

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

No: 500-11-042345-120

SUPERIOR COURT

Commercial Division  
(Sitting as a court designated pursuant to the  
*Companies' Creditors Arrangement Act*, R.S.C.  
1985, c. C-36)

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IN THE MATTER OF THE PROPOSED PLAN OF  
COMPROMISE AND ARRANGEMENT OF:

**AVEOS FLEET PERFORMANCE INC./  
AVEOS PERFORMANCE AÉRONAUTIQUE INC.  
and  
AERO TECHNICAL US, INC.**

**Insolvent Debtors/Respondents**

and

**FTI CONSULTING CANADA INC.**

**Monitor**

and

**THE SUPERINTENDENT OF FINANCIAL  
INSTITUTIONS**

**Petitioner**

and

**CRÉDIT SUISSE AG, CAYMAN ISLAND BRANCH,  
as Fondé de Pouvoir**

and

**WELLS FARGO BANK NATIONAL ASSOCIATION,  
as Fondé de Pouvoir**

and

**AVEOS HOLDING COMPANY as Fondé de  
Pouvoir**

**And**

**BREOF/BELMONT BAN L.P.**

and

**AON HEWITT, as administrator of the Aveos  
Fleet Performance Inc. pension plans**

and

**The former retired employees of Aveos Fleet  
Performance Inc.**

**Mis en cause**

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**WRITTEN SUBMISSIONS OF AVEOS FLEET PERFORMANCE INC.  
(TO THE MOTION FOR A DECLARATORY JUDGMENT  
OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS)**

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**TO THE HONOURABLE JUSTICE MARK SCHRAGER, J.S.C., SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, AVEOS FLEET PERFORMANCE INC. RESPECTFULLY SUBMITS THE FOLLOWING:**

**I. INTRODUCTION**

1. Capitalized terms used herein have the same definition as in the Agreed Statement of Facts executed between the parties on March 28, 2013.
2. OSFI takes the position in the Motion that the property of Aveos is subject to a deemed trust established under the PBSA in favour of the Plan for an amount equivalent to the unpaid special payments owing to the Plan for calendar year 2012.
3. Aveos takes no position on the existence of such deemed trust or its validity and enforceability in the context of:
  - i) These proceedings under the CCAA;
  - ii) Any eventual proceedings by Aveos under the *Bankruptcy and Insolvency Act*.
4. This Submission is limited solely to the issue of the application (“imputation”) of a forthcoming payment by Aveos to the Plan in the amount of \$600,288 (the “**Payment**”) to be made on or around October 25, 2013 pursuant to an Order of this Court made on October 11, 2013 by Hon. Mark Schrager, already part of the Court record and quoted for the purposes of this Motion record as **Exhibit A-1** (the “**PBA Order**”). In this regard and, for the reasons as set out and summarized below, Aveos seeks only to put forward the underlying facts and its position based on those facts and the context in which the PBA Payments came into existence.
5. The PBA Order was made pursuant to a *Re-Amended Motion for Authorization to Cancel a Letter of Credit and to Make Certain Distributions* filed by Aveos and dated October 11, 2013, already part of the Court record and quoted for the purposes of this Motion record as **Exhibit A-2** (the “**PBA Motion**”).
6. The Payment to be made under the PBA Order is based on amounts owing by Air Canada to Aveos under the *Pension and Benefits Agreement* dated as of June 22, 2007 between Aveos and Air Canada, already part of the Court record as exhibit R-1 to the PBA Motion and quoted for the purposes of this Motion record as **Exhibit A-3** (the “**PBA**”).

## **II. IMPUTATION OF THE PAYMENT**

7. To the extent it has the authority to do so in the context of these CCAA Proceedings, Aveos intends the Payment to be imputed to the special payments due and owing to the Plan in the following order:
  - i) \$254,950 for the monthly special payment for February, 2012;
  - ii) \$254,950 for the monthly special payment for March, 2012; and
  - iii) the balance of \$90,388 on account of the special payment for the month of April 2012.
8. The above mentioned special payments are the debts Aveos believes should be discharged because they are allegedly protected by a form of priority that would reduce the property otherwise available for the creditors in general, should any property ultimately be available and not be subject to the security interests of the Third Party Secured Lenders, for example, in a subsequent bankruptcy.
9. The above mentioned special payments are the oldest debts of Aveos to the Plan and, in fact, the February and March 2012 payments were the only amounts owing to the Plan at the date of the Initial Order and still unpaid.
10. As stated in the Agreed Statement of Facts, at paragraph 27 and in Exhibit R-5, the special payments for the period of June 2012 to December 2012 only became due upon the effective date of termination of the Plan on May 19, 2012.
11. As stated in the Agreed Statement of Facts, at paragraph 30 and in Exhibit R-7, the actuarial deficit of the Plan only became due and payable on May 19, 2012 and was only determined on December 19, 2012 in the Termination Report, Exhibit R-7.
12. No provision of the Plan, the PBSA or the CCAA restricts the right of the debtor to impute payments.

