

**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 shall pay, without set off, for its consumption of Aero Parts (as defined below) from November 11, 2009 onward, as such consumption is determined in accordance with the Algorithm and the Pricing Methodology (each as defined below) and that Air Canada shall make such payments within five (5) business days of delivery of an invoice to Air Canada by Aero.
- (b) that Air Canada shall pay amounts due to Aero as evidenced by the April 15 Invoice (as defined below) within five (5) business days of the date of the Order;
- (c) that all consumption of Aero Parts on and after November 11, 2009 shall be deemed to have occurred in accordance with the Terms of Sale (as defined below); and
- (d) that Air Canada shall cease consumption of Aero Parts immediately unless such consumption occurs in accordance with subparagraphs (a) and (c) above.

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;
- (f) Aero's assets in Canada are primarily composed of category 3 consumable and expendable aircraft parts ("**CAT 3 Parts**", CAT 3 Parts owned by Aero in Canada being referred to herein as "**Aero Parts**");
- (g) The Recognition Order states, at Paragraph 10, in part that "any new purchases of goods from the Foreign Debtors under existing supply contracts or otherwise from and after the effective time of this Order shall be paid by the customers on terms acceptable to the Foreign Representatives without counterclaim or deduction";
- (h) The Foreign Representatives regarded this provision as necessary in order to prevent Aero's Canadian customers from continuing their consumption of Aero's inventory without payment to Aero in reliance upon certain purported set-off rights;
- (i) There is currently no agreement between Air Canada and Aero for the continued consumption of Aero's CAT 3 Parts by Air Canada;
- (j) A computer algorithm to determine ownership and consumption of CAT 3 Parts as between Aveos, Air Canada and Aero (the "**Algorithm**") has been developed by Air Canada, Aveos and Aero;
- (k) A pricing methodology (the "**Pricing Methodology**") for consumption of Aero Parts was determined by Aero through a historical review of prices charged by Aero to Air Canada;
- (l) Between November 11, 2009 and April 15, 2012, Air Canada has consumed several million dollars worth of Aero Parts, as reflected in an invoice generated by Aero (the "**April 15 Invoice**");

- (m) Air Canada has not made any payments for this consumption;
- (n) Any consumption of Aero Parts by Air Canada on or after November 11, 2009 must be on an “as is, where is” basis, as more fully described in the Foreign Representatives’ motion record (the “**Terms of Sale**”); and
- (o) The Foreign Representatives seek to enforce the terms of the Recognition Order.

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

- (a) the Third 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

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

Orestes Pasparakis LSUC# 36851T
Tel: (416) 216-4815
Fax: (416) 216-3930

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

Lawyers for the Applicants

TO: The parties on the attached service list

4A

SERVICE LIST

TO: **Stikeman Elliott LLP**
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

Alexander Rose
Tel: 1 (416) 819-5261
Fax: 1 (416) 947-0866
Email: arose@stikeman.com

Lawyers for Air Canada

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

John Porter
Tel: 1 (416) 304-0778
Fax: 1 (416) 304-1313
Email: jporter@tgf.ca

Lawyers for Lloyds TSB Commercial Finance Limited

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

Collin Trupp
Tel: 61 4 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 4600
Bay Adelaide Centre
333 Bay Street
Toronto, ON M5H 2S5

Nicholas Brearton
Tel: 1 (416) 777-3768
Fax: 1 (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

4C

AND TO: Aveos Fleet Performance Inc.
2311 Boulevard Alfred Nobel Suite 300
St. Laurent, Quebec
H4Y 1J9

Jonathan Solursh
Chief Restructuring Officer, Aveos Fleet Performance Inc.
Tel: (416) 230-1022
Email: jsolursh@relgrp.com

Fraser Milner Casgrain LLP
1 Place Ville-Marie
39th Floor
Montreal, Quebec H3B 4M7

Roger Simard
Tel: (514) 878-5834
Fax: (514) 866-2241
Email: roger.simard@fmc-law.com

Lawyers for Aveos Fleet Performance Inc.

**FTI Consulting Canada Inc.,
in its capacity as Monitor of Aveos Fleet Performance Inc.**
TD Waterhouse Tower
79 Wellington Street West
Toronto Dominion Centre
Suite 2010, P.O. Box 104
Toronto, Ontario M5K 1G8

Greg Watson
Tel: (416) 562-6364
Fax: (416) 649-8101
Email: greg.watson@fticonsulting.com

Norton Rose Canada LLP
Royal Bank Plaza, South Tower
200 Bay Street
Suite 3800
Toronto, Ontario M5J 2Z4

Mario Forte
Tel: (416) 216-4870
Fax: (416) 216-3930
Email: Mario.Forte@nortonrose.com

Lawyers for FTI Consulting Canada Inc., in its capacity as Monitor of Aveos Fleet Performance Inc.

AND TO: Lloyds TSB Commercial Finance Limited
Boston House, The Little Green
Richmond, Surrey
TW9 1 QE
United Kingdom

Jon Fenton-Jones
Tel: 44 208 727 2023
Fax: 01295 702124
Fax: 44 (208) 332-7761
Email: Jon.Fenton-Jones@ltsbcf.co.uk

AND TO: Ontario Ministry of Finance
Legal Services Branch
6th Floor
33 King Street West
Oshawa, Ontario
L1H 8H5

Kevin O'hara
Tel: 905.433.6934
Fax: 905.436.4510
Email: kevin.ohara@ontario.ca

AND TO: Canada Revenue Agency
c/o Department of Justice
Ontario Regional Office
The Exchange Tower, Box 36
130 King Street W., Suite 3400
Toronto, Ontario M5X 1K6

Diane Winters
Tel: 416.973.3172
Fax: 416.973.0810
Email: diane.winters@justice.gc.ca

4E

COURIER SERVICE LIST

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

Attn: Danny Truong
Fax: 1 (416) 973-7440

**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**

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

NOTICE OF MOTION

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

Orestes Pasparakis LSUC# 36851T
Tel: (416) 216-4815
Fax: (416) 216-3930

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

Lawyers for the Applicants

5