

D. Gray #5
Sworn: March 18, 2009

No. S-088488
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*
R.S.C. 1985, c. C-36, as amended

AND

IN THE MATTER OF THE *Canada Business Corporations Act*
R.S.C., 1985 c. C-44

AND

IN THE MATTER OF HYDROXYL SYSTEMS INC.

PETITIONER

AFFIDAVIT

I, DAVID GRAY, CA-CIRP, of 1000 - 570 Granville Street, Vancouver, British Columbia,
MAKE OATH AND SAY AS FOLLOWS:

1. I am the President of The Summit Group Business Consultants Ltd. ("Summit") and, as such, I have personal knowledge of the matters hereinafter deposed to, except where stated to be on information, in which case, because of my belief in the veracity of the informant I identify, I believe both the information and the resulting statement I make to be true.
2. Capitalized terms used in this Affidavit have the same meaning as ascribed to in my

earlier Affidavits in this proceeding.

3. I make this Affidavit to supplement my Affidavit #4 sworn March 17, 2009.
4. In my Affidavit #4, I referred to certain ongoing patent litigation in Finland involving the Petitioner and a competitor, Kruger-Kaldenes.
5. Earlier today, I participated in a conference call with representatives of the Petitioner, its Canadian intellectual property counsel (Rob Faschler of Gowlings), and the Petitioner's Finish intellectual property counsel (Seppo Kemppinen).
6. The purpose of the call was to have Mr. Kemppinen, who I understand has been extremely busy with another matter, explain the import of the decision described in my previous Affidavit, review the process for appealing from the decision, discuss the issue of costs and provide advice with respect to issues arising from the decision, including the impact of the decision, if any, on the Petitioner's ongoing work on the Genesis projects at the Aker yard in Finland.
7. Because the decisions were intended to be privileged, I cannot disclose all of the contents of our discussion.
8. I can say, however, that Mr. Kemppinen advised the group, including myself, that an award of costs has been made against the Petitioner in the amount of approximately €270,000, or about \$450,000 (Cdn.).
9. Based on Mr. Kemppinen's description of the award of costs, I understand that it can be broken down into components, including costs which were incurred, or which arose, before or after December 5, 2008 (the Filing Date in this matter).
10. Mr. Kemppinen indicated that he had not yet calculated the portion of costs awarded that relate to pre- and post-Filing Date matters, but that a rough estimate would be that post-Filing Date costs will be in the range of somewhere between \$50,000 and \$100,000 (Cdn.).

11. (A translation of the actual judgment still is not available. Mr. Kemppinen indicated that he hoped to have a translation ready later today or tomorrow).
12. Mr. Kemppinen also explained the process for appealing from the judgment of the Finnish tribunal (which he described as a "City Court"). He also discussed, in summary fashion, his views as to the Petitioner's prospects of success on an appeal. Mr. Kemppinen undertook to provide the Petitioner with a written statement of his opinion in this regard in due course.
13. With respect to the issue of process, Mr. Kemppinen indicated that if the Petitioner appeals from the City Court's decision, it would be open to Kaldenes, as a respondent, to apply for what I understood to be the equivalent of what we would refer to in British Columbia as an order for security for costs. Again, I am reluctant to disclose the particular advice that Mr. Kemppinen gave on this issue. Suffice it to say that, in his view, this is an issue that might have to be addressed if the Petitioner decides to appeal.
14. We also discussed the situation, as it now pertains to the Petitioner's ongoing work at the Aker yard. Again, I cannot reveal the substance of Mr. Kemppinen's advice. I can tell the Court, however, that I am satisfied, based on Mr. Kemppinen's advice, that the Petitioner should be able to continue with the installation of its wastewater treatment systems in the two Genesis ships being built at Aker yard in Finland.
15. I am informed by Mr. Major that the Petitioner has informed Aker of the decision, and that he has already begun the process of discussing its impact on the Genesis projects (if any) with representatives of Aker.
16. Mr. Kemppinen advised that, to date, Kaldenes has not commenced patent infringement or other proceedings against the Petitioner in Finland, or elsewhere.
17. I understand, based on my discussions with Mr. Kemppinen earlier today, and earlier discussions that I have had with Mr. Major and Canadian intellectual property counsel, that the Petitioner would be in a position to defend any patent infringement proceedings with respect to the Genesis ships based, at least in part, on the assertion that the

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