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

**JUDICIAL CENTRE** CALGARY

**DOCUMENT** FOURTH 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 NOVEMBER 12, 2018

**ADDRESS FOR SERVICE AND  
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# Introduction and Notice to Reader

## 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. On June 14, 2018, Statements of Projected Cash Flow for the Thirteen Week Period Ended September 1, 2018 were filed for Aspen, Aspen U.S., and on a consolidated basis for the Aspen Companies. On August 10, 2018, a Statement of Projected Cash Flow for the Thirteen Week Period Ended November 3, 2018 was filed on a consolidated basis for the Aspen Companies. On September 27, 2018, a further Statement of Projected Cash Flow for the Eleven Week Period Ended December 8, 2018 was filed on a consolidated basis for the Aspen Companies (the "Cash Flow Forecast").
3. 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 "First Extension"). On August 15, 2018, the Court granted an Order (the "August 15 Order") extending the Stay to October 4, 2018 (the "Second Extension"). On October 3, 2018, the Court granted an Order (the "October 3 Order") extending the stay to November 19, 2018 (the "Third Extension").
4. 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 (as further described herein) at the hearing on June 26, 2018 (the "June 26 Hearing"), at which time the June 26 Order was granted. The second report of the Trustee (the "Second Report"), as well as the supplement to the Second Report of the Trustee (the "Second Supplement") dated August 10, 2018 and August 13, 2018 respectively were filed in support of the relief sought by the Aspen Companies at the hearing on August 15, 2018 (the "August 15 Hearing"), at which time the August 15 Order was granted. The third report of the

Trustee (the "Third Report") was filed in support of the relief sought by the Aspen Companies on October 3, 2018 (the "October 3 Hearing"), at which time the October 3 Order was granted.

5. This report is the fourth report of the Trustee (the "Fourth Report" or "this report"). The Fourth Report is being filed to provide the Court with an update on the NOI proceedings and in support of the relief sought by the Aspen Companies at applications scheduled for November 16 and 19, 2018 (the "November 16 and 19 Hearings") as further described herein.

#### Notice to Reader

6. In preparing this report, the Trustee has relied on unaudited financial information, the books and records of the Applicants and discussions with the Applicants' employees, interested parties, and stakeholders.
7. The financial information of the Aspen Companies has not been audited, reviewed or otherwise verified by the Trustee as to its accuracy or completeness, nor has it necessarily been prepared in accordance with generally accepted accounting principles and the reader is cautioned that this report may not disclose all significant matters about the Applicants. Additionally, none of the Trustee's procedures were intended to disclose defalcations or other irregularities. If the Trustee were to perform additional procedures or to undertake an audit examination of the financial statements in accordance with generally accepted auditing standards, additional matters may have come to the Trustee's attention. Accordingly, the Trustee does not express an opinion nor does it provide any other form of assurance on the financial or other information presented herein. The Trustee may refine or alter its observations as further information is obtained or brought to its attention after the date of this report.
8. The Trustee assumes no responsibility or liability for any loss or damage occasioned by any party as a result of the circulation, publication, reproduction, or use of this report. Any use, which any party makes of this report, or any reliance or decision to be made based on this report, is the sole responsibility of such party.
9. Capitalized terms not defined in this report have the meaning given to them in the First Report, Second Report, Second Supplement, Third Report, or the SISP (as defined below).
10. All amounts included herein are in Canadian dollars unless otherwise stated.

# Background

## Court Proceedings

11. At the June 26 Hearing, the Court granted an Order approving the following relief:

- 11.1. Approval of the First Extension;
- 11.2. Allowing the NOI proceedings and any subsequent proceedings undertaken pursuant to the BIA to be administered on a consolidated basis;
- 11.3. Authorizing the Applicants to seek foreign recognition of the NOI proceedings as a foreign main proceeding under Chapter 15 of the United States Bankruptcy Code (the "Bankruptcy Code");
- 11.4. Approving a Sale and Investor Solicitation Process (the "SISP");
- 11.5. Approving a charge in the amount of \$150,000 as security for the reasonable professional fees and disbursements of the Trustee, the Trustee's legal counsel, and the Aspen Companies' U.S. and Canadian legal counsel (the "Administration Charge"), which forms a first charge over all assets, rights, undertakings and properties of the Applicants of every nature and kind whatsoever, and wherever situated including all proceeds thereof (the "Property");
- 11.6. Approving the Aspen Companies borrowing by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable to fund its operations during the NOI proceedings provided that the outstanding principal amount does not exceed \$250,000 or such greater amount as the Court may subsequently authorize (the "DIP Loan");
- 11.7. Approving a charge on the Property as security for the DIP Loan together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise but subordinate only to the Administration Charge (the "DIP Charge");
- 11.8. Approving a charge in the amount of \$150,000 as security to indemnify the directors and officers of the Aspen Companies against obligations and liabilities that they may incur in those capacities after the Filing Date, provided that such obligations were not incurred as a result of the directors' or officers' gross negligence or wilful misconduct (the "D&O Charge"). The D&O Charge forms a third charge over the Property, ranking behind the Administration Charge and the DIP Charge; and