## **III. QUALIFICATION OF THE PAYMENT**

13. As appears from the PBA, Exhibit A-3, the PBA Motion, Exhibit R-2 and the PBA Order, Exhibit A-1, Aveos was owed certain payments by Air Canada, based on the shortfall of the actuarial value of the assets transferred to the Plan in comparison to the actuarial value of the liabilities assumed by Aveos as at October 22, 2007.
14. While Aveos was receiving certain amounts from Air Canada in respect of the obligations Aveos assumed towards the former Air Canada employees covered by the Plan, the obligations of Aveos towards the Plan were separate and distinct from the amounts received from Air Canada and were strictly regulated by the PBSA.

15. In accordance with the PBSA, Aveos therefore made more payments to the Plan on account of the actuarial solvency deficit than the amounts it received and will receive from Air Canada, including the funds forming part of the PBA Payment.
16. As stated in the Agreed Statement of Facts, at paragraphs 11, 12 and 13, Aveos made special payments in the calendar year 2011 in an aggregate amount of \$3,059,400 and an additional payment of \$254,950 for the month of January 2012.
17. Therefore, Aveos has already paid more into the Plan than the original 2007 solvency deficit and the amounts now owing to the Plan are, in fact, subsequent, new obligations of Aveos to the Plan that only arose by virtue of the termination of the Plan, which occurred after the date of the initial Order.
18. As stated in the PBA Motion, Air Canada agreed to voluntarily make a payment by anticipation (in advance of the due date) to Aveos for the remaining non-union pension obligations of Air Canada under the PBA, subject to Aveos agreeing that such funds be made available to the Plan.
19. While an amount in excess of the original 2007 deficit obligation to the Plan had been paid by Aveos, Aveos agreed to receive the Air Canada funds and make the Payment, subject to the PBA Order being granted.
20. While the PBA Order contains provisions at paragraph 9 that Aveos is acting in trust and as fiduciary, such provision was only intended to protect stakeholders against a commingling of funds and does not diminish Aveos' right to receive the funds and to direct how they should be applied on account of its obligations to the Plan, as long as it is "in respect of the liabilities of Aveos to the Non-Unionized Pension Plan".
21. In summary, Aveos submits that, if it has a right to impute how the payment to the Plan should be applied, it is logical to impute the payment against the special payments owing for calendar year 2012 that had accrued and were owed as at the date of the Initial Order. However, Aveos respects the fact that other stakeholders may take a different position and that the ultimate decision as to how the payment to the Plan is to be imputed will be made by the Court. As noted above, Aveos seeks only to put forward the underlying facts and its position based on those facts and the context in which the PBA Payments came into existence and will abide by whatever decision the Court ultimately makes, without objection.

**THEREFORE, RESPONDENT AVEOS FLEET PERFORMANCE INC. PRAYS THIS COURT TO:**

**ACKNOWLEDGE** the Written Submissions of Aveos Fleet Performance Inc.;

**SUBSIDIARILY AND**, if applicable, and subject to the above payment,

**ACKNOWLEDGE** that the amount of \$600,288 to be paid by Aveos is to be applied on account of the special payments due and owing for the months of February, March and April 2012;

**REDUCE** to \$2,204,162 the amount referred to in the conclusions of the Motion for a declaratory judgment;

**THE WHOLE** without costs.

Montréal, October 18, 2013

**(s) Dentons Canada LLP**

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**DENTONS CANADA LLP**  
Attorneys for AVEOS FLEET  
PERFORMANCE INC./ AVEOS  
PERFORMANCE AÉRONAUTIQUE INC

**TRUE COPY**

*Dentons Canada LLP*

CANADA

SUPERIOR COURT

PROVINCE OF QUÉBEC  
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and  
AERO TECHNICAL US, INC.

Insolvent Debtors/Respondents

and

FTI CONSULTING CANADA INC.

Monitor

and

THE SUPERINTENDENT OF FINANCIAL  
INSTITUTIONS

Petitioner

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AVEOS LIST OF EXHIBITS ON THE MOTION FOR A DECLARATORY JUDGMENT  
OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS

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- Exhibit A-1:** Order dated October 11, 2013 by Hon. Mark Schragger;
- Exhibit A-2:** Re-Amended Motion for Authorization to Cancel a Letter of Credit and to Make Certain Distribution filed by Aveos Fleet Performance Inc. dated October 11, 2013;
- Exhibit A-3:** Pension and Benefits Agreement dated as of June 22, 2007 between Aveos Fleet Performance Inc. and Air Canada.

Montréal, October 18, 2013  
(s) Dentons Canada LLP

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TRUE COPY

*Dentons Canada LLP*

DENTONS CANADA LLP  
Attorneys for AVEOS FLEET  
PERFORMANCE INC./ AVEOS  
PERFORMANCE AÉRONAUTIQUE INC

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AÉRONAUTIQUE INC.**

And  
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And  
**THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS** Petitioner

And  
**CRÉDIT SUISSE AG, CAYMAN ISLAND BRANCH, as Fondé de Pouvoir**  
and  
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and  
**AVEOS HOLDING COMPANY as Fondé de Pouvoir** Respondents

And  
**BREOF/BELMONT BAN L.P. and**  
**AON HEWITT, as administrator of the Aveos Fleet Performance Inc.**  
pension plans  
and

The former and retired employees of Aveos Fleet Performance Inc.  
Mis en cause

Roger P. Simard File: 548731-1

**BRIEF OF ARGUMENTS OF AVEOS FLEET PERFORMANCE  
INC. (ON THE MOTION FOR A DECLARATORY JUDGMENT  
OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS)**

COPY



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