

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

THE HONOURABLE ) WEDNESDAY, THE 11<sup>th</sup> DAY  
JUSTICE **NEWBOULD** ) OF NOVEMBER, 2009

**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 SECTION 46 AND FOLLOWING OF THE *COMPANIES'*  
*CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED**

**ORDER  
(November 11, 2009)**

**THIS APPLICATION**, made by James Robert Tucker, Richard Heis and Allan Watson Graham of KPMG LLP, in their capacity as the foreign representatives (the "**Foreign Representatives**") for an Order substantially in the form enclosed in the Application Record was heard this day, at Toronto, Ontario;

**ON:**

- (i) reading the Notice of Application, the witness statement of Collin Lee Trupp, and the Report of KPMG Inc. dated November 10, 2009; and
- (ii) being provided with certified copies of the application to, and orders of, the High Court of Justice (Chancery Division, Companies Court) (the

“**English Court**”) dated November 11, 2009 commencing the administration proceedings in the United Kingdom in respect of each of Aero Inventory (UK) Limited and Aero Inventory plc (the “**Foreign Debtors**”) and authorizing the Foreign Representatives to act in the capacity of foreign representatives;

### **SERVICE**

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

### **RECOGNITION OF THE UNITED KINGDOM PROCEEDING**

2. **THIS COURT ORDERS** that the proceedings commenced by the Foreign Debtors in the United Kingdom for protection under the *Insolvency Act 1986* (the “**Foreign Proceedings**”) be and are hereby recognized as a “foreign main proceeding” for the purposes of section 47 of the *Companies’ Creditors Arrangement Act, R.S.C., 1985, c. C-36*, as amended (the “**CCAA**”).

3. **THIS COURT ORDERS** that the Foreign Representatives be and are hereby recognized as “foreign representatives” as defined in section 45 of the CCAA.

4. **THIS COURT ORDERS** that the orders made by the English Court on November 11, 2009 and attached as Schedule “A” hereto are hereby recognized and enforced pursuant to section 49 of the CCAA.

### **STAY OF PROCEEDINGS**

5. **THIS COURT ORDERS** from this date and until such date as this Court may further order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Foreign Debtors, the Foreign Representatives, or affecting the business or the property of the Foreign Debtors (the “**Business**” and the “**Property**”, respectively), except with the written consent of the Foreign Debtors and the Foreign Representatives, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Foreign Debtors or the

Foreign Representatives or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

6. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Foreign Debtors or the Foreign Representatives, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Foreign Debtors and the Foreign Representatives, or leave of this Court, provided that nothing in this Order shall (i) empower the Foreign Debtors to carry on any business which the Foreign Debtors are not lawfully entitled to carry on, (ii) exempt the Foreign Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

7. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Foreign Debtors, except with the written consent of the Foreign Debtors and the Foreign Representatives, or leave of this Court.

8. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Foreign Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Foreign Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Foreign Debtors or the Foreign Representatives, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Foreign Debtors in accordance with normal payment practices of the Foreign Debtors or such

other practices as may be agreed upon by the supplier or service provider and the Foreign Representatives, or as may be ordered by this Court.

9. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, no creditor of the Foreign Debtors shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Foreign Debtors.

10. **THIS COURT ORDERS** that the determination and enforcement of any Person's rights of set-off from and after the effective time of this Order shall be stayed pending further order of this Court and 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.

#### **NO INTERFERENCE WITH RIGHTS**

11. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Foreign Debtors, except with the written consent of the Foreign Representatives and the Foreign Debtors, or leave of this Court.

#### **INFORMATION OFFICER**

12. **THIS COURT ORDERS** that:

- (a) KPMG Inc. be and is hereby appointed as information officer (in such capacity, the "**Information Officer**");
- (b) The Information Officer be and is hereby authorized and empowered, but not obligated, to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may require;
- (c) The Information Officer be and is hereby authorized and empowered to respond to reasonable requests for information from stakeholders;

- (d) The Information Officer shall deliver to the Court a report at least once every three (3) months outlining the status of these proceedings, the Foreign Proceedings and such other information as the Information Officer believes to be material; and
- (e) The Foreign Representatives and the Information Officer shall incur no liability or obligation as a result of the appointment of the Information Officer or the fulfillment of the duties of the Information Officer in carrying out the provisions of this Order and no action or other proceedings shall be commenced against the Foreign Representatives or the Information Officer for the fulfillment of the duties of the Information Officer, except with prior leave of this Court obtained on not less than seven (7) days notice to the Information Officer and the Foreign Representatives.

#### **AID AND ASSISTANCE OF OTHER COURTS**

13. **THIS COURT REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or territory of Canada or any court or any judicial, regulatory or administrative body of the United Kingdom and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this order.

#### **GENERAL PROVISIONS**

14. **THIS COURT ORDERS** that the Information Officer or the Foreign Representatives may apply to this Court for advice and direction in connection with the discharge or variation of their powers and duties under this order;

15. **THIS COURT ORDERS** that nothing in this Order shall prevent the Foreign Representatives or the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Foreign Debtors, the Business or the Property.

16. **THIS COURT ORDERS** that each of the Foreign Representatives, the Foreign Debtors and the Information Officer 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.

17. **THIS COURT ORDERS** that the Foreign Representatives shall publish a notice as required by subsection 53(b) of the CCAA in the Globe and Mail (national edition) and La Presse for one (1) day in two (2) consecutive weeks without delay following the issuance of this Order.

18. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, any interested person may apply to this Court to vary or rescind this Order or seek other relief upon four (4) days notice to the Foreign Representatives, and their counsel, and to the Foreign Debtors, and their counsel, and to any other party likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

19. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:00 p.m. Greenwich Mean Time on the date of this Order.



ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

NOV 12 2009

PER / PAR: JV

**SCHEDULE "A"**

**See Attached**

**IN THE HIGH COURT OF JUSTICE**

**No 20293 of 2009**

**CHANCERY DIVISION**

**COMPANIES COURT**

**Mrs Justice Proudman  
Wednesday 11 November 2009**



**IN THE MATTER OF AERO INVENTORY PLC**

**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

**ADMINISTRATION ORDER**

UPON THE APPLICATION OF the directors of **AERO INVENTORY PLC** ("the Company") presented to the Court on Wednesday 11 November 2009

AND UPON hearing Counsel for the Company

AND UPON reading the evidence

AND UPON the High Court of Justice (Chancery Division, Companies Court) of England and Wales by Mrs Justice Proudman hereby making a decision and giving judgment to open insolvency proceedings in England and Wales by way of administration under the Insolvency Act 1986, Schedule B1, in respect of the Company to take effect from ~~12 NOV 2009~~ <sup>11 NOV 2009</sup> on Wednesday 11 November 2009, which proceedings shall be foreign main proceedings, and the reasons for the decision are:- (a) the Company is or is likely to become unable to pay its debts, and (b) the administration order is reasonably likely to achieve the purpose of the administration, and (c) the centre of main interests of the Company is situated in the jurisdiction of this Court and this Court has jurisdiction under EC Regulation on Insolvency Proceedings 2000, Article 3 (1) to open insolvency proceedings, and (d) Lloyds TSB Commercial Finance Ltd as holder of qualifying floating charges in respect of the

Company would be entitled to appoint an administrator or seek a court order to appoint an administrator

*AND UPON the company by its Counsel undertaking to file with the Court witness evidence exhibiting the email from Jim Tucker dated 11 November 2009.*



1. **It is ordered** that during the period for which this Order is in force the affairs, business and property of the Company be managed by the Joint Administrators.
2. **It is ordered** that James Robert Tucker, Richard Heis and Allan Watson Graham of KPMG LLP be appointed Joint Administrators of the Company.
3. **It is ordered that:**
  - a. Service of the Administration Application upon the Joint Administrators be dispensed with (rule 2.6 (3)(d) Insolvency Rules 1986).
  - b. Service of the Administration Application upon Lloyds TSB Commercial Finance Ltd be dispensed with (Schedule B1, paragraph 12 (2)(c) Insolvency Act 1986).
4. **And the Court being satisfied** on the evidence before it that the EC Regulation on Insolvency Proceedings 2000 does apply and that these proceedings are main proceedings as defined in Article 3 of the EC Regulation (and are accordingly foreign main proceedings for the purposes of any applicable UNICTRAL Model Law).
5. **And upon the Court determining** that it is expedient to set out the purpose, powers and effect of the Administration Order the Court declares that the Joint Administrators appointed by this Order shall conduct the Administration for the purpose, with the powers and with the effect set out in the Schedule to this Order.
6. **And it is ordered** that any function of the Administrators and/or any act required or authorised under any enactment to be done by the Administrators

may be exercised and/or done by any or all of the Administrators (Schedule B1, paragraph 100 (2)(b)).

7. **It is ordered** that the costs of the said application (including the costs of the Form 2.2B (rule 2.3 (5)) are payable as an expense of the administration.



8. **It is ordered** that this appointment shall take effect from ..... 12 noon .....  
~~3:45 pm~~ on Wednesday 11 November 2009.
9. **It is ordered** that Schedule B1, paragraph 46 (3)(b) shall not apply.

### Schedule to the Order

1. The objectives of the administrator are those set out in paragraphs 3 and 4 of Schedule B1 to the Insolvency Act 1986 ("Schedule B1").
2. Without prejudice to the provisions at Schedule B1 and by way of summary the objectives of the administrator are:-
  - a. Under paragraph 3 (1) of Schedule B1 the administrator must perform his functions with the objective of:-
    - i. Rescuing the Company as a going concern and only if it is not reasonably practical to achieve that objective or if the pursuit of objective 3 (1)(b) would achieve a better result for the Company's creditors as a whole, then
    - ii. Achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being in administration) or, if that objective is not reasonably practical and it does not unnecessarily harm the interests of the creditors of the Company as a whole, then
    - iii. Realising property of the Company in order to make a distribution to one or more secured or preferential creditors.
  - b. Under paragraphs 49 – 51 of Schedule B1 the administrator must make a statement setting out his proposals for achieving the purpose and must, inter alia, send those proposals to every creditor of the Company of whose details the administrator is aware.
  - c. Under paragraphs 51 and 52 of Schedule B1 unless the administrator is of the view that no monies will be available to distribute to the creditors of the Company or that creditors will be paid in full he must convene and hold within 10 weeks of the making of the administration order a meeting of creditors for the purpose of considering and, if thought fit, approving his

proposals with or without modification or seek the approval of creditors by correspondence.

- d. Under paragraph 67 of Schedule B1 the administrator has a duty to take custody or control of all the property of the Company on being appointed.
  - e. Under paragraph 68 of Schedule B1 the administrator is under a duty to manage the affairs, business and property of the Company in accordance with his proposals as approved by the Company's creditors and subject to any directions that the Court may give him.
  - f. The administrator must obtain approval for payment of his fees and disbursements by the creditors of the Company or by a committee of the creditors' of the Company or by the Court.
3. The powers of the administrator are those set out in Schedule B1 and in Schedule 1 to the Insolvency Act 1986 (a copy of which is annexed to this Order).
  4. Without prejudice to those provisions and by way of summary the administrator has the following powers under Schedule B1.
    - a. The power to do anything necessary or expedient for the management of the affairs, business and property of the Company and, in particular, without prejudice, to this general power the administrator has the specific powers set out in Schedule 1 to the Insolvency Act 1986 which are summarised in Appendix A to this Schedule.
    - b. No officer of the Company may exercise a management power without consent of the administrator.
    - c. The administrator may remove and appoint directors of the Company.

- d. The administrator may convene and hold meetings of members and creditors of the Company.
  - e. The administrator may apply to the Court for directions in connection with his functions.
  - f. The administrator may pay monies to secured or preferential creditors of the Company and with the consent of the Court may make a distribution to unsecured creditors.
  - g. The administrator may make a payment other than to a secured or preferential creditor without permission of the Court if he considers that making such a payment is likely to assist in the achievement of the purpose of administration as set out in paragraph 3 (1) of Schedule B1 recited above.
  - h. Under paragraph 66 the administrator may make payments to the employees of the Company, such that they receive the same monies as the employees would receive if secondary proceedings were commenced under Article 27 of the EC Regulation on Insolvency Proceedings 2000 provided that the administrator thinks that the making of such payments are likely to assist achievement of the purpose of administration.
  - i. In exercising functions the administrator acts as agent of the Company.
5. The effect of the moratorium on insolvency and other proceedings against the Company as set out in Schedule B1, paragraph 43 of the Insolvency Act 1986 came into effect at the time the appointment of Joint Administrators (which time is set out in the Order) (without prejudice to the interim moratorium, where applicable, set out in Schedule B1, paragraph 44 of the Insolvency Act 1986).
6. Without prejudice to the provisions of Schedule B1 and by way of summary the moratorium has the following effect on insolvency and other proceedings.

- a. No resolution may be passed to wind up the Company.
- b. No order may be made for the winding up of the Company.
- c. No step may be made to enforce any security over the Company's property without consent of the administrator or permission of the English Court.
- d. No step may be taken to repossess any goods in the Company's possession under any hire purchase agreement, except with the consent of the administrator or leave of the English Court.
- e. A landlord may not exercise a right of forfeiture by peaceable re-entry in relation to any premises let to the Company except with consent of the administrator or leave of the English Court.
- f. No legal process (including legal proceedings, execution, distress and diligence) may be instituted or continued against the Company or the property of the Company, except with the consent of the administrator or leave of the English Court.

## **Appendix A**

### **Insolvency Act 1986**

#### **Schedule 1 Powers of Administrator**

1. Power to take possession of, collect and get in the property of the Company and, for that purpose to take such proceedings as may seem to him expedient.
2. Power to sell or otherwise dispose of the property of the Company by public auction or private auction or private contract.
3. Power to raise or borrow money and grant security therefor over the property of the Company.
4. Power to appoint a solicitor or accountant or other professionally qualified person to assist him in the performance of his functions.
5. Power to bring or defend any action or other legal proceedings in the name and on behalf of the Company.
6. Power to refer to arbitration any question affecting the Company.
7. Power to effect and maintain insurances in respect of the business and property of the Company.
8. Power to use the Company's seal.
9. Power to do all acts and to execute in the name and on behalf of the Company any deed, receipt or other document.
10. Power to draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the Company.

11. Power to appoint any agent to do any business which he is unable to do himself or which can more conveniently be done by an agent and power to employ and dismiss employees.
12. Power to do all such things (including the carrying out of works) as may be necessary for the realisation of the property of the Company.
13. Power to make any payment which is necessary or incidental to the performance of his functions.
14. Power to carry on the business of the Company.
15. Power to establish subsidiaries of the Company.
16. Power to transfer to subsidiaries of the Company the whole or any part of the business and property of the Company.
17. Power to grant or accept a surrender of a lease or tenancy of any of the property of the Company, and to take a lease or tenancy of any property required or convenient for the business of the Company.
18. Power to make any arrangement or compromise on behalf of the Company.
19. Power to call up any uncalled capital of the Company.
20. Power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of any person indebted to the Company and to receive dividends, and to accede to trust deeds for the creditors of any such person.
21. Power to present or defend a petition for the winding up of the Company.
22. Power to change the situation of the Company's registered office.
23. Power to do all other things incidental to the exercise of the foregoing powers.

No 20293 of 2009

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

Mrs Justice Proudman  
Wednesday 11 November 2009

IN THE MATTER OF AERO  
INVENTORY PLC

AND IN THE MATTER OF THE  
INSOLVENCY ACT 1986

ADMINISTRATION ORDER



Taylor Wessing,  
5 New Street Sq,  
London EC4A 3TW.

Tel: 020 7300 7000.  
Ref: Patrick Cook / Amy Patterson.

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

**ORDER**  
**(November 11, 2009)**

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