

COURT FILE NUMBER 1301-02432

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF A PLAN OF COMPROMISE  
OR ARRANGEMENT OF RS TECHNOLOGIES INC.

DOCUMENT **FIRST REPORT OF FTI CONSULTING CANADA  
INC., IN ITS CAPACITY AS MONITOR OF RS  
TECHNOLOGIES INC.**

**MARCH 22, 2013**

ADDRESS FOR SERVICE AND  
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## INTRODUCTION

1. By Order of this Court dated March 14, 2013 (the “**Initial Order**”), RS Technologies Inc. (the “**Applicant**” or “**RS**”) obtained protection from its creditors under the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36*, as amended (the “**CCAA**”).
2. The Initial Order, among other things, granted a stay of proceedings until April 12, 2013, or such later date as this Honourable Court may order, and appointed FTI Consulting Canada Inc. (“**FTI Consulting**”) as monitor (the “**Monitor**”) of the Applicant in these proceedings (the “**CCAA Proceedings**”).
3. The Applicant is in the business of designing, engineering and manufacturing modular composite utility and communications poles.
4. Further background information regarding the Applicant and the CCAA Proceedings is provided in the affidavit of Howard R. Elliott sworn on March 13, 2013 (the “**Elliott Initial Order Affidavit**”) filed in support of the Applicant’s application for the Initial Order which has been posted on the Monitor’s website for the CCAA Proceedings at <http://cfcanada.fticonsulting.com/RS>.

## PURPOSE OF THIS REPORT

5. The purpose of this first report of the Monitor (the “**First Report**”) is to provide this Honourable Court with an update in respect of the following:
  - (a) communications by the Applicant and the Monitor with the Applicant’s stakeholders since the commencement of the CCAA Proceedings;

- (b) the Monitor’s analysis and recommendation on the Applicant’s request for approval of a key employee retention plan (“**KERP**”) and the granting of a charge to secure the Applicant’s obligations thereunder (the “**KERP Charge**”), and the Monitor’s recommendations on the forgoing;
- (c) the Monitor’s recommendation on the relief sought by the Applicant’s with respect to suppliers who are considered critical to their operations; and
- (d) the Monitor’s efforts to date with respect to negotiating replacement Interim Financing up to the amount of \$2,750,000.

#### **TERMS OF REFERENCE**

- 4. In preparing this report, the Monitor has relied upon unaudited financial information of the Applicant, RS's books and records, certain financial information prepared by the Applicant and discussions with the Applicants' management. The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the information. Accordingly, the Monitor expresses no opinion or other form of assurance on the information contained in this report or relied on in its preparation. Future oriented financial information reported or relied on in preparing this report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.
- 5. Capitalized terms not otherwise defined herein have the meaning given to them in the Elliott Initial Order Affidavit and the Initial Order.
- 6. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

## COMMUNICATIONS WITH STAKEHOLDERS

7. In order to inform the general public and the Applicant's stakeholders the Applicant issued a press release on March 14, 2013 describing the commencement of its CCAA Proceedings.
8. Pursuant to the Initial Order, the Monitor;
  - (a) arranged for a notice containing the information prescribed in the CCAA to be published in the Calgary Herald on March 21, 2013 and March 28, 2013;
  - (b) made a copy of the Initial Order available on the Monitor's website;
  - (c) sent, in prescribed manner , a notice to every known creditor who has a claim against the Applicant of more than \$1,000; and
  - (d) prepared a list of those creditors and the estimated amounts of those claims, and made such list publicly available on the Monitor's website.
9. In addition, the Monitor has made available on the Monitor's website responses to frequently asked questions directed at answering potential questions in connection with the CCAA Proceedings.

## KEY EMPLOYEE RETENTION PLAN

10. RS is seeking the approval of the KERP and the granting of the KERP Charge. If approved, the employees, each of whom is considered by RS to be critical to the successful completion of the CCAA Proceedings, will participate in the KERP ("Key Employees").

11. The maximum aggregate payment under the KERP is \$495,775 (“**Maximum Payment**”). The Maximum Payment includes a retention bonus aspect totaling \$320,587 (“**Retention Bonus**”) as well as a contingent component totaling \$175,188 (“**Contingent Bonus**”). The Contingent Bonus is only being offered to a limited number of key management employees (“**Management Employees**”) whom the Applicant considers critical to the successful completion of the CCAA Proceedings.
12. The Retention Bonus relating to the non-Management Employees will be payable upon the occurrence of the earliest of:
  - (a) the termination of the CCAA proceedings; or
  - (b) the employment of the Key Employee is terminated by the Applicant other than for cause prior to the termination of the CCAA Proceedings.
13. With respect to Management Employees, the Retention Bonus will be payable in the following manner:
  - (a) If retained by the Applicant upon termination of the CCAA Proceedings, 50% of the Retention Bonus will be paid upon the termination of the CCAA Proceedings and 50% six months following the termination of the CCAA Proceedings; or
  - (b) If the Management Employee is not retained by the Applicant, the Retention Bonus is payable upon the termination of the CCAA Proceedings.
14. The Contingent Bonus is only payable to a Management Employee if that individual is not retained by the Applicant, or the successful purchaser of the Applicant’s assets or shares at the completion of the CCAA Proceedings.

15. All payments under the KERP are only payable if the employee has not voluntarily resigned, been terminated for cause and has fulfilled their obligations to the Applicant.

**The Monitor's comments and recommendation with respect to the proposed KERP**

16. Until the proclamation of amendments to the CCAA and its regulations on September 18, 2009, there was no central repository of data on CCAA cases. While employee retention plans are sometimes approved in CCAA cases, the details of such plans are usually treated as confidential and decisions on Court approval are rarely reported. Accordingly, exhaustive research on employee retention plans approved in CCAA cases is difficult.
17. The Monitor has, however, been able to review information available in respect of nine employee retention plans approved in CCAA cases in 2008 and 2009. In addition, utilizing the list of CCAA cases since September 18, 2009 maintained by the Office of the Superintendent of Bankruptcy, the Monitor has identified and reviewed information from 20 further cases where employee retention plans have been approved.
18. The Monitor concurs with the Applicant's position that the departure of the Key Employees could be detrimental to its business and operations and could impair the likelihood of a successful outcome to the CCAA Proceedings and that the approval of the KERP should provide incentive for the employees to remain in their employment for the duration of the restructuring process.

19. From its review of the court-approved retention plans as described above, the Monitor is satisfied that the KERP is consistent with current practice for retention plans in the context of a CCAA proceeding and that the quantum of the proposed payments under the KERP, both to individuals and in the aggregate, are reasonable in the circumstances.
20. Based on the totality of the foregoing, the Monitor is of the opinion that the KERP is reasonable in the circumstances and its implementation would be beneficial to the Applicant and their stakeholders. Accordingly, the Monitor respectfully recommends that the KERP be approved by this Honourable Court. The Monitor also supports the granting of the KERP Charge to secure the obligations under the KERP.

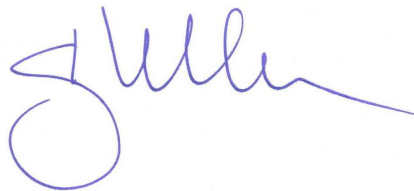
## **CRITICAL SUPPLIERS**

21. The Applicant has requested this Honourable Court to grant it the ability to pay, if required, certain pre-filing obligations to suppliers (“**Critical Suppliers**”) it determines are critical to its ongoing operations and only with the consent of the Monitor and the Interim Lenders.
22. The Monitor understands that the relief requested by the Applicant to pay Critical Suppliers would only be utilized in the situation where a supplier is essential to the continuation of the operations and delays in supply would adversely affect the Applicant’s operations and its ability to fill customer orders.
23. The Monitor supports the Applicant’s request to be able to deal with their Critical Suppliers on a case by case basis throughout the CCAA Proceedings.

## INTERIM FINANCING UPDATE

24. The Initial Order tasked the Monitor with the obligation to negotiate, subject to approval of this Honourable Court, Interim Financing up to the amount of \$2,750,000.
25. To date the Monitor has completed a marketing teaser letter (“**Interim Financing Teaser**”) summarizing the Applicant’s business and certain financial information relevant to potential Interim Financing lenders. The Interim Financing Teaser will be distributed to potential lenders in due course.
26. In addition the Monitor is in the process of compiling detailed information within an electronic data room which will be available to potential lenders upon execution of a confidentiality agreement.
27. The Monitor will report further to this Honourable Court with an update regarding the results of its negotiations for Interim Financing.

FTI Consulting Canada Inc.  
in its capacity as the Court-Appointed Monitor  
of RS Technologies Inc.



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Deryck Helkaa CA●CIRP  
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FTI Consulting Canada Inc.