

COURT FILE NUMBERS 25-2386427
25-2386434

Clerk's Stamp

COURT COURT OF QUEEN'S BENCH OF
ALBERTA IN BANKRUPTCY AND
INSOLVENCY

JUDICIAL CENTRE CALGARY

APPLICANT IN THE MATTER OF THE DIVISION I PROPOSAL
PROCEEDINGS OF ASPEN AIR CORPORATION
and ASPEN AIR U.S. CORP.

DOCUMENT **APPLICATION – STAY EXTENSION**

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File No. 258090

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge. To do so, you must be in Court when the application is heard as shown below:

| | |
|--------------|-----------------------|
| Date: | November 16, 2018 |
| Time: | 1:15 PM |
| Where: | Calgary Courts Center |
| Before Whom: | Justice K. M. Horner |

Go to the end of this document to see what else you can do and when you must do it.

Remedy Claimed or Sought: Aspen Air Corporation (“**Aspen Air**”) and Aspen Air U.S. Corp. (“**Aspen Air US**” and together, the “**Aspen Companies**”) apply for an Order, substantially in the form attached as Schedule “A” hereto:

1. Extending the period of time within which the Aspen Companies are required to file proposals to their creditors, under section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), up to and including December 6, 2018.
2. Declaring that the Application is properly returnable on November 16, 2018, that service of the Application and the affidavit of Onkar Dhaliwal, sworn on November 9, 2018, on the service list created and maintained in respect of the within proceedings (the “**Service List**”) is validated, good and sufficient and that no persons other than those on the Service List are entitled to service of the materials filed in connection with the within Application.
3. Ordering and declaring that service of any orders arising from the Application by email, facsimile, registered mail, courier, regular mail, or personal delivery, shall constitute good and sufficient service of such orders and that no persons other than those in attendance at the Application are entitled to be served with a copy of such orders.
4. Such further and other relief as counsel for the Applicants may advise and this Honourable Court may permit.

Grounds for Making this Application: The grounds for the Application are as follows:

5. On June 6, 2018, the Aspen Companies each filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 (the “**BIA**”) as amended. Deloitte Restructuring Inc. was named as proposal trustee (the “**Proposal Trustee**”) in the Aspen Companies’ NOIs.
6. On June 26, 2018, Justice G.A. Campbell granted an initial order (the “**Initial Order**”) which, among other things, consolidated the proposal proceedings of Aspen Air and Aspen Air US, approved a sale and investor solicitation process (the “**SISP**”), and extended the period of time within which the Aspen Companies must file a proposal to August 20, 2018.
7. On August 15, 2018, Justice D.B. Nixon granted an order in the within proceedings that, among other things, extended the period of time within which the Aspen Companies must file a proposal to October 4, 2018.
8. On August 16, 2018, the United States Bankruptcy Court for the District of Montana granted an order recognizing the within proceedings as foreign main proceedings under Chapter 15 of the *United States Bankruptcy Code*.
9. On October 3, 2018, Justice A.D. Macleod granted an order in the within proceedings that, among other things, extended the period of time within which the Aspen Companies must file a proposal to their creditors to November 19, 2018.

Extension of Stay Period

10. As described in the Affidavit of Onkar Dhaliwal sworn November 9, 2018, the Aspen Companies engaged the services of a financial advisor, Whitehorn Capital (the “**Financial Advisor**”) to implement the SISP.
11. The SISP was initiated on August 10, 2018. The Financial Advisor received multiple non-binding indications of interest on the Phase I Bid Deadline of September 18, 2018. The Financial Advisor, with the assistance of the Proposal Trustee and the Aspen Companies, determined that of the non-binding indications of interest received from interested parties on or before the Phase I Bid Deadline, only one party met the criteria to be a Qualified Phase II Bidder (each as defined in the SISP).

12. On October 1, 2018, the Financial Advisor delivered correspondence to Invico Diversified Income Fund Limited Partnership (“**Invico**”) advising that Invico was determined to be a Qualified Phase II Bidder pursuant to the provisions of the SISP. Invico is the senior secured lender of the Aspen Companies and has provided interim financing to same.

13. On November 9, 2018, Aspen Air US, as vendor, entered into a Purchase and Sale Agreement (the “**Purchase and Sale Agreement**”) with Aspen Air U.S. LLC, an assignee of Invico, as purchaser (the “**Purchaser**”).

