

D. Gray #7  
Sworn: May 27, 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 them in my earlier Affidavits in this proceeding.

3. I submit this Affidavit in support of an application for approval of a settlement agreement (the "Settlement Agreement") that Hydroxyl has negotiated with Krüger Kaldnes AS ("Krüger Kaldnes"). A copy of the Settlement Agreement, which I have read, is attached to the Notice of Motion in connection with which I am swearing this Affidavit.
4. As set out in the recitals to the Settlement Agreement, Hydroxyl commenced legal proceedings against Krüger Kaldnes in the Helsinki City Court (the "Helsinki Court"), known as "a dispute matter of invalidity of Finnish Patent FI 112355", Docket No. 7697 (the "Invalidity Proceedings"), claiming that patent No. FI 112355, held by Krüger Kaldnes (the "112 Patent") is invalid.
5. As has been reported to this Court in previous Affidavits, on March 13, 2009, the Helsinki Court dismissed Hydroxyl's claims in the Invalidity Proceedings (the "Decision") and awarded costs against Hydroxyl in the amount of €277,486.02, plus 10,000 Swedish Krona and 25,000 Norwegian Krone (the "Costs Award").
6. Hydroxyl has appealed from the Decision to the Helsinki Court of Appeals (the "Court of Appeal"), under Docket No. S09/1003 (the "Appeal").
7. As set out in my earlier affidavits in this matter, in April 2007, STX Finland Cruise Oy ("STX") (which I previously referred to as "Aker") and Hydroxyl entered into an agreement, pursuant to the terms of which Hydroxyl agreed to install advance wastewater purification systems in certain ships being built by STX at the Aker Yards in Turku, Finland (the "Supply Contract").
8. Pursuant to the terms of the Supply Contract, Hydroxyl has supplied goods and services to STX, and amounts are now due by STX to Hydroxyl, and the parties expect that further amounts will become due and owing to Hydroxyl as and when it fulfills its obligations under the Supply Contract.
9. Krüger Kaldnes has applied to the Execution Authority of Turku (the "Execution Authority") for an Order for execution of the Costs Awards, including a garnishing order directing STX to pay any amounts that would otherwise be payable to Hydroxyl to the Execution Authority (the "Execution Proceedings"). Because of this, STX has paