CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
No.: 500-11-042912-127

SUPERIOR COURT
(Commercial Division)
The *Canada Business Corporations Act*

MONTREAL, this 25th day of February, 2013

PRESIDING:
THE HONOURABLE MARK SCHRAGER, J.S.C.

IN THE MATTER OF THE LIQUIDATION OF:

ACE AVIATION HOLDINGS INC.

Applicant

-and-

ERNST & YOUNG INC.

Liquidator

CLAIMS PROCESS ORDER

CONSIDERING the *"Application for an Order Establishing a Claims Process"* (the **"Motion"**) and its supporting exhibits including the First Report of the Liquidator dated February 22, 2013 brought by Ernst & Young Inc. (the "Liquidator"), the Liquidator of ACE Aviation Holdings Inc. ("ACE").

CONSIDERING the submissions of counsel for the Liquidator;

GIVEN the provisions of the *Canada Business Corporations Act*, (R.S.C., 1985, c. C-44) as amended (the **"CBCA"**);

No.: 500-11-042912-127

WHEREFORE, THE COURT:

[1] **ORDERS** that the following terms in the present section of this order (the **"Order"**) shall, unless otherwise indicated, have the following meanings ascribed thereto:

(a) "**Books and Records**" means ACE's financial and accounting records, its tax records and its records and documents relating to litigation matters;

(b) **"Business Day"** means a day on which banks are generally open for business in Quebec and Ontario, other than a Saturday, a Sunday or a non-juridical day (as defined in article 6 of the Code of Civil Procedure, R.S.Q., c. C-25, as amended);

(c) **"Claim"** means any right of any Person against ACE in connection with any indebtedness, liability or obligation of any kind of ACE owed to such Person and any interest accrued thereon or costs payable in respect thereof, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, surety or otherwise, and whether or not such right is executory or anticipatory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, except, in all cases, an Excluded Claim;

(d) **"Claims Bar Date"** means 4:00 p.m. Eastern time (EDT) on May 13, 2013, or such later date as may be ordered by the Court;

(e) **"Contingent Claim"** means a Claim that may or may not become a debt of ACE depending upon the result of a specified future event;

(f) **"Court"** means the Superior Court of Québec (Commercial Division);

(g) **"Creditor"** means any Person having a Claim, other than an Excluded Claim, and may, where the context requires, include the assignee of a Claim or a trustee, interim receiver, receiver, receiver and manager, or other Person acting on behalf of such Person and includes a Known Creditor;

(h) **"Creditors' Instructions"** means the instructions for Creditors, including a Proof of Claim, a notice and an instruction letter (being substantially in the form set out at Annex B hereto) explaining how to complete same, and a copy of this Order;

(i) **"Creditors' List"** means a list of all Known Creditors;

(j) **"Designated Newspapers"** means La Presse and the Globe and Mail;

(k) **"Excluded Claim"** means any claim or right of a director, former director, officer and/or former officer of ACE, in their capacity as director, officer, former director and/or former officer, stemming from a contractual or legal obligation to indemnify owed by ACE, including under the by-laws of ACE;

(l) **Known Creditor** means a Creditor whose Claim is included in ACE's Books and Records;

(m) **"Liquidation Order"** means the order of this Court dated June 28th, 2012, granting ACE's "Application for an Order Appointing a

Liquidator and for an Order that the Liquidation be Continued under the Supervision of the Court";

(n) **"Newspaper Notice"** means the notice of this Order to be published in the Designated Newspapers on the Publication Date in accordance with paragraph 2, which shall set out the Claims Bar Date and the Creditors' Instructions;

(o) **"Notice of Revision or Disallowance"** means the notice referred to in subparagraph 7 (e) hereof, advising a Creditor that the Liquidator has revised or rejected all or part of such Creditor's Claim set out in its Proof of Claim and setting out the reasons for such revision or disallowance;

(p) **"Person"** means any individual, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, governmental body or agency, or any other entity;

(q) **"Proof of Claim"** means the form of proof of claim for Creditors referred to in paragraphs 6 and following hereof, being substantially in the form set out at Annex B attached herewith;

(r) **"Proven Claim"** means the amount of any Claim of any Creditor determined in accordance with the provisions of this Order, and proven by delivering a Proof of Claim to the Liquidator, but only after and to the extent that such Proof of Claim has been accepted by the Liquidator;

(s) **"Publication Dates"** means the dates on which the publication of the Newspaper Notice in all of the Designated Newspapers has been completed;

(t) **"Valid Contingent Claim"** means a Contingent Claim set forth in a Proof of Claim, delivered to the Liquidator pursuant to the terms hereof, which is determined by the Liquidator to be valid, and which may therefore become a Proven Claim upon the occurrence of a specified future event;

GENERAL PROCEDURE

[2] **ORDERS** that the Newspaper Notice shall be published by the Liquidator in the Designated Newspapers on at least two occasions being at least seven days apart, as soon as practicable following the issuance of this Order, but in any event no later than March 18, 2013;

[3] **ORDERS** that, in addition to the publication referred to in paragraph 2, the Liquidator shall send a copy of the Creditors' Instructions, by regular mail, to each Known Creditor at the last known address for each Known Creditor on ACE's Books and Records as soon as practicable and no later than March 8, 2013;

[4] **ORDERS** that, in addition to the publication referred to hereinabove, the Liquidator shall publish on its website at www.ey.com/ca/aceaviation and/or the website of ACE at www.aceaviation.com a copy of the Creditors' Instructions, as soon as possible but no later than March 8, 2013;

