

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
NO: 500-11-042345 - 120

SUPERIOR COURT
Commercial Division
*Designated tribunal under the
Companies' Creditors Arrangement Act*¹

IN THE MATTER OF THE
PROPOSED PLAN OF COMPROMISE
AND ARRANGEMENT OF AVEOS
FLEET PERFORMANCE INC. /
AVEOS PERFORMANCE
AÉRONAUTIQUE INC. AND AERO
TECHNICAL US INC.

DEBTORS

- and -

FTI CONSULTING CANADA INC.
MONITOR

**FIFTEENTH REPORT TO THE COURT SUBMITTED BY FTI CONSULTING
CANADA INC., IN ITS CAPACITY AS MONITOR**

INTRODUCTION

1. On March 19, 2012, Aveos Fleet Performance Inc. (“**Aveos**”) and Aero Technical US Inc. (“**Aero US**” and together with Aveos, the “**Company**” or the “**Debtors**”) made an application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) and an initial order (the “**Initial Order**”) was made by the Honourable Mr. Justice Schragger of the Superior Court of Quebec (Commercial Division) (the “**Court**”), granting, *inter alia*, a stay of proceedings against the Debtors until April 5, 2012, (as extended from time to time thereafter², the “**Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor of the Debtors (the “**Monitor**”). The proceedings commenced by the Debtors under the CCAA will be referred to herein as the “**CCAA Proceedings**”.

¹ *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

² The Stay Period was extended three times by way of Orders dated April 5, May 4 and July 19, 2012 and is set to expire on October 25, 2012.

2. On May 23, 2012, NorthgateArinso Canada Inc. (“**NGA**”) filed a *De Bene Esse* Motion (as amended, the “**NGA Motion**”), to strike the notice by Aveos to disclaim or resiliate an agreement.
3. A hearing is scheduled for September 28, 2012 and October 18, 2012 with the Court to hear the NGA Motion.
4. The purpose of this report is to advise the Court on the NGA Motion, which is contested by Aveos by way of a Contestation dated August 31, 2012.
5. In preparing this report, the Monitor has relied upon unaudited financial information of the Debtors, the Debtors’ books and records, certain financial information prepared by the Debtors and discussions with the Debtors’ 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.
6. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the previous reports of the Monitor.

THE NGA MATTER

Background

7. On May 7, 2012, Aveos sent NGA a termination notice (the “**Termination Notice**”), with respect to the Global Master Service Agreement dated June 30, 2010 executed between Aveos and NGA whereby NGA was to provide certain human resources, payroll services and related processes, which agreement had been amended from time to time (the “**NGA Agreement**”).

8. The Termination Notice issued by the Company is based on alleged faulty execution by NGA of the NGA Agreement as outlined in the Termination Notice included in the motion materials as exhibit R-2. NGA denies these allegations of faulty execution.
9. In addition, on the same date, the Company issued a resiliation notice (the “**Resiliation Notice**”) of the NGA Agreement pursuant to section 32(1) of the CCAA. The Resiliation Notice issued pursuant to section 32(1) of the CCAA, was approved by the Monitor.
10. The Monitor will not comment on the claims of the parties regarding the termination for faulty execution. This is a contractual dispute between Aveos and NGA in relation to events some of which occurred before the Initial Order concerning which the Monitor could only offer second-hand and ex-post facto information or comments. More importantly, Aveos’ allegations of faulty execution of the NGA Agreement by NGA were simply not considered by the Monitor at the time it approved the Resiliation Notice and did not form part of its approval process.
11. It is important to note that as of the time of preparation of this report, the Monitor has received and reviewed:
 - (a) exhibits R-1 to R-8 filed by NGA in support of the NGA Motion, as well as exhibits R-9 to R-28 communicated on September 18, 2012;
 - (b) exhibits D-1 to D-20 communicated on September 18, 2012 by Aveos;
 - (c) the stenographic notes of the examination of Mr. Ian Latulippe held on August 16, 2012 (to which Monitor’s counsel attended), together with undertakings # 1 to # 11.
 - (d) the stenographic notes of the examination of Mr. Charles Frosst held on September 21, 2012 (to which Monitor’s counsel attended).
12. On May 23, 2012, NGA filed the NGA Motion requesting the Court to:

- (a) strike the Termination Notice;
 - (b) declare the Agreement terminated by Aveos for convenience pursuant to section 20.2 of the Agreement;
 - (c) order Aveos to pay NGA a termination fee in the amount of \$501,381,00, the whole with interest at the legal rate.
13. NGA subsequently filed two amendments to their original motion, the first filed on July 9, 2012, claiming payment of post-filing obligations in a sum of \$91,377.00, with interest, representing the systems maintenance fees allegedly owing to NGA from May 1 to June 27, 2012 and again on September 25, 2012, claiming payment of applicable taxes on the amounts claimed.
14. Following the issuance of the Initial Order by this Court, Aveos and NGA entered into memoranda of agreement on March 26, April 10 and April 13, 2012 (the “**Memoranda of Agreement**”), whereby Aveos requested that NGA provide certain human resources and payroll services out of the ordinary terms of the NGA Agreement. Pricing and performance terms in respect of these services were negotiated by the parties.
15. The costs negotiated outside of the terms of the NGA Agreement included a charge for the preparation of the Record of Employment (“**ROEs**”) for the former Aveos employees, additional charges for administration and a charge for Systems Support and Hosting (the “**System Maintenance Fee**”) in the amount of \$10,153.00 per week. According to the NGA Motion, Aveos paid the Systems Maintenance Fee to NGA until April 30, 2012, but did not pay it thereafter while NGA kept the systems running until June 27, 2012 or thereabouts.
16. The Memoranda of Agreement and specifically Memoranda #3 provides for the payment of the System Maintenance Fee up to and including April 30, 2012 by which time NGA was to have completed the issuance of the ROEs. The ROEs were substantially completed by June 22, 2012 and finally completed on June 26, 2012. The testimony of

Mr. Latulippe confirms that NGA required the Aveos payroll system in order to complete the ROEs. NGA was paid in full in advance by the Company for the completion of the ROEs.

17. There was no agreement in place for the payment of this fee for the period after April 30, 2012. The parties were unable to reach a further agreement and the NGA Agreement was terminated by the Company on May 7, 2012.
18. Counsel to NGA acknowledge this situation in their letter to the Company dated May 1, 2012, included as exhibit R-1-B, whereby NGA includes its proposal for terms of service and fees in respect of the ongoing payroll and termination services required by Aveos.

Scope of this report

19. Subsection 32(1) of the CCAA provides that a debtor Company may, with the approval of the Monitor, disclaim or resiliate any agreement to which the Company is a party on the day on which proceedings commence under the CCAA barring certain exceptions noted in subsection 32(9). In the Monitor's view, the NGA Agreement is not subject to any of the exceptions noted in subsection 32(9).
20. Amongst the three factors to be considered, subsection 32(4) CCAA provides that the Court should consider first "whether the Monitor approved the proposed disclaimer or resiliation".
21. Even though it has already approved the resiliation, the Monitor feels that it is appropriate to describe to the Court the considerations it took into account when it made its determination, given that subsection 32(4) CCAA requires the Court to consider the approval given by the Monitor.
22. This report is submitted to the Court solely to assist it in adjudicating the matters in dispute and to inform the Court and the parties concerning the Monitor's basis and rationale for its approval of the Resiliation Notice.

23. This report is in no way intended to be determinative of any legal issue before the Court. Also, the Monitor acknowledges and emphasizes that it is the Court and not the Monitor that is the authority for the adjudication of the matters in dispute.
24. The Monitor will also address a request it made to NGA on June 27, 2012 to maintain accessibility to the Aveos payroll system maintained by NGA.

Resiliation of the NGA Agreement

25. In the days leading up to the Initial Order, Aveos employed approximately 2,620 employees working from four facilities across Canada and operated three main divisions, namely the Airframe, Engine and Component Divisions.
26. Approximately 88% of its workforce in Canada was unionized and represented by the International Association of Machinists and Aerospace Workers (the “**Union**”).
27. On the eve of the Initial Order, Aveos ceased the operations of its Airframe Division and notified all other of its employees not to report to work as of March 19, 2012.
28. On the day following the issuance of the Initial Order, Aveos ceased the operations of its two other divisions, the Engine and Component Divisions and terminated the employment of its remaining workforce save for a very limited number of key employees.
29. On March 20, 2012, the Court approved the appointment of Jonathan Solursh to act as Chief Restructuring Officer of Aveos (collectively with R.e.l. Group Inc., the “**CRO**”), who has developed and implemented, with the support of the Union and the Secured Lenders, a Court approved divestiture process (the “**Divestiture Process**”).
30. The Divestiture Process was approved by this Court on April 20, 2012 and has already resulted in thirteen Court approved transactions, excluding the sale of certain landing gear parts for which Aveos intends to seek Court approval on September 27, 2012.

31. The objectives of the Divesture Process can be summarized as follows:
- (a) maximization of the value of the assets of Aveos;
 - (b) implementing proper cash preservation measures and ensuring proper cash management while Aveos no longer operates;
 - (c) facilitating the sale of assets en “bloc” and the ongoing viability of restarted businesses, which would benefit all stakeholders, including importantly the Union and its members; and
 - (d) fostering a cooperative approach with all stakeholders, regulatory agencies, customers and the Union.
32. In determining whether to approve the resiliation of the NGA Agreement, the Monitor notes that subsection 32(4) CCAA offers no express guidance to it. The Monitor is of the view that the Standards of Professional Practice issued by the Canadian Association of Insolvency and Restructuring Professionals (the “**Standards**”) and recent case-law³ offers some valuable guidance. The Standards provide with respect to the disclaimer or resiliation of agreements:
- 5.01 The Monitor should gain an understanding of the reason/purpose of the proposed disclaimer or resiliation, the benefits and costs to the Company resulting from such disclaimer or resiliation, and the impact of the disclaimer or resiliation, or the absence of such disclaimer or resiliation, as the case may be, on the Company and its proceedings under the Act.
- 5.02 The Monitor should consider whether the disclaimer or resiliation of an Agreement would enhance the prospects of a viable compromise or arrangement” being made in respect of the Company or otherwise benefit the Company’s stakeholders as a whole.
33. At the time of the Resiliation Notice of the NGA Agreement, the Monitor was consulted for their review and approval of the Resiliation Notice. The Monitor considered among other factors the total cost of continuing on with the NGA Agreement in respect of the

³ *In the matter of Abitibi*, 2009 QCCS 2188; *In the matter of Homburg Invest Inc*; 2011 QCCS 6376, December 5, 2011 at paragraphs 102 to 106 (motion for leave to appeal denied April 12, 2012, 500-09-022267-116); *In the matter of Timminco Limited*, 2012 ONSC 4471 (CanLii) at paragraphs 46-57 (decision rendered after the approval of the Termination Notice on June 4, 2012) .

services provided and required by the Company as compared to the costs associated with changing providers at that time.

34. The NGA Agreement included monthly costs of approximately \$80,000.00 for payroll services and certain ancillary services. After March 19, 2012 the Company no longer required the ancillary services and with a significantly reduced workforce and severe cash constraints the original payroll costs were simply too high for the level of service required. This was acknowledged by both NGA and the CRO resulting in the negotiations of the various Memoranda identified above.
35. On the expiry of the Memoranda #3, NGA provided the Company with its proposed fees for post filing services for payroll processing in the amount \$42,167.00 per month. This was the quoted cost to provide payroll for less than 100 employees.
36. To address the issue of the prohibitive cost of continuing the NGA Agreement, even considering the proposed amendment, the Company had investigated other alternative providers and was able to identify a reputable payroll service provider who could provide the required payroll services for less than 100 employees at a fee which on an annual basis was less than the reduced fee for one month of service proposed by NGA.
37. The Company was subject to severe cash constraints at the time of the resiliation and entering into a new agreement with the other payroll provider, in the view of the Monitor, was a sound business decision on the part of the CRO.
38. The NGA Motion states in paragraph 4(a) and 4(b):
 - (a) The disclaimer or resiliation of the Agreement could not possibly enhance the prospects of a viable compromise or arrangement as it is manifest, since Aveos ceased its operations and terminated substantially all of its employees, that Aveos will not be proposing any form of compromise or arrangement to its creditors;
 - (b) In this regard, on April 20, 2012, this Honourable Court already rendered an Order approving the Divestiture Process for the sale of all

of Aveos' lines of business, divisions and assets, the whole as appears from the Court record;

39. With respect, the Monitor does not share this view. The termination of the employees in and of itself does not preclude the Company from filing a plan of arrangement or compromise nor does the sale of its respective lines of business. At the date of the resiliation, it was not possible to anticipate what form of plan, compromise or arrangement might be achieved as the outcome of the Divestiture Process was not known.

40. As stated in paragraph 18 of the Monitor's Third Report:

The Divestiture Process has been carefully designed and developed by the CRO in consultation with the Monitor with a view to maximizing recovery and facilitating a transaction or transactions that could lead to the restart of one or more of the divisions of the Company...

41. The Divestiture Process was designed to enhance the likelihood of a restart of the various business lines and the possibility of a plan of arrangement or compromise being proposed. At the outset of the Divestiture Process it was considered extremely unlikely that any one party would seek to purchase Aveos as a whole and this made it more unlikely that any party would seek to assume the NGA Agreement.

42. In addition, the Company had incurred significant tax losses which may have value to a potential purchaser and could be more readily realized through a plan of compromise or arrangement under the CCAA.

43. In the Monitor's analysis, the NGA Agreement was undesirable on its face and unnecessary to the business going forward, the resiliation of the NGA Agreement enhanced the likelihood of any such plan or compromise given the prohibitive costs associated with continuing with NGA relative to the services required.

44. In addition, the parties were incapable of reaching an agreement for a scope of reduced services and fees that more appropriately suited the needs of Aveos following the Initial Order.

45. At the time it approved the Resiliation Notice, the Monitor was satisfied (and remains satisfied) that it would enhance the prospects of a viable compromise or arrangement. In addition, the Monitor was satisfied (and remains satisfied) that the resiliation was clearly economically beneficial to Aveos and was entirely within the objectives set by the Divestiture Process and these CCAA Proceedings, which were fully disclosed by the Monitor and the CRO, accepted by all the stakeholders and explained to this Court.
46. As previously stated, the Monitor did not consider the allegations of Aveos concerning faulty execution of the Agreement at the time of approving the Resiliation Notice.
47. The Monitor further notes that:
 - (a) NGA does not allege to suffer a significant hardship within the meaning of subparagraph 32(4)c) CCAA;
 - (b) by entering into the Memoranda, NGA acknowledged that its services were no longer required as provided by the NGA Agreement;
 - (c) NGA's claim for the immediate payment of a \$500,000 penalty and alleged post-filing fees of \$91,377, while it did not provide corresponding post-filing services would be unfair to other creditors and contrary to both the Initial Order and the CCAA.

Monitor's request to NGA to maintain Aveos payroll data

48. The abrupt shut down of the Aveos businesses generated significant concerns for the appropriate treatment of employees with respect to their earned and unpaid pre-filing wages, as well as certain statutory requirements to issue ROEs and subsequently income tax forms ("T4s"), within the required statutory timeline.
49. Following the issuance of the Initial Order, NGA sought direction with respect to the required services for Aveos, and at the same time, NGA ceased to perform work under the terms of the NGA Agreement including all work on processing of the Aveos payroll.

NGA through its counsel sent a letter to counsel to the Company and counsel to the Monitor on March 21, 2012, NGA exhibit R-11, requesting the contact details of the CRO in order to commence negotiations on a memoranda to set out the services required from NGA and confirmation of payment. The Company and NGA spent several days in negotiations on the original Memoranda which was eventually signed on March 26, 2012.

50. Due to NGA ceasing to prepare for the payroll and the duration of the negotiations the initial post-filing payroll was late.
51. The Monitor was kept apprised of the negotiations between the Company and NGA on the initial Memoranda and each of the subsequent Memoranda and was aware that these negotiations were difficult and lengthy. The Monitor discussed with the Company, its concerns, which were shared by the Company, with respect to the fees requested by NGA. The Monitor suggested that the Company pursue further negotiations with NGA in respect of fees that were in the Monitor's view excessive given the services provided. At the time, the Company was concerned with ensuring that the payroll was completed on a timely basis and felt that further negotiation of fees and other matters would hold up the processing of the payments to employees. The CRO professed to the difficulty of achieving agreement with NGA on the matters and fees addressed in the Memoranda and the importance of ensuring the employees received their regularly scheduled payroll. The CRO expressed that in its view, it had negotiated extensively with NGA and further discussions were unlikely to result in amendments to the agreement and furthermore it was essential to have the payroll run. On this basis, the Monitor concurred with the CRO and acknowledged the Memoranda.
52. The second Memoranda which was agreed between the parties on April 10, 2012 introduced the System Maintenance Fee of \$10,153.00 per week. The Monitor and the Company discussed their concerns with respect to this additional fee which again seemed excessive, but again there seemed little option other than to pay this amount as NGA refused to provide further service without this payment. In addition, the Monitor and the Company discussed the importance of not only being able to meet the current payroll

requirements, but also the statutory requirements of issuing records of employment and the T4s to the employee group following year end.

53. The third Memoranda which was agreed between the parties on April 13, 2012 included the additional payroll for the reimbursement of certain wages and the preparation of the ROEs. Upon reviewing the proposed statement of work, the Monitor requested firmer commitments in respect of service levels particularly concerning the issuance of ROEs on “best efforts” basis and the inclusion of a provision for NGA to provide to the Company or the Monitor, the data necessary to complete the T4s in a usable format for safekeeping and use following the year end. The negotiations between the parties were again difficult. In each instance the CRO was in a difficult position, as it was reliant on NGA to provide the required payroll services for which NGA was demanding excessive fees and was negotiating within the set deadlines of the payroll cycle. The CRO felt strongly that it was unfair to the employees that payment of their wages be held up or suspended further due to the business issues of the Company. A specific provision for the inclusion of the T4 data was not included in Memoranda #3.
54. The Company made full payment to NGA as agreed in each of the Memoranda, NGA had a number of difficulties in completing the services that it was contracted and paid to perform. These issues, led to the Company choosing in at least one instance to issue manual cheques to employees rather than continue to rely on NGA to provide services.
55. Prior to the May 7, 2012 termination of the NGA Agreement, the Company assured the Monitor that it would be able to recreate the data necessary to prepare the required T4s for the employees. The Company has prepared this data and provided it to the Monitor. Following the issuance of the Resiliation Notice, the Company continued to negotiate with NGA in an effort to obtain the T4 data as well as the return of various Company records in the possession of NGA.
56. Following the issuance of the Resiliation Notice, NGA terminated the Company’s access to the payroll system on May 11, 2012, but it is the Monitor’s understanding that the data

was still intact until on or about June 27, 2012. The Company, NGA and the Monitor participated in a conference call on June 11, 2012. The parties attempted to negotiate a number of matters including the payment of the post-filing System Maintenance Fee, the completion of the ROEs, the retrieval of Aveos' records from NGA including the requested employee data for the T4s. NGA stated that without payment of the outstanding System Maintenance Fee it would turn off the Aveos payroll system resulting in the loss of the Aveos data.

57. The CRO made a further offer for a payment to settle the outstanding matters including a payment in respect of the System Maintenance Fee and the requested data and records. This offer was rejected by NGA and the parties were unable to reach an agreement.
58. NGA did agree to provide a flat file of the employee data but noted that the data would only be readable with the appropriate system software. The data was delivered on a memory stick on or around June 29, 2012, but as noted Aveos does not possess the appropriate software to read and use the data.
59. The Monitor made a request to Mr. Ian LaTulippe on or about June 26, 2012 to not immediately terminate the Aveos payroll system and to maintain the data in the event that a resolution could be reached as the parties were scheduled to appear before this Honourable Court on June 28, 2012. During the course of this conversation the Monitor informed Mr. Latulippe that:
 - (a) The Monitor had no authority to bind the Company or commit to payment of any sort in respect of maintaining the data; and
 - (b) No compensation of any form would be made payable to NGA as a result of agreeing to the Monitor's request to maintain the Aveos data except for what could be negotiated with the Company.
60. On June 27, 2012, Mr. Latulippe contacted the Monitor and requested that the Monitor put its request in an email which is filed by NGA as exhibit R-28.

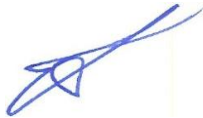
61. The Monitor believes it would have been very helpful to have obtained useable data directly from the payroll service provider as this would have provided a means of verifying the accuracy of the Company's data and additional detail should any errors be detected, which errors will likely only be identified after the T4s are issued in the new year, and the ability to access former Aveos payroll and human resources employees is expected to be severely limited.
62. In the Monitor's view, the request to protect the data was a reasonable one given the importance of the data, in consideration of the statutory requirements of the Company and the Monitor's hope and expectation that a satisfactory business resolution would be achieved prior to the court proceedings.
63. The Monitor respectfully submits this Fifteenth Report to the Court.

Dated this 27th day of September, 2012.

FTI Consulting Canada Inc.
In its capacity as Monitor of
Aveos Fleet Performance Inc. and Aero Technical US Inc.



Greg Watson
Senior Managing Director



Toni Vanderlaan
Managing Director