- 11.9. Approving the designation of selected suppliers as critical to the Applicants' ongoing operations (the "Critical Suppliers") and approving payment to the Critical Suppliers of up to \$250,000 due for the period prior to the Filing Date (the "Critical Supplier Payments").
12. On August 1, 2018, the United States Bankruptcy Court for the District of Montana (the "U.S. Court") granted an Order (the "Recognition Order") approving the following further relief:
  - 12.1. Recognizing the NOI proceedings as foreign main proceedings;
  - 12.2. Confirming that 11 U.S.C. Sec. 1520 of the Bankruptcy Code applies in this Chapter 15 case;
  - 12.3. Recognizing the specific provisions of the June 26 Order save and except that none of the Administration Charge, the DIP Charge and the D&O Charge will be in priority to a claim by Yellowstone County Treasurer for unpaid property taxes (the "Tax Claim");
  - 12.4. Authorizing and empowering the Aspen Companies and Deloitte, as the Foreign Representative, to take all actions necessary to implement the Recognition Order; and
  - 12.5. Confirming that the Aspen Companies and the Foreign Representative are entitled to certain protections contained in the Bankruptcy Code and subject to other provisions of the Bankruptcy Code;
  - 12.6. Recognizing the Order granted in the Court of Queen's Bench on August 15, 2018; and
  - 12.7. Recognizing the Order granted in the Court of Queen's Bench on October 3, 2018.
13. At the August 15 Hearing, the Court granted the following relief:
  - 13.1. Approval of the Second Extension;
  - 13.2. Assigning to Invico Diversified Income Fund Limited Partnership ("Invico") of the CF Security upon the repayment of the CF Loans;
  - 13.3. Approval of the Invico Loan Agreement; and
  - 13.4. Approval of the Invico DIP Agreement and the replacement of CF Capital with Invico as interim lender pursuant to the Initial Order.
14. At the October 3 Hearing, the Court granted the following relief:
  - 14.1. Approval of the Third Extension; and
  - 14.2. Increase of the DIP Loan and DIP Charge from \$250,000 to \$750,000.
15. The Fourth Report is being filed in support of the following relief being sought by the Applicants at the November 16 and 19 Hearings:
  - 15.1. Approval of a 17 day extension of the Stay of the Aspen Companies from November 19, 2018 to December 6, 2018 (the "Fourth Extension"); and

15.2. Approval of the Agreement of Purchase and Sale ("APS") between Aspen U.S. and Aspen Air U.S., LLC.

# Restructuring Efforts

## SISP

16. The Applicants have continued the Amended SISP, and have entered into an APS with the successful bidder, a copy of which is attached to the affidavit of Onkar Dhaliwal dated November 9, 2018. An outline of the Amended SISP and key dates is described further below:

<b>Phase/ Event</b>	<b>Estimated Timing</b>	<b>Description of Activities</b>
<b>Publication Notice</b>	August 14, 2018	Notice of the SISP published in the Globe and Mail and other agreed upon publications
<b>Phase I</b>	To last for a period of four weeks following the publication notice	Solicitation of non-binding indications of interest ("IOI's) to invest in the Companies or to purchase the Companies' assets
<b>Phase I Bid Deadline</b>	September 18, 2018	IOIs must be submitted by the specified deadline
<b>Assessment of IOIs</b>	As promptly as practical after the Phase I bid deadline	IOIs will be considered in regard to the requirements of the SISP and qualified bidders will be advanced to Phase II
<b>Phase II</b>	To last for a period of no longer than 4 weeks following the Phase I bid deadline	Qualified bidders will conduct due diligence and prepare final bids/ proposals specifying the structure of the proposed transaction
<b>Phase II Bid Deadline</b>	October 12, 2018	Final bids/ proposals must be submitted by the required deadline
<b>Evaluation and selection of successful bid</b>	As promptly as practical after the Phase II bid deadline	Terms of all final bids/ proposals will be clarified. The Companies will elect a final bid/ proposal and the terms of the agreement will be negotiated Court approval will be sought
<b>Closing of any successful bid/ proposal</b>	As agreed	To occur on the agreed upon date subject to Court approval of a BIA Proposal or an asset purchase agreement



