

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF BEDFORD

**SUPERIOR COURT**  
**COMMERCIAL DIVISION**  
(Sitting as a court designated pursuant to the  
*Companies Creditors Arrangement Act*)

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N<sup>o</sup>: 460-11-001918-104

**IN THE MATTER OF THE COMPROMISE OR  
ARRANGEMENT OF:**

**AAER INC.**

and

**AAER USA INC.**

and

**WIND-SMART LLC**

Debtors/Petitioners

and

**SAMSON BÉLAIR / DELOITTE & TOUCHE INC.**

Monitor

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**MOTION TO SANCTION THE PLAN OF REORGANIZATION AND COMPROMISE AND  
TO APPROVE A REORGANIZATION**

(Sections 6 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**"), and section 191  
of the *Canada Business Corporations Act*, R.S.C. 1985, c. 44)

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN  
COMMERCIAL CHAMBER, IN AND FOR THE DISTRICT OF BEDFORD, THE  
PETITIONERS RESPECTFULLY SUBMIT AS FOLLOWS:**

**I. INTRODUCTION**

1. As appears from the court record, on April 8, 2010, this Court issued an order (the "**Initial Order**") pursuant to section 11.02 of the *CCAA* in respect of the Petitioners,

AAER Inc., AAER USA Inc. and Wind Smart LLC (collectively, "**AAER**" or the "**Petitioners**"), which Initial Order, *inter alia*:

- (a) declared that the Petitioners are debtor companies to which the CCAA applies;
  - (b) ordered an initial stay of proceedings in respect of the Petitioners up to and including May 7, 2010 (the "**Stay Period**");
  - (c) authorized the Petitioners to carry on business in a manner consistent with the preservation of their property and to make certain payments in connection with their respective businesses;
  - (d) appointed Samson Bélair / Deloitte & Touche Inc. as monitor (the "**Monitor**");
  - (e) authorized certain measures in order to enhance the prospects of a viable compromise or arrangement between the Petitioners and their creditors, including an interim financing and a investment or purchase offers' solicitation process (the "**Solicitation Process**"); and
  - (f) authorized the Petitioners to file with the court a plan or plans of compromise or arrangement between the Petitioners and some or all of their respective creditors ;  
the whole as appears from the Court record.
2. On May 7, 2010, this Court issued an order extending the Stay Period up to and including June 2, 2010, and providing for the procedural matters relating to the claims process and the eventual creditors' meeting ("**Creditors' Meeting**") to vote on the Plan, as the case may be, as appears from the Court record (the "**Creditors' Meeting and Claims Process Order**").
  3. On June 2, 2010, this Court issued an order authorizing two transactions resulting in the sale of the majority of AAER Inc.'s assets, except its cash on hand and accounts receivable, respectively (i) to Pioneer Power Solutions Inc., or one or more of its subsidiaries, affiliates or related entities, namely 7525451 Canada Inc. and (ii) to Global Casting Inc. ("**Global**") (collectively, the "**Transactions**") and extending the Stay Period for a period of five (5) days, up to and including June 7, 2010 (the "**Transactions' Approval and Second Extension Order**").
  4. On June 9, 2010, this Court issued an order authorizing the extension of the Stay Period for a period up to and including July 7, 2010 (the "**Order Authorizing a Third Extension**").
  5. On July 7, 2010, this Court issued an order authorizing the extension of the Stay Period up to and including August 11, 2010, and authorizing the Petitioners to call, hold and conduct the Creditors' Meeting on or before August 9, 2010 (the "**Order Authorizing a Fourth Extension**").

6. The Petitioners signed a plan of reorganization and compromise on July 12, 2010, (the "**Plan**"), **Exhibit R-1**;
7. The Plan has been duly approved by the Creditors; the Petitioners now apply to this Court for an order sanctioning the Plan and approving the Petitioners' restructuring under section 191 of the *Canada Business Corporations Act* (the "**Reorganization**"), as set out more fully below.

