



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.) MONDAY, THE 3RD
JUSTICE MORAWETZ) DAY OF FEBRUARY, 2014

**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**

ORDER

(REGULARIZATION)

THIS MOTION, made by the Applicants, further to a motion brought by Air Canada on January 6, 2011 and an endorsement of this Court granted on August 18, 2011, as foreign representatives (in such capacity, the "Foreign Representatives"), for an Order pursuant to section 49 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, and sub-sections 187(11) and (12) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Eighth Report (the "Eighth Report") of KPMG Inc., in its capacity as Information Officer and Trustee in Bankruptcy (in such capacity, the "Trustee") of the respondents Aero Inventory (UK) Limited (in administration) and Aero Inventory Plc (in administration) (collectively, the "Foreign Debtors") dated January 16, 2014, and the Motion

Record of Air Canada for its Motion returnable January 6, 2011, and on hearing the submissions of counsel for the Foreign Representatives, no one appearing for any other party although duly served as appears from the affidavit of service of Evan Cobb sworn January 31, 2014,

1. **THIS COURT ORDERS** that the time for service of the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the provisions of this Order apply notwithstanding the provisions of the Order of this Court granted on February 10, 2010 in these proceedings (the "**February 10 Order**") and in the case of any conflict between the provisions of this Order and the February 10 Order, the provisions of the February 10 Order are hereby varied.

3. **THIS COURT ORDERS** that in view of the continuation of the motion brought by the Trustee against Air Canada under Section 95 of the BIA (the "**Preference Motion**"), proceedings shall be regularized with the Trustee taking the steps necessary to comply with its obligations under the BIA, except as modified in paragraphs below.

4. **THIS COURT ORDERS** that the Preference Motion shall be transitioned to the proceedings commenced by the Foreign Debtors under the BIA.

5. **THIS COURT DECLARES** that:

- (a) a trustee in bankruptcy (or a Section 38 BIA assignee) is the only party that can bring a preference action in bankruptcy proceedings;
- (b) the proceeds recovered by the trustee are brought into the estate;
- (c) distribution under the BIA is subject to the rights of recovery of secured creditors; and
- (d) the bringing of a preference action and the recovery of proceeds does not preclude secured creditors from pursuing whatever remedies they may have under the provisions of their security agreements and relevant statutes.

6. **THIS COURT ORDERS** that if it is the intention of any secured party to work in conjunction with the Trustee and for the Trustee to utilize the preference provisions, the

appropriate notifications should be provided in accordance with Section 13.4 of the BIA and the Trustee should move forward to fulfill its statutory obligations in the conduct of its administration.

7. **THIS COURT ORDERS** that the Trustee shall no longer be relieved from compliance with the provisions of Subsections 16(1) and 16(2) of the BIA.

8. **THIS COURT ORDERS** that if the Trustee discovers any unencumbered property of the Foreign Debtors located in Canada, or any material deeds, books, records or documents related thereto, and of which it would be required to take possession or make an inventory under Subsection 16(3) of the BIA, the Trustee shall seek directions from the Court.

9. **THIS COURT ORDERS** that the Trustee may rely on the Joint Administrators' verification of the Foreign Debtors' financial information in satisfaction of the Trustee's obligations under Section 21 of the BIA.

10. **THIS COURT ORDERS** that the Trustee shall no longer be relieved from compliance with the provisions of Section 22 of the BIA to the extent that the Trustee has authority, in view of the Administration Proceedings (as defined in the Eighth Report), to deliver the returns described in Section 22 of the BIA.

11. **THIS COURT ORDERS** that the Trustee shall no longer be relieved from compliance with the provisions of Section 24 of the BIA that would require the Trustee to insure (or cause to be insured) any of the Foreign Debtors' insurable property in which the Trustee has an interest.

12. **THIS COURT ORDERS** that the Trustee shall no longer be relieved from compliance with the provisions of Section 27 of the BIA. In complying with Section 27 of the BIA, the Trustee shall be entitled to rely upon information received from the Foreign Debtors, acting by the Applicants (as agents and without personal liability) or any subsequently appointed liquidator.

13. **THIS COURT ORDERS** that all of the Trustee's obligations to call and hold a first meeting of creditors, including steps related to notice and meeting procedures, under the BIA shall be met in the manner described in the Meeting Protocol attached hereto as Schedule "A".

14. **THIS COURT ORDERS** that where the Trustee is now required to comply with any duties or obligations under the BIA as a result of this Order, the Trustee shall comply with those duties or obligations as soon as reasonably practicable following the date of this Order without reference to any time periods prescribed in the BIA.

15. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, the United Kingdom or elsewhere, to give effect to this Order and to assist the Applicants, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Trustee in any foreign proceeding, or to assist the Applicants and the Trustee and their respective agents in carrying out the terms of this Order.

16. **THIS COURT ORDERS** that each of the Applicants and the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

[Handwritten Signature] RST

RECEIVED BY THE REGISTRAR
BANKRUPTCY AND RECEIVERS A TORONTO
100 KING STREET WEST
TORONTO, ONTARIO M5X 1C5
FEB 3 - 2014
[Handwritten Initials]

SCHEDULE "A"

MEETING PROTOCOL

In the circumstances of the bankruptcies of Aero Inventory (UK) Limited (in administration) ("AIUK") and Aero Inventory PLC (in administration) ("Aero PLC"), clarification is needed regarding compliance with certain provisions of the Bankruptcy and Insolvency Act, R.S.C. 1985 c. B – 3, as amended (the "BIA"). Accordingly, the following meeting protocol has been developed.