17. The results of Phase I of the Amended SISP are as follows:
  - 17.1 Fifty-four prospective purchasers were contacted and provided a teaser document;
  - 17.2 Five non-disclosure agreements were signed and proceeded to Phase I, allowing prospective purchasers access to a data room, discussions with company management and in certain instances site visits; and
  - 17.3 Three non-binding indications of interest ("IOI's") were received, requesting advancement to Phase II.
18. After completion of Phase I of the SISP, the Applicants, with the assistance of Whitehorn and the Proposal Trustee, reviewed the non-binding bids received to determine which bidders to advance to Phase II. One bidder, Invico, was qualified and advanced to Phase II, based on a superior initial bid price, and an assessment of the bidders' likelihood to complete a transaction. After negotiation of a final bid price and other terms, Aspen U.S. and Aspen Air U.S., LLC, an entity controlled by Invico, have entered into an APS, subject to the approval of the Court.
19. The Proposal Trustee reports as follows in regards to the APS:
  - 19.1 The APS includes the assets of Aspen U.S., which are being sold on an "as is, where is" basis;
  - 19.2 Invico and Aspen U.S. have agreed to the form of APS, in the event that the Court approves the APS;
  - 19.3 Purchase price of approximately \$14.8 million USD, to be satisfied as follows:
    - i. The setting off of amounts owing to Invico under the Invico Security;
    - ii. The setting off of the amount outstanding under the Invico DIP Loan, which will include an advance to the Proposal Trustee to satisfy the following:
      - a) All amounts secured by the Administration Charge; and
      - b) An amount on account of the future bankruptcy costs of Aspen and Aspen U.S.;
    - iii. The setting off of amounts owing under the lease agreements previously assumed by Invico;
    - iv. The assumption of certain vendor trade payables, certain subordinated debt, employee liabilities, and municipal tax liabilities of Aspen U.S.; and
    - v. The payment of a cure amount to the counterparties of assigned contracts.
  - 19.4 Once the APS is completed, Aspen and Aspen U.S. will no longer have any active operations, nor will they hold any material assets. Aspen and Aspen U.S. will be deemed bankrupt upon expiry of the Stay.

- 19.5 While there will be no recovery for unsecured creditors of Aspen under the APS, it does create the maximum value from the assets of the Aspen Companies. In addition, the APS will result in the retention of employment of approximately 20 individuals who are currently employed by Aspen U.S.;
- 19.6 A hearing in the U.S. Court to approve the APS is scheduled for November 29, 2018. The closing date is set to occur shortly after approval by the U.S. Court; and
- 19.7 The Proposal Trustee has reviewed the APS with the assistance of the Applicants and Whitehorn. The Proposal Trustee is satisfied that the Amended SISP has adequately exposed the assets to the market and that the APS is in the best interests of the Aspen Companies, their creditors, and other stakeholders, and is commercially reasonable.

# Cash Flow Variance Analysis

20. The following is the cash flow variance analysis for the Aspen Companies (the "Variance Analysis") for the period from September 23, 2018 until November 3, 2018 (the "Variance Period"). The Variance Analysis is based on the statement of projected cash flows filed by the Applicants on September 29, 2018:

