

# TAB 1

**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**")**

**NOTICE OF MOTION**

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 a date to be determined, at 330 University Avenue, Toronto.

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

THE MOTION IS FOR AN ORDER, among other things:

- (a) that Air Canada and Aero are bound by the terms of the Uplift Agreement (as defined below);
- (b) that Air Canada shall forthwith provide Aero, or its affiliates, agents or contractors, with access to the Facilities for the purposes of repossessing the Aero Parts (as defined below);
- (c) that Air Canada shall preserve all Airworthiness Certifications (as defined below) in its possession and relating to the Aero Parts, and deliver such documents, whether in electronic or hard copy form, to Aero upon request, and Air Canada shall cooperate with Aero to assist in obtaining Airworthiness Certifications relating to Aero Parts in Air Canada's possession if Aero does not currently possess those Airworthiness Certifications, all with reimbursement by Aero for Air Canada's reasonable out-of-pocket costs;
- (d) that Air Canada shall provide Material Transfer Forms (as defined below) in fully executed form to Aero for all Aero Parts currently in Air Canada's possession; and
- (e) authorizing Aero, or its affiliates, agents or contractors, to take possession of the Swapped Back CAT 3 Parts (as defined below), for the purposes of storing those Swapped Back CAT 3 Parts at Aero-controlled facilities in Montreal until resolution of Air Canada's potential claim to the Swapped Back CAT 3 Parts or further order of the Ontario Court, provided that Air Canada is given rights to inspect the Swapped Back CAT 3 Parts on reasonable notice to Aero.

THE GROUNDS FOR THE MOTION ARE:

- (a) On November 11, 2009, James Robert Tucker, Richard Heis and Allan Watson Graham of KPMG LLP were appointed Joint Administrators of Aero Inventory (UK) Limited ("**Aero**") and Aero Inventory plc ("**Aero plc**" and, collectively with Aero, the "**Foreign Debtors**") pursuant to an order of the

High Court of Justice of England and Wales (Chancery Division, Companies Court) (the "**Administration Order**");

- (b) On the same date, the Ontario Superior Court of Justice (Commercial List) granted an order (the "**Recognition Order**"), *inter alia*, recognizing the UK administration proceedings of the Foreign Debtors as "foreign main proceedings" for the purposes of section 47 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, (the "**CCAA**") recognizing the Foreign Representatives as "foreign representatives" as defined in section 45 of the CCAA and recognizing and enforcing the Administration Order pursuant to section 49 of the CCAA;
- (c) The Foreign Debtors and their international affiliates, supplied parts to the airline industry;
- (d) Aero's customers are airlines and aerospace maintenance and repair companies that operate in various locations globally;
- (e) Aero has two primary Canadian customers: Air Canada and Aveos Fleet Performance Inc. ("**Aveos**");

*The Aero Parts*

- (f) Aero's assets in Canada are primarily composed of category 3 consumable and expendable aircraft parts ("**CAT 3 Parts**", and those CAT 3 Parts owned by Aero in Canada being "**Aero Parts**");
- (g) All Aero Parts, save for a minimal amount of slow moving inventory located in third party owned warehouse space rented by Aero Canada, is located at various facilities across Canada that are under the control of Aveos and Air Canada (the Air Canada controlled facilities being the "**Facilities**");

*Removal of Aero Parts*

- (h) On December 31, 2010, Aero entered into a Settlement and Labour Supply Agreement (the "**Settlement Agreement**") with Aveos, among others,

pursuant to which Aveos agreed to undertake the removal of the Aero Parts from Air Canada and Aveos controlled premises;

- (i) Aveos has commenced proceedings under the CCAA and has indicated that it is no longer willing to undertake the parts removal task;
- (j) Air Canada and Aero have negotiated an agreement (the "**Uplift Agreement**") pursuant to which Air Canada shall permit, following reasonable written notice to, and under the supervision of, Air Canada, the uplifting and removal (or scrapping or disposition) of certain Aero Parts by Aero, or by such parties as may be approved by Air Canada acting reasonably, in a manner agreed to by the parties acting reasonably (the costs of doing so to be borne solely by Aero) so as not to materially disrupt the normal operations of Air Canada;
- (k) The Uplift Agreement has never been executed by Air Canada;
- (l) Aero has no option other than to contract for its own labour, either directly or through an affiliate, to undertake the uplift process;
- (m) Aero seeks to enforce the terms of the Uplift Agreement in order to allow Aero to remove its parts from the Facilities using the processes outlined in the Fourth Report of KPMG Inc., as Information Officer, dated April 26, 2012 (the "**Repossession Procedures**");

*Certification of Aero Parts*

- (n) In order to market the Aero Parts in a manner that achieves optimum value, Aero must be able to provide such parts in an appropriately certified form;
- (o) The Joint Administrators would expect that Air Canada would be possession of certification documents in electronic and/or hard copy form that would be responsive to the requirements of relevant authorities that a particular Aero Part conforms to applicable standards of airworthiness, which would include documentation confirming a continuous chain of ownership (the "**Airworthiness Certifications**");

- (p) The Joint Administrators further expect that Air Canada would be in a position to provide valid and executed material transfer forms to Aero for all Aero Parts that are removed from the Facilities (the "**Material Transfer Forms**");
- (q) The Joint Administrators require Air Canada's assistance and cooperation in preserving and obtaining Airworthiness Certifications and executed Material Transfer Forms for the Aero Parts;

*Swapped Back CAT 3 Parts*

- (r) Air Canada acknowledges that Aero owns certain CAT 3 Parts currently, but asserts a potential interest in those parts that were the subject of pre-Administration Date swap arrangements between Aero and Air Canada, which interest could only crystallize if the Trustee in Bankruptcy of Aero is successful in its claim against Air Canada under Section 95 of the *Bankruptcy and Insolvency Act* (Canada) (the "**Swapped Back CAT 3 Parts**");
- (s) Aero has elected not to deal with the Aero Parts that constitute Swapped Back CAT 3 Parts at this time and intends to place those parts into storage in Montreal pending resolution of Air Canada's potential contingent claim, or further order of the Ontario Court;
- (t) Aero continues to believe that the Swapped Back CAT 3 Parts are validly owned by Aero;

*Aero's Inventory Realization Strategy*

- (u) In order to maximize realisations for the benefit of creditors, Aero is currently implementing a global inventory realization strategy; and
- (v) In order to complete its global inventory realization strategy on an acceptable timeline, the inventory access issues in Canada must be resolved immediately; and

*Miscellaneous*

- (w) such further and other grounds as counsel may advise and this Honourable Court permit

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

- (a) the Fourth Report of KPMG Inc., in its capacity as Information Officer of the Foreign Debtors, dated April 26, 2012; and
- (b) such further and other evidence as counsel may advise and this Honourable Court permit.

April 26, 2012

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

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( COMMERCIAL LIST)**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

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