Inquiries as to the names and addresses of creditors of AIUK and Aero PLC:

KPMG Inc., in its capacity as Trustee in Bankruptcy of AIUK and Aero PLC (in such capacity, the "Trustee"), will be entitled, for the purposes of the first meetings of creditors of those parties, to rely upon the names and addresses of creditors of AIUK and Aero PLC as shown in the records provided by AIUK and Aero PLC to the Joint Administrators of AIUK and Aero PLC on November 11, 2009 (the "Creditor Records"), except to the extent that the Trustee has actual knowledge of creditors or claim amounts other than those which appear in the Creditor Records (the "Additional Known Claims").

Notice procedures:

The Trustee will send notice of the first meeting of creditors of AIUK or the first meeting of creditors of Aero PLC, as applicable, by ordinary mail to those parties and those addresses found in the applicable Creditor Records as well as to the Superintendent (the "Recorded Notice Parties") and to holders of Additional Known Claims, at the last known address of the holders of such Additional Known Claims in AIUK's or Aero PLC's records. The Trustee will do so not less than 16 days before the date of the first meeting of creditors of each of AIUK and Aero PLC. With the notice the Trustee shall include a list of creditors of the applicable bankrupt and the amounts of their claims as provided in the Creditor Records and the Additional Known Claims and a proof of claim and proxy in prescribed form. A creditor shall be entitled to complete a proof of claim form using a claim amount that is different from that found in the Creditor Records or the Additional Known Claims.

The Trustee will, to the extent not already included among the Recorded Notice Parties, send the form of notice, creditor list, proof of claim and proxy contemplated in the foregoing paragraph by ordinary mail to applicable tax authorities in Canada, individuals employed by AIUK or Aero PLC as at November 11, 2009, affiliates of AIUK or Aero PLC, and parties who purchased products or services from AIUK or Aero PLC during the 12 month period ending on November 11, 2009. The Trustee will also provide the same notice, creditor list, proof of claim and proxy to any creditors of AIUK or Aero PLC as at November 11, 2009 of which the Trustee becomes aware prior to the first meetings of creditors of AIUK and Aero PLC.

Review of Claims:

Proofs of claim are provided in connection with the first meetings of creditors of AIUK and Aero PLC solely for the purposes of calculating votes at those meetings. The Trustee will accept a creditor's claim for voting purposes at the first meeting of creditors up to the balance of such claim as reflected in the records of AIUK and Aero PLC and will not review the accuracy or validity of any claim except to the extent that such claim exceeds the amount shown in the books and records of AIUK and Aero PLC and would have a material impact on the results of any voting at the first meetings of creditors. The acceptance or valuation of a proof of claim in connection with the first meeting of creditors of AIUK or Aero PLC for the purpose of voting at that meeting is not, and shall not be interpreted as, an acceptance of that claim for any distribution purposes whether under the BIA or in any foreign insolvency proceedings or otherwise nor is it, nor shall it be interpreted as, an acceptance of the BIA as the appropriate statute under which any distributions shall be made. The filing of a proof of claim

for the purpose of voting at the meeting will not prevent a creditor filing a separate proof of claim for distribution purposes, if that stage is reached, either in the proceedings of AIUK and Aero PLC under the BIA or in any foreign insolvency proceedings but its right to do so will be determined in accordance with the relevant proceedings.

Location of first meeting of creditors:

Each of the first meetings of creditors will be held at the offices of KPMG Inc., 333 Bay St., 46th Floor, Toronto, Ontario. Parties may also attend the applicable first meeting of creditors via teleconference from London, England.

Eligible Attendees:

Only those eligible to attend a first meetings of creditors in accordance with the provisions of the BIA, and related regulations, shall be entitled to attend the first meeting of creditors of either AIUK or Aero PLC.

Publication requirements:

Publication requirements under Subsection 102(4) of the BIA shall not be applicable for the purposes of the first meetings of creditors of AIUK and Aero PLC.

Purpose of meetings:

The purposes of the first meetings of creditors of AIUK and Aero PLC shall be as set forth in subsection 102(5) of the BIA.

Chair of first meetings:

The Official Receiver, or its nominee, shall be the chair of the first meetings of creditors of AIUK and Aero PLC.

Casting Vote:

The chair of the first meetings of creditors of AIUK and Aero PLC shall not have a casting vote in the case of a tie.

Non-receipt of notice by creditor:

The proceedings had and resolutions passed at the first meetings of creditors of AIUK and Aero PLC shall, unless the Court otherwise orders, be valid, notwithstanding that some creditors had not received notice.

Quorum:

One creditor entitled to vote, or the representative of such creditor, shall constitute a quorum for the purposes of each of the first meetings of creditors of AIUK and Aero PLC, respectively.

Form of Proxy and Voting Letter

All creditors receiving notice of the first meetings of creditors will receive a notice package in prescribed form. Creditors shall be entitled to name the Trustee as their proxy for all matters except for the appointment of inspectors. The Trustee intends to vote any such proxies in favour of the confirmation of its, and its counsel's, appointment in these proceedings.

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

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

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

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Proceeding commenced at Toronto

ORDER

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