14. Aspen Air US and the Purchaser will not be in a position to close the Purchase and Sale Agreement by November 19, 2018 due to the requirement for certain US Court Orders under the Purchase and Sale Agreement, and it is therefore necessary to extend the period within which Aspen Air US has to file a proposal to December 6, 2018. The Purchaser has indicated that for efficiency and flexibility reasons it would prefer that Aspen Air also obtain an extension of the time to file a proposal to December 6, 2018. In order for Aspen Air US to close the transactions contemplated by the Purchase and Sale Agreement (the “**Invico Transaction**”) the Companies require an extension of the Filing Period, pursuant to section 50.4(9) of the BIA, up to and including December 6, 2018.

15. Since the granting of the Order in the within action by Justice A.D. Macleod on October 3, 2018, the Aspen Companies have continued to diligently work to complete the SISP and negotiate the Invico Transaction.

16. Unsecured creditors will benefit from the extension to the extent that Aspen Air US is able to close the Invico Transaction and generate greater recoveries for such creditors than the recoveries available from an immediate bankruptcy.

17. The extension of the Filing Period is appropriate as: (i) the Aspen Companies have acted and continue to act in good faith and with due diligence; (ii) the Aspen Companies will likely be able to close the Invico Transaction if the extension of the Filing Period is granted; and (iii) the extension of the Filing Period will not materially prejudice any of the Aspen Companies’ creditors.

18. Such further and other grounds as counsel for the Aspen Companies may advise and this Honourable Court may permit.

Material or Evidence to be Relied On: The Applicants will rely on the following evidence:

19. The Affidavit of Onkar Dhaliwal, sworn on November 9, 2018.

20. The Fourth Report of the Proposal Trustee, filed; and

21. Such further and other evidence as counsel for the Applicants may advise.

Applicable Rules:

22. Rules 6.3(1), 6.9, 11.27 of the Alberta Rules of Court; and

23. Such further and other rules as counsel for the Applicants may advise and this Honourable Court may permit.

Applicable Acts and Regulations:

24. The *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, section 50.4(9) and 50.6; and

25. Such further and other acts and regulations as counsel for the Applicants may advise and this Honourable Court may permit.

Any Irregularity Complained of or Objection Relied On:

26. There are no irregularities complained of, or objections relied on.

How the Application is Proposed to be Heard or Considered:

27. The Applicants propose that the Application be heard in person with one, some, or all of the parties present.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicants.

SCHEDULE "A"

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Kourtney Rylands
Phone: 403-355-3326
Email: kourtney.rylands@mcmillan.ca

File No. 258090

DATE ON WHICH ORDER WAS PRONOUNCED: November 16, 2018

LOCATION OF HEARING OR TRIAL: Calgary, Alberta

NAME OF MASTER/JUDGE WHO MADE THIS ORDER: Justice K.M. Horner

UPON THE APPLICATIONS of Aspen Air Corporation (“**Aspen Air**”) and Aspen Air U.S. Corp. (“**Aspen Air US**”) (collectively, the “**Aspen Companies**”), **AND UPON** having read the Affidavit of Onkar Dhaliwal, sworn on November 9, 2018 (the “**November 9 Dhaliwal Affidavit**”), filed; **AND UPON** having read the Affidavit of Service of _____ sworn _____ (the “**Affidavit of Service**”), filed; **AND UPON** hearing counsel to the Aspen Companies, counsel to the Proposal Trustee, Deloitte Restructuring Inc., and any counsel present for other parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The Application is properly returnable today, service of the Application and the November 9 Dhaliwal Affidavit on the service list prepared by the Aspen Companies and maintained in these proceedings (the “**Service List**”), in the manner described in the Affidavit of Service, is validated, good and sufficient and no other persons are entitled to service of the November 9 Dhaliwal Affidavit or the Application.

FILING EXTENSION

2. The period of time within which the Aspen Companies are required to file a proposal to their creditors, under section 50.4 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the “**BIA**”), shall be and is hereby extended up to and including December 6, 2018.

SERVICE AND NOTICE

3. Service of this Order by email, facsimile, registered mail, courier or personal delivery to the persons listed on the Service List shall constitute good and sufficient service of this Order, and no persons other than those listed on the Service List are entitled to be served with a copy of this Order.

J.C.Q.B.A.