<b>Aspen Companies</b>					
<b>Variance Analysis</b>					
<b>For the six week period ending November 3, 2018</b>					
	<b>Total Forecast</b>	<b>Total Actual</b>	<b>Variance</b>	<b>% Variance</b>	
<b>Receipts</b>					
Account receivables	\$ 907,500	\$ 1,107,341	\$ 199,841	22%	
Rental Receipts	-	-	-	0%	
GST collected	375	228	(147)	(39%)	
<b>Total Receipts</b>	<b>907,875</b>	<b>1,107,569</b>	<b>199,694</b>	<b>22%</b>	
<b>Disbursements</b>					
Salaries and wages	(333,750)	(316,678)	17,072	5%	
Employee benefits	(36,738)	(77,511)	(40,774)	(111%)	
Vehicle and equipment leases	(173,125)	(110,450)	62,675	36%	
Fuel	(45,000)	(39,833)	5,167	11%	
Utilities	(263,884)	(229,986)	33,898	13%	
Water	(8,125)	(8,942)	(817)	(10%)	
Repair & Maintenance	(165,625)	(143,172)	22,453	14%	
Rent	(12,125)	(10,308)	1,817	15%	
IT services	(13,121)	(18,371)	(5,251)	(40%)	
Office expenses	(18,475)	(48,646)	(30,171)	(163%)	
Insurance	(35,917)	(39,525)	(3,608)	(10%)	
DIP Loan Fees	(8,333)	(15,000)	(6,667)	(80%)	
Professional fees	(272,000)	(77,577)	194,423	71%	
Contingency	(35,250)	(26,106)	9,144	26%	
<b>Total Disbursements</b>	<b>(1,421,467)</b>	<b>(1,162,106)</b>	<b>259,362</b>	<b>18%</b>	
<b>Net Cash Flow</b>	<b>\$ (513,592)</b>	<b>\$ (54,537)</b>	<b>\$ 459,055</b>	<b>89%</b>	
<b>Bank Balance</b>					
Beginning Cash Balance	\$ 130,668	\$ 130,668	-	0%	
DIP Loan	450,000	550,000	100,000	22%	
Transfers US/CAN Bank Account	-	(7,759)	(7,759)	(100%)	
Net Cash Flow	(513,592)	(54,537)	459,055	89%	
<b>Ending Bank Balance</b>	<b>\$ 67,076</b>	<b>\$ 618,372</b>	<b>\$ 551,296</b>	<b>822%</b>	

21. The following permanent variances over \$10,000 are not anticipated to impact the Aspen Companies go-forward operations or ability to restructure:
  - 21.1 A permanent positive variance of approximately \$30,200 for office expenses as a result of additional costs incurred in anticipation of the plant maintenance repairs.
22. As at November 3, 2018, the Aspen Companies have a cash balance of approximately \$618,400 consisting of cash held in bank accounts with ATB in Canada and Wells Fargo in the U.S. As contained in the cash flow forecast filed in the Third Report on September 27, 2018, in the subsequent 5 weeks to December 6, the Aspen Companies projected to have a net cash outflow of approximately \$263,900. Based on the cash balance as at November 3, 2018, and the net cash outflow, the Aspen Companies have sufficient liquidity to sustain their ongoing operations throughout the period of the Fourth Extension.

# Recommendation and Conclusion

23. Based on the Trustee's review of the APS and the results of the Amended SISP, it is the Trustee's view that pursuant to Section 65.13(4) of the BIA:

23.1 The Amended SISP leading to the transaction was reasonable;

23.2 The Trustee was in support of the approved Amended SISP;

23.3 The transaction will be more beneficial to creditors of Aspen U.S. than a sale or disposition under bankruptcy;

23.4 The Aspen Companies' secured creditor is a party to the APS and was sufficiently consulted;

23.5 The Aspen Companies' employees and secured creditors, and Aspen U.S.' creditors and contract counterparties will receive a greater benefit under the APS than a sale or disposition under a bankruptcy; and

23.6 The consideration to be received for the assets under the APS is fair and reasonable.

24. Based on the Trustee's review of the Aspen Companies' operations and restructuring efforts to date, the Trustee is of the view that pursuant to Section 50.4(9) of the BIA:

24.1 The Aspen Companies appear to be acting in good faith and with due diligence;

24.2 The Aspen Companies are cooperating with the Trustee and appear to be making efforts to complete the APS, which provides the maximum possible benefit to the secured creditors of the Aspen Companies and the unsecured creditors of Aspen U.S.;

24.3 The Aspen Companies require the extension to complete the Amended SISP and close the APS; and

24.4 The Aspen Companies' creditors will not be materially prejudiced by the Extension.

25. The Fourth Report has been prepared to provide the Court with an update on the Aspen Companies' NOI proceedings, and in support of the Fourth Extension and APS.

**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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Ryan Adlington, CA, CPA, CIRP  
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