



**COURT FILE NUMBER** 25-2386427  
25-2386434

**COURT** COURT OF QUEEN'S BENCH OF ALBERTA

**JUDICIAL CENTRE** CALGARY

**DOCUMENT** SUPPLEMENT TO THE SECOND REPORT OF THE TRUSTEE IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF ASPEN AIR CORPORATION AND ASPEN AIR U.S. CORP

**DATED AUGUST 13, 2018**

**ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT**

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# Introduction

1. On June 6, 2018 (the "Filing Date"), Aspen Air Corporation ("Aspen") and Aspen Air U.S. Corp. ("Aspen U.S." collectively the "Aspen Companies" or the "Applicants") each filed a Notice of Intention to Make a Proposal (the "NOI(s)") pursuant to Section 50.4(1) of the Bankruptcy and Insolvency Act, RSC 1985, c B-3 (the "BIA"). Deloitte Restructuring Inc. ("Deloitte") consented to act as Trustee under the NOIs (the "Trustee"). Information on these proceedings can be accessed on Deloitte's website at [www.insolvencies.deloitte.ca](http://www.insolvencies.deloitte.ca) under the link entitled "Aspen Companies".
2. The Aspen Companies were granted an initial 30-day stay of proceedings pursuant to Section 69(1) of the BIA (the "Initial Stay"). The Aspen Companies are required to file a proposal within the Initial Stay or within any further extension of that period granted by the Court of Queen's Bench of Alberta (the "Court"). On June 26, 2018, the Court granted an Order (the "June 26 Order") extending the Initial Stay to August 20, 2018 (the "Stay").
3. The first report of the Trustee (the "First Report") dated June 25, 2018 was filed in support of the relief sought by the Aspen Companies at the hearing on June 26, 2018 (the "June 26 Hearing"), at which time the June 26 Order was granted.
4. The second report of the Trustee (the "Second Report") dated August 10, 2018 was filed to provide the Court with an update on the NOI proceedings and in support of the relief sought by the Aspen Companies at an application scheduled for August 15, 2018 (the "August 15 Hearing") as further described therein.
5. This supplemental report is being prepared as a supplement to the Second Report (the "Supplement to the Second Report"). The Supplement to the Second Report is being prepared to provide the Court with the Trustee's views in relation to the Notice of Application served by the Aspen Companies on August 11, 2018 (the "Notice of Application"), which Notice of Application is seeking, inter alia:
  - 5.1. The approval of the Invico Loan Agreement (as defined below);
  - 5.2. The assignment to Invico Diversified Income Fund Limited Partnership ("Invico") of the CF Security upon the repayment of the CF Loans (as those terms are defined below); and
  - 5.3. The approval of the Invico DIP Agreement (as defined below) and the replacement of CF Capital with Invico as interim lender pursuant to the Initial Order.
6. All terms not otherwise defined herein shall have the meaning ascribed to them in the Second Report.

# CF Capital Indebtedness

7. As previously set out in the First Report, the Second Report and the June 26 Order:
  - 7.1. CF Capital Management LLC (“CF Capital”) acquired a secured claim against the Aspen Companies from ATB Financial (as successor in interest to Alberta Treasury Braches) in the amount of approximately \$8.3 million (\$6.4 million USD), which is comprised of two non-revolving reducing demand loan facilities (the “CF Loans”). The CF Loans were guaranteed by Aspen U.S.;
  - 7.2. the CF Loans are secured by a general security agreement over all present and after acquired property, a floating charge on all lands, a \$10 million U.S. mortgage on the Plant, a postponement and assignment of claims from any subordinated debt provider, title insurance of \$8.5 million U.S. and a pledge agreement of the shares of Aspen U.S. (collectively, the “CF Security”);
  - 7.3. the Trustee’s legal counsel has reviewed the CF Security and determined that it is valid and enforceable in both Canada and the U.S.;
  - 7.4. on June 21, 2018, the Aspen Companies agreed to a term sheet (the “DIP Term Sheet”) with CF Capital to provide up to \$250,000 in interim financing (the “DIP Loan”). The DIP Term Sheet was approved by this Honourable Court as part of the June 26 Order; and
  - 7.5. pursuant to the terms of the DIP Term Sheet a commitment fee and an exit fee in the combined amount of CAD \$10,000 were earned by CF Capital upon acceptance of the DIP Term Sheet by the Aspen Companies and upon approval of the DIP Term Sheet by the Court.
8. To date, no advances have been made to the Aspen Companies under the DIP Loan.