[5] **ORDERS** that the Liquidator shall have no further notice obligations with respect to this Order, aside from those set forth at Paragraphs 2 to 4 hereof;

CLAIMS PROCEDURE

[6] **ORDERS** that a Creditor who does not file a Proof of Claim by the Claims Bar Date shall not be entitled to any further notice, shall be forever barred

from advancing a Claim against ACE and shall not be entitled to receive any amount from the Liquidator pursuant to the terms hereof;

[7] **ORDERS** that the following procedure shall apply where a Creditor files a Proof of Claim on or before the Claims Bar Date:

(a) the Liquidator shall review all Proofs of Claim received on or prior to the Claims Bar Date;

(b) in connection with its review, the Liquidator may request that the Creditor submit additional information and / or may attempt to consensually resolve the amount of the Claim with the Creditor;

(c) the Liquidator may accept a Proof of Claim or may disallow it in whole or in part;

(d) as regards any Contingent Claim set forth in a Proof of Claim, the Liquidator may declare it a Valid Contingent Claim (in which case it shall notify the Creditor of the portion of its Claim declared to be a Valid Contingent Claim by mail, facsimile, courier or other means of electronic communication), or may disallow it in whole or in part;

(e) where the Liquidator may determine that a Proof of Claim or Contingent Claim should be disallowed in whole or in part, the Liquidator shall send the Creditor a Notice of Revision or Disallowance by mail, facsimile, courier or by means of electronic communication within 120 days of the Claims Bar Date, failing which the Proof of Claim shall be deemed to have been accepted or in the case of a Contingent Claim, shall be deemed to have been declared a Valid Contingent Claim;

(f) a Creditor who receives a Notice of Revision or Disallowance and wishes to dispute it shall, within thirty (30 days) of the date of the Notice of Revision or Disallowance, deliver a Dispute Notice to the

Liquidator, and the Liquidator's counsel identified in the Liquidation Order;

(g) unless otherwise authorized by this Court, if the Creditor does not deliver a Dispute Notice to the Liquidator within the time period provided for above, such Creditor shall be deemed to have accepted the value of its Claim or the treatment of its Contingent Claim as set out in the Notice of Revision or Disallowance;

(h) upon receipt of a Dispute Notice, the Liquidator may attempt to consensually resolve the amount of the Claim or the treatment of the Contingent Claim with the Creditor and / or seek further instructions from this Honourable Court with respect to a process for the resolution of the Claim or the Contingent Claim;

(i) notwithstanding paragraph 28 of the Liquidation Order, a Creditor receiving a Notice of Revision or Disallowance and having duly delivered a Dispute Notice to the Liquidator in accordance with paragraph (g) above, may make application to this Honourable Court;

<u>Creditor Payments</u>

[8] **ORDERS** that upon review of all Proofs of Claim received as of the Claims Bar Date, the Liquidator shall establish a creditor reserve (the "**Creditor Reserve**") determined based upon the aggregate of:

(a) the value of all Proven Claims;

(b) any provision for disputed Notices of Revision or Disallowance, in an amount determined by the Liquidator in its discretion;

(c) the estimated value of any Valid Contingent Claims which have not become Proven Claims, in an amount determined by the Liquidator in its discretion;

(d) the estimated potential value of any Excluded Claims, in an amount determined by the Liquidator in its discretion; and

(e) any additional contingency that the Liquidator may determine in its discretion;

[9] **ORDERS** that the Liquidator shall pay (by way of one or more payments) all Proven Claims out of the Creditor Reserve;

[10] **ORDERS** that the amount of the Creditor Reserve shall be reduced or otherwise adjusted by the Liquidator from time to time based upon;

(a) payments of Proven Claims or other changes to the value of the Proven Claims;

(b) disputes regarding Notices of Revision or Disallowance being resolved or otherwise determined pursuant to a final and non-appealable Court order, or a settlement agreement between the Liquidator, on behalf of ACE, and the relevant Creditor;

(c) payment of a Valid Contingent Claim that became a Proven Claim upon the occurrence of a specified future event;

(d) payment of an Excluded Claim;

(e) the expiry of the deadline for the occurrence of a specified future event with respect to a Valid Contingent Claim, or the expiry of any applicable limitation / prescription period with respect to a Valid Contingent Claim; or

(f) a final and non-appealable Court order with respect to a Valid Contingent Claim or any settlement agreement which may be entered into between the Liquidator, on behalf of ACE, and the relevant Creditor with respect to a Valid Contingent Claim;

[11] **ORDERS** that the portion of the Creditor Reserve established based on the estimated potential value of the Excluded Claims shall remain in the Creditor Reserve until there remains any other amounts in the Creditor Reserve, and shall be released from the Creditor Reserve on the Business Day immediately preceding the date on which the Liquidator is proposing to proceed with the final Liquidation Distribution in accordance with the Liquidation Order;

[12] **ORDERS** that all amounts released from the Creditor Reserve shall become available for the purposes of Liquidation Distributions pursuant to the Liquidation Order;

[13] **ORDERS** that, subject to this Order, the Liquidation Distributions shall take place as set forth in the Liquidation Order;

THE WHOLE WITHOUT COSTS.

MONTREAL, this 25th day of February, 2013

Mark Schrager

THE HONOURABLE MARK SCHRAGER, J.S.C.

COPIE CONFORME

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