## II. THE MEETING OF CREDITORS

8. On July 12, 2010, the Monitor sent to each creditor a copy of the Plan, a notice of the Creditors' Meeting, the Sixth Monitor's Report issued to the Creditors on the Plan, a voting ballot and a proxy form.
9. On July 12, 2010, the Monitor caused a notice of the Creditors' Meeting to be published in *La Presse*.
10. The meeting was duly held the 9<sup>th</sup> of August at 10am in hall C of the Chateau Bromont hotel, located at 90 Stanstead, Bromont, Québec, J2L 1K9, as provided by the Creditors' Meeting and Claims Process Order.
11. At the Creditors' Meeting, the Monitor confirmed that all creditors present had received a copy of the Sixth Monitor's Report dated July 9, 2010 issued to the Creditors on the Plan and provided an opportunity for all creditors to ask questions about the report and/or the Plan, and to address general questions to the Petitioners' management.
12. The Monitor tabulated a list of creditors present, the amount of their claims, and their vote in favour of or against the Plan, whether the vote was cast by voting letter, in person, or by proxy.
13. The Plan was approved by 54 of the 62 Affected Unsecured Creditors having cast a vote (whether by voting letter, in person or by proxy), representing 96.1 per cent of the claims for which votes were cast.
14. The votes in favour of the Plan are in excess of the simple majority in number and two-thirds majority in value required by the CCAA.
15. As appears from the notice of the meeting, the creditors have been informed of the Petitioners' intention to apply on August 11, 2010 to this Court for the sanction of the Plan and the approval of the Reorganization in the event the Plan was approved by the creditors.

## III. THE PLAN OF REORGANIZATION AND COMPROMISE

16. The Plan is funded with the proceeds of a subscription agreement (the "**Subscription Agreement**") to be entered into between the Petitioners and Pioneer Wind Energy Holdings Inc. for the subscription of a new class of voting common

shares ("**New Common Shares**") as provided by Section 5.1(a) of said Plan in exchange for payment of a sum of \$450,000.

17. With the exception of claims secured by the Administration Charge or by the D&O Charge, Post-Filing Claims, Crown Claims, Employee Claims and claims described under Section 19(2) of the CCAA, claims which AAER is required to pay in full, in priority to Unsecured Claims, according to the terms of the Initial Order or any subsequent Order, and which are, in that capacity, unaffected by the Plan, the Plan provides for the settlement of all unsecured indebtedness.
18. The Affected Unsecured Creditors will receive a *pro rata* share of a fund composed of cash.

#### **IV. REORGANIZATION**

19. It is essential to the success of this restructuring process that a reorganization pursuant to section 191 of the *Canada Business Corporations Act* ("**CBCA**") be implemented.
20. The Plan provides for the issuance of an aggregate amount of 450,000 New Common Shares to Pioneer Wind Energy Holdings Inc. and for the amendment of AAER's existing share capital.
21. The issuance of New Common Shares and the amendment of the existing share capital can only be achieved in the course of a reorganization pursuant to section 191 of the *CBCA*.
22. The Petitioner will therefore request that this Court approve the articles of reorganization pursuant to Section 191 of the *CBCA* as discussed below.
23. Before the hearing of the motion to sanction the Reorganization, the Petitioners have issued a press release, which mentions the planned reorganization of AAER's share capital, communicated herewith as **Exhibit R-2**.

#### **A. THE PETITIONERS' EXISTING CORPORATE STRUCTURE**

24. AAER was incorporated as an ordinary stock corporation under the *CBCA* in 2007.
25. AAER is authorized to issue an unlimited number of common shares of which 169,220, 051 shares are issued and outstanding.