# Invico Financing

9. As described in the Affidavit of Onkar Dhaliwal sworn August 10, 2018 (the "Dhaliwal Affidavit"):
  - 9.1. Following the Initial order, Invico approached the Aspen Companies and advised on a non-binding basis that Invico intended to make a bid in the SISP to permit the restructuring of the Aspen Companies (the "Potential Invico Bid");
  - 9.2. The Potential Invico Bid would be contingent upon (among other things):
  - 9.3. Acquiring secured debts and subordinated securities held by American Welding & Gas, Inc., Principal Leasing Company LLC and/or Canadian Cryogenics Gases & Cylinders, Ltd. (collectively the "Subordinated Parties");
  - 9.4. Obtaining security on the same terms as the CF Security upon paying out the debt due to CF Capital under the CF Loans;
  - 9.5. Invico entered into a support agreement with the Subordinated Parties dated August 8, 2018 (the "Support Agreement") to effect the acquisition set out in paragraph 9.3 above;
  - 9.6. In order to effect the assignment of the CF Security from CF Capital to Invico, the Aspen Companies have negotiated a loan agreement dated August 10, 2018 (the "Invico Loan Agreement") whereby Invico will loan the Aspen Companies funds sufficient to pay CF Capital the amounts due under the CF Loans;
  - 9.7. In addition to the refinancing of the CF Loans, Invico is also prepared to extend interim financing to the Aspen Companies (the "Invico DIP Agreement") on substantially similar economic terms as are set out in the DIP Term Sheet;
  - 9.8. Aspen intends to repay in full in cash all indebtedness outstanding under the CF Loans and the DIP Term Sheet with the advance to be made by Invico pursuant to the Invico Loan Agreement; and
  - 9.9. The interim financing to be advanced pursuant to the Invico DIP Agreement will help fund the Aspen Companies' restructuring costs.
10. The Trustee previously reported on the terms of the Support Agreement in the Second Report.
11. Based on the Trustee's review of the Invico Loan Agreement, the key terms of the Invico Loan Agreement are as follows:
  - 11.1. Invico will make available to Aspen a non-revolving reducing loan facility in the principal amount of USD\$6,750,000 (the "Facility");
  - 11.2. Interest is payable on the Facility in U.S. dollars at U.S. Prime plus 2.00% per annum;
  - 11.3. The Facility may be prepaid in whole or in part at any time without penalty (subject to the relevant notice periods provided in the Invico Loan Agreement);
  - 11.4. The Facility is a demand facility;

11.5. The Facility is subject to the following fees:

11.5.1. Any amount in excess of the established Facility may be subject to a fee where Invico permits excess borrowings; and

11.5.2. For reports or statements not received within the stipulated periods Aspen will be subject to a fee of \$50 per month (per monthly or quarterly report or statement) and \$250 per month (per annual report or statement) for each late reporting occurrence.

11.6. The Facility shall be secured by:

11.6.1. An assignment to Invico of the CF Security; or

11.6.2. New security documents on substantially the same terms as the CF Security; and

11.6.3. The transactions contemplated by the Invico Loan Agreement are subject to approval by the Court.

12. Based on the Trustee's review of the Invico DIP Agreement, the key terms of the Invico DIP Agreement are as follows:

12.1. Invico will make available to the Aspen Companies a non-revolving secured first priority interim credit facility (the "Interim Facility") in an aggregate maximum principal amount of CDN \$250,000;

12.2. The Aspen Companies are authorized to use any advances made under the Interim Facility for working capital;

12.3. Advances under the Interim Facility are subject to the satisfaction of certain conditions precedent, which include but are not limited to, the Court having issued the Interim Facility Order (as defined in the Invico DIP Agreement);

12.4. The Interim Facility will bear interest at 10% per annum, calculated monthly and payable on the maturity date; and

12.5. The Interim Facility shall be secured by an interim facility charge, which charge will rank in priority to all other encumbrances against the property of the Aspen Companies other than the Administration Charge and the Yellowstone Tax Claim.

13. The Trustee notes that should the Court approve the Invico Agreements, while CF Capital will no longer be the primary secured creditor in this matter, it remains open to CF Capital to make a bid pursuant to the SISP.

# Recommendation and Conclusion

14. Based on the Trustee's review of the Invico Loan Agreement and the Invico DIP Agreement (collectively, the "Invico Agreements"), the Trustee is of the view that:
- 14.1 The terms of the Invico Agreements are not less advantageous than the terms of the CF Loans and the DIP Term Sheet;
  - 14.2 The Invico DIP Agreement does not contain any additional commitment or exit fees, meaning that creditors of the Aspen Companies will only bear commitment and exit fees in relation to the DIP Term Sheet;
  - 14.3 Approving the Invico Agreements will allow for the within proposal proceedings to continue and will assist to facilitate the Aspen Companies in making a proposal to their creditors;
  - 14.4 In light of the difficulties in the relationship between CF Capital and the Aspen Companies (as discussed in paragraph 18 of the Second Report), approving the Invico Agreements will repay CF Capital in full and give the Aspen Companies a fresh start in a relationship with a new lender that appears to be supportive to the Aspen Companies and this process; and
  - 14.5 No creditors of the Aspen Companies will be prejudiced by the approval of the Invico Agreements.
15. For the forgoing reasons, the Trustee is supportive of the relief being sought in the Notice of Application.

**DELOITTE RESTRUCTURING INC.,**  
in its capacity as Trustee under the proposal of  
Aspen Air Corporation and Aspen Air U.S. Corp.  
and not in its personal or corporate capacity



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