

**ONTARIO
SUPERIOR COURT OF JUSTICE - COMMERCIAL LIST**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF JAMES ROBERT TUCKER, RICHARD HEIS AND
ALLAN WATSON GRAHAM OF KPMG LLP, AS JOINT ADMINISTRATORS**

Applicants

**AND IN THE MATTER OF AERO INVENTORY (UK) LIMITED
and AERO INVENTORY PLC**

Respondents

**APPLICATION UNDER SECTIONS 46 AND FOLLOWING OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED (“CCAA”)**

MOTION RECORD

January 17, 2011

OGILVY RENAULT LLP
Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4
CANADA

Evan Cobb LSUC# 55787N
Tel: (416) 216-1929
Fax: (416) 216-3930

Lawyers for the Applicants

TO: The parties on the attached service list

SERVICE LIST

TO: **Aero Inventory (UK) Limited and Aero Inventory PLC**
30 Lancaster Road
New Barnet, Hertfordshire
EN4 8AP
United Kingdom

Collin Trupp
Tel: 614 0662-6670
Email: collin.trupp@aero-inventory.com

Respondents

AND TO: **Aero Inventory (Canada) Inc. /**
Aero-Inventaire (Canada) Inc.
394 Isabey Street
Bureau 250
Saint-Laurent, Québec H4T 1V3

Martin Webster
Email: martin.webster@aero-inventory.com

AND TO: **KPMG Inc.**
Suite 3300
Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B2

Nicholas Brearton
Tel: (416) 777-3768
Fax: (416) 777-3364
Email: nbrearton@kpmg.ca

Information Officer, Receiver and Manager and Trustee in Bankruptcy

AND TO: Air Canada
7373 Cote Vertu West
PO Box 14000
Saint-Laurent, Quebec H4Y 1H4

Diane Mazuroski
Senior Director, ACM
7373 Cote-Vertu West
Dorval, Quebec H4Y 1H4

Tel: 1 (514) 422 7499
Fax: 1 (514) 422 4730
Email: diane.mazuroski@aircanada.ca

With a copy to

Vice President and General Counsel
Fax: 1 (514) 422 4147

AND TO: Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Sean F. Dunphy
Tel: (416) 869-5662
Email: sdunphy@stikeman.com

Alex Rose
Tel: (416) 869-5261
Email: arose@stikeman.com

Fax: (416) 947-0866

Solicitors for Air Canada

AND TO: Osler, Hoskin & Harcourt LLP
1000 De La Gauchetière Street West
Suite 2100
Montréal QC H3B 4W5

Sandra Abitan
Tel: (514) 904-5648
Fax: (514) 904-8101
Email: sabitan@osler.com

Solicitors for Aveos Fleet Performance Inc.

AND TO: Thornton Grout Finnigan
Canadian Pacific Tower
Toronto-Dominion Centre
Suite 3200, 100 Wellington Street West
P.O. Box 329
Toronto, Ontario M5K 1K7

John T. Porter
Tel: (416) 304-0778
Fax: (416) 304-1313

Solicitors for Lloyds TSB Commercial Finance Limited

AND TO: **Industry Canada, Bankruptcy Division**
600 – 25 St. Clair Avenue East
Toronto, Ontario M4T 1M2

Attn: Danny Truong
Fax: (416) 973-7440

AND TO: Diane Winters
GST Payroll Deductions
Canada Customs and Revenue Agency
c/o Department of Justice
Ontario Regional Office
The Exchange Tower
130 King Street West
Suite 3400, Box 36
Toronto, Ontario M5K 1K6

Email: Diane.Winters@justice.gc.ca

Tel. (416) 973-3172

Fax: (416) 973-0810

AND TO: Kevin J. O'Hara
Ontario Ministry of Finance
Ministry of the Attorney General
Legal Services Branch
6th Floor
33 King Street West
Box 627, Stn. A
Oshawa, Ontario L1H 8H5

Email: Kevin.Ohara@ontario.ca

Tel.: (905) 433-6934

Fax: (905) 436-4510

AND TO: Josée Guillemette
Secteur C65-6G
1265, boulevard Charest Ouest
Québec, (Québec) G1N 2B6

Email: Josee.guillemette@mrq.gouv.qc.ca

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MOTION RECORD

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Tab 1

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**NOTICE OF MOTION
(Returnable January 21, 2011)**

James Robert Tucker, Richard Heis and Allan Watson Graham of KPMG LLP, in their capacity as foreign representatives (the “**Foreign Representatives**”) in these proceedings will make a motion to a Judge presiding over the Commercial List on January 21, 2011, at 10:00 am or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR AN ORDER:

- (a) abridging the time for service of the Notice of Motion and the Motion Record and dispensing with further service thereof;
- (b) approving the settlement and labour supply agreement (the “**Aveos Settlement Agreement**”) between Aero Inventory (UK) Limited (in administration) (“**Aero UK**”), Aero Inventory plc (in administration) (collectively, the “**Foreign Debtors**”), Aero Inventory (Canada) Inc./Aero Inventaire (Canada) Inc. (“**Aero Canada**”), James Robert Tucker, Richard Heis and Allan Watson Graham, in their capacities as Joint Administrators of the Foreign Debtors, Aveos Fleet Performance Inc. (“**Aveos**”), Aeromantenimiento S.A. (“**Aeroman**”), and KPMG Inc., in its capacities as trustee in bankruptcy of the Foreign Debtors (the “**Trustee**”) and Receiver and Manager of all of the assets, undertakings and properties of Aero Canada (the “**Receiver**”) dated December 31, 2010 and appended to the Second Report of KPMG Inc., in its capacities as Information Officer (the “**Information Officer**”) and Trustee, dated January 17, 2011 (the “**Second Report**”),
- (c) approving the sale transactions to Aveos (the “**Sale Transactions**”) contemplated by the Aveos Settlement Agreement and vesting in Aveos the Foreign Debtors’ right, title and interest in and to the Aveos Purchased Assets (as defined in the Aveos Settlement Agreement) upon satisfaction of the conditions described in the draft order served with this Notice of Motion,
- (d) directing the net proceeds from the Aveos Settlement Agreement to be paid to Aero UK to be dealt with in accordance with the Administration Proceedings (as defined in the Second Report);
- (e) sealing the confidential appendices to the Second Report as well as the Supplement to the Second Report of KPMG Inc. in its capacity as Trustee, dated January 17, 2011 (the “**Supplemental Report**”),

- (f) approving the Second Report, the First Report (as defined in the Second Report), the Supplemental Report and the Receiver's First Report (as defined in the Second Report) and the activities of the Information Officer, the Trustee and the Receiver described therein,
- (g) approving the Receiver's Statement of Receipts and Disbursements for the period from December 1, 2009 to January 7, 2011 in the form attached to the Receiver's First Report (the "**R&D Statement**"), and
- (h) such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Approval of the Aveos Settlement Agreement

- (a) the Aveos Settlement Agreement is beneficial to all stakeholders of the Foreign Debtors;
- (b) the Aveos Settlement Agreement settles outstanding disputes between Aero UK and Aveos, providing a mechanism by which outstanding accounts will be paid and a process for the removal of Aero UK owned inventory from Aveos' control, all in a commercially reasonable fashion;
- (c) the Trustee is satisfied that the releases granted are reasonable and the Joint Administrators are satisfied that their actions in providing the releases are in the interests of creditors as a whole in accordance with their statutory duties;

Vesting Order

- (d) the Information Officer is advised by Aveos that Aveos needs to represent to its customers that it has the ability to pass title to parts free and clear upon installation of those parts on customers' property;
- (e) as a result of the foregoing, the draft order served with this Notice of Motion contemplates that upon installation of any Initial Aveos Purchased Assets or Interim Aveos Purchased Assets (each as defined in the Aveos Settlement

Agreement) on a customer's property, all of the Foreign Debtors' right, title and interest in those Aveos Purchased Assets shall vest absolutely in Aveos free and clear;

- (f) there will be no proceeds paid by Aveos for the Termination Date Aveos Purchased Assets (as such term is defined in the Aveos Settlement Agreement) and such assets will vest in Aveos upon termination of the Aveos Settlement Agreement in certain circumstances;
- (g) in all other cases, the Aveos Purchased Assets (as such term is defined in the Aveos Settlement Agreement) will vest on customary terms;

Proceeds of Aveos Settlement Agreement

- (h) the Foreign Representatives propose that the net proceeds from the Aveos Settlement Agreement shall be paid to Aero UK to be dealt with in accordance with the Administration Proceedings;
- (i) the only party that the Trustee and the Foreign Representatives are aware of that will obtain an economic benefit from the proceeds of the Aveos Settlement Agreement is the syndicate of senior lenders to the Foreign Debtors;

Request for Sealing Order

- (j) the Foreign Representatives request that the Confidential Schedules be sealed pending further order of the Court to protect certain confidential commercial information regarding pricing and operations that is critical to Aveos' operations and the disclosure of which would be damaging to Aveos' commercial interests;
- (k) the disclosure of the pricing information would also be detrimental to efforts to realize on Aero UK's inventory;

- (l) the Foreign Representatives and the Trustee believe that the salutary effects of sealing the Confidential Schedules outweigh any deleterious effects and that no third party would be materially prejudiced by such sealing;
- (m) the Trustee also believes that it is essential that the Supplemental Report remain sealed and segregated from the public record due to the sensitive commercial nature of the settlement information disclosed therein;

Approval of Reports, R&D Statement and Activities

- (n) the Trustee, the Information Officer and the Receiver respectfully submit that their activities, as set out in this Second Report, the First Report, the Supplemental Report and the Receiver's First Report, are within the scope of their respective mandates and are reasonable in the circumstances;

Miscellaneous

- (o) Rules 2.03 and 3.02 of the *Rules of Civil Procedure* (Ontario);
- (p) the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended, and of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (q) the grounds described in the First Report, the Second Report, the Receiver's First Report and the Supplemental Report, filed; and
- (r) such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) the Second Report;
- (b) the Receiver's First Report;

- (c) the Supplemental Report; and
- (d) such further and other evidence as counsel may advise and this Honourable Court permit.

January 17, 2011

Ogilvy Renault LLP
Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4
CANADA

Evan Cobb LSUC# 55787N
Tel: (416) 216-1929
Fax: (416) 216-3930

Lawyers for the Applicants

TO: The parties on the attached service list

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Court File No: 09-CL-8456-00CL

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ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

NOTICE OF MOTION
(Returnable January 21, 2011)

Ogilvy Renault LLP
Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street, P.O. Box 84
Toronto, Ontario M5J 2Z4

Evan Cobb LSUC#: 55787N
Tel: (416) 216-1929
Fax : (416) 216-3930

Lawyers for the Applicants

7