#### **B. THE PROPOSED REORGANIZATION**

26. As mentioned above, it is essential to the success of this restructuring process that the Reorganization be implemented.
27. The Reorganization provides that AAER's existing share capital shall be amended to create (A) the New Common Shares, without par value, having the rights, privileges,

27. The Reorganization provides that AAER's existing share capital shall be amended to create (A) the New Common Shares, without par value, having the rights, privileges, restrictions and conditions set forth in Schedule I to Schedule A of the Articles of Reorganization, and to authorize the Company to issue an unlimited number of such New Common Shares, and (B) a new class of redeemable commons shares (the "**Redeemable Common Shares**"), having the rights, privileges, restrictions and conditions set forth in Schedule I to Schedule A of the Articles of Reorganization, and to authorize the Company to issue an unlimited number of such Redeemable Common Shares.
28. All existing shares of AAER that are issued and outstanding shall be exchanged for Redeemable Common Shares on the basis of one fully paid and non assessable Redeemable Common Share for each Existing Company Share.
29. In consideration of an aggregate amount of \$450,000 to be paid by Pioneer Wind Energy Holdings Inc. to AAER, an aggregate amount of 450,000 New Common Shares shall be issued to Pioneer Wind Energy Holdings Inc.
30. AAER's share capital shall be amended to delete the authorized Existing Common Shares from AAER's share capital.
31. All other equity securities of AAER shall be cancelled for no consideration, and any agreement, contract, plan, indenture, deed certificate or other document or instrument having created or governing such other equity securities shall be terminated.
32. To implement the Reorganization, the Petitioners hereby request that this Court approve the Articles of Reorganization, attached hereto at Schedule A of the Plan, **Exhibit R-1**, pursuant to section 191 of the *CBCA*.

#### **V. FAIRNESS OF THE PLAN**

33. AAER is currently insolvent in that the sum of its liabilities exceeds the sum of its assets, insolvency being a precondition of its application under the *CCAA*.
34. As appears from the Monitor's Report to the Court, **Exhibit R-2**, the opinion of both the Petitioners and the Monitor is that the Plan and the Reorganization present the only realistic possibility for the Petitioners to present an arrangement to their creditors under the *CCAA*, the almost certain alternative being a bankruptcy liquidation.
35. As appears from the Monitor's Report to the Court, the Plan would provide the only realistic and reasonable alternative for the all creditors to obtain a dividend, given that in a bankruptcy scenario, the realization value of AAER's assets would be nil.
36. Accordingly, the Plan is clearly beneficial to all the creditors of the Petitioners.

37. In addition, there has been strict compliance with all statutory requirements and nothing has been done or purported to be done that is not authorized by the CCAA.
38. The Petitioner therefore requests that the Plan be sanctioned by the Court.

#### **VI. FAIRNESS OF THE REORGANIZATION**

39. The Reorganization provides that the existing shares of AAER be cancelled for no consideration, as an essential condition of the Subscription Agreement and, by extension, the Plan.
40. While the benefit to all creditors is much greater under the Plan than in a liquidation, shareholders stand to receive money for their shares only after all creditors have been paid in full, meaning that the fair market value of the existing shares of the Petitioner is zero under either of the above scenarios.
41. In light of the foregoing, it is unreasonable, and the shareholders have no standing, to oppose the Subscription Agreement and the Plan which do them no harm and which provide a significantly greater return to all creditors.
42. For all of the above reasons, the Petitioners request that this Court approve the Reorganization as described in the conclusions of the present motion.

#### **VII. EXECUTION NOTWITHSTANDING APPEAL**

43. In the interests of the orderly conduct of the restructuring process, the Petitioners ask that the order be made executable notwithstanding appeal.

#### **WHEREFORE MAY IT PLEASE THIS HONOURABLE COURT TO:**

44. **GRANT** the present Motion to Sanction the Plan of Reorganization and Compromise and to Approve a Reorganization of AAER Inc (the "**Motion**").
45. **ABRIDGE** the delay for the service, filing and presentation of the Motion, and **DECLARE** that the Motion has been properly served and filed.
46. **DECLARE** that the plan of reorganization and compromise (the "**Plan**"), dated July 12, 2010 made pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") has been approved by the required majorities of Affected Creditors of the Petitioners in conformity with the CCAA.
47. **DECLARE** that the Petitioners have complied with the provisions of the CCAA and with the orders of this court made under the CCAA.
48. **DECLARE** that the Court is satisfied that the Company has neither done nor purported to do anything that is not authorized by the CCAA.

49. **DECLARE** that the Plan including the compromises, arrangements and releases set out therein and the transactions and reorganization described in section 5.1 and in the Articles of Reorganization contemplated thereby are fair and reasonable, and in the best interests of the Petitioners, the Affected Creditors and the other stakeholders of the AAER (having considered, among other things, the composition of the vote, what creditors would receive in liquidation as compared to this Plan, alternatives to the Plan or liquidation, whether any oppression exists or has occurred, the treatment of shareholders and the public interest).
50. **ORDER** that the Plan (including the compromises, arrangements and releases set out therein and the transactions and reorganization described in Section 5.1 and in the Articles of Reorganization) is sanctioned and approved pursuant to Section 6 of the CCAA and Section 191 of the CBCA and, as at the Effective Date, will be effective, and will enure to the benefit of and binding the Petitioners, the Affected Creditors and all other persons stipulated in the Plan or in the Sanction Order.
51. **DECLARE** that the Petitioners and the Monitor are authorized and directed to take all steps and actions necessary or appropriate to implement the Plan, including, without limitation, filing the Articles of Reorganization with the Director, and the transactions contemplated under the Plan in accordance and subject to the terms of the Plan and of this Order, and such steps are approved.
52. **DECLARE** that the articles of AAER will be amended as set out in the Articles of Reorganization as at the Effective Date.
53. **DECLARE** that all Other Equity Securities are of no further force or effect as of the Effective Date and that all such Other Equity Securities are cancelled for no consideration and any agreement, contract, plan, indenture, deed, certificate or other document or instrument having created or governing such Other Equity Securities shall be terminated as at such a time.
54. **DECLARE** that all Proven Claims determined in accordance with the Claims Process Order and the Creditors' Meeting Order are final and binding on the Petitioners and all Affected Creditors.
55. **DECLARE** that the New Common Shares will be validly issued and outstanding as fully paid and non-assessable.
56. **ORDER** that Dave Gagnon, Pierre Patry, Jonathan Dorval, Jacques Gauthier and Gérard Prévost shall be deemed to have resigned as directors of the Company and that Nathan Mazurek and Norman Issley be appointed as the new directors of the company as of the Effective Date, upon completion of the steps set out in paragraphs [52] to [55].
57. **DECLARE** that, subject to the performance by the Petitioners of their obligations under the Plan, all contracts, leases, agreements and other arrangements to which the Petitioners are a party and that have not been terminated or repudiated pursuant to the Initial Order will be and remain in full force and effect, unamended, as at the

Effective Date, and no Person who is a party to any such contract, lease, agreement or other arrangement may accelerate, terminate, rescind refuse to perform or otherwise repudiate its obligations hereunder, or enforce or exercise any right (including any right of dilution or other remedy) or make any demand under or in respect of any such contract, lease, agreement or other arrangement and no automatic terminations will have any validity or effect, by reason of:

- (ii) Any event that occurred on or prior to the Effective Date and is not continuing that would have entitled such person to enforce those rights or remedies (including defaults, events of default, or termination events arising as a result of the insolvency of the Company);
- (iii) The insolvency of the Company or the fact that the Company sought or obtained relief under the CCAA and the CBCA;
- (iv) Any compromises or arrangements effected pursuant to this Plan or any action taken or transaction effected pursuant to this Plan; or
- (v) Any change in control of the Petitioners or any assignment of any such contract, lease, agreement or other arrangement arising from the implementation of the Plan.

- 58. **DECLARE** that the Stay of Proceedings under the Initial Order continues until the Effective Date.
- 59. **DECLARE** that no meetings or votes of holders of Existing Company Shares or Other Equity Securities are required under any applicable Laws in connection with the Plan and the transactions described at Section 5.1. or the adoption or filing of the Articles of Reorganization.
- 60. **DECLARE** that the releases and discharges contemplated by Sections 5.2(1) and 5.2(2) of the Plan are binding and effective as of the Effective Date.
- 61. **DECLARE** that no demand, claim, action, cause of action, counterclaim, suit, and no indebtedness, liability, obligation or cause of action released and discharged pursuant to this Plan shall be prosecuted or commenced, whether directly or derivatively or otherwise.
- 62. **ORDER** that all CCAA Charges shall be released and discharged.
- 63. **ORDER** the provisional execution notwithstanding appeal.
- 64. **THE WHOLE**, without costs.



MONTREAL, August 9, 2010

*McCarthy Tétrault LLP*

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**McCARTHY TÉTRAULT LLP**  
Attorneys for the Petitioners, AAER Inc.,  
AAER USA Inc. and Wind-Smart LLC

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Monitor

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**AFFIDAVIT**


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I, the undersigned, Dave Gagnon, director of AAER Inc., AAER USA Inc. and Wind-Smart LLC, having a place of business at 80, de l'Aéroport Blvd., à Bromont, province of Quebec, J2L 1S9, solemnly declare the following:

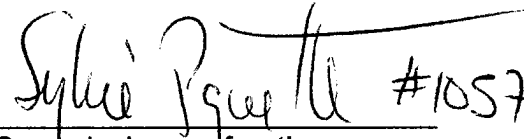
1. I am a duly authorized representative of AAER Inc. and of its subsidiaries for the purposes hereof;

2. All the facts alleged in the *Motion to Sanction the Plan of Reorganization and Compromise and to Approve a Reorganization* are true.

AND I HAVE SIGNED

  
\_\_\_\_\_  
Dave Gagnon

Solemnly declared before me in  
Montreal, on this 9th day of August 2010

 #105746  
\_\_\_\_\_  
Commissioner of oaths



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**NOTICE OF PRESENTATION**

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TO : M. Jean-François Nadon  
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Me Serge Bourque  
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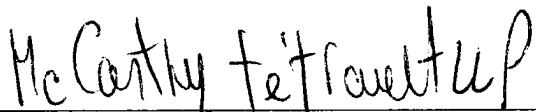
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**TAKE NOTICE** that the *Motion to Sanction the Plan of Reorganization and Compromise and to Approve a Reorganization* will be presented before an Honourable Judge of the Superior Court, sitting in Commercial Chamber, designated pursuant to the *Companies Creditors Arrangement Act* in Granby, Québec, on August 11, 2010, at 9H30 a.m.

**DO GOVERN YOURSELVES ACCORDINGLY.**

MONTREAL, August 9, 2010

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**McCARTHY TÉTRAULT LLP**  
Attorneys for the Petitioners, AAER Inc.,  
AAER USA Inc. and Wind-Smart LLC.

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Monitor

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**LIST OF EXHIBITS**

**(Motion to Sanction the Plan of Reorganization and Compromise and to Approve a  
Reorganization)**

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Exhibit R-1: Plan of reorganization and compromise

Exhibit R-2: Press Release

MONTREAL, August 9, 2010



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**McCARTHY TÉTRAULT LLP**  
Attorneys for the Petitioners, AAER Inc.,  
AAER USA Inc. and Wind-Smart LLC

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MOTION TO SANCTION THE PLAN OF  
REORGANIZATION AND  
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ORIGINAL

Me Alain N. Tardif  
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BC 0847

**McCarthy Tétrault LLP**

Avocats • Agents de brevets et marques de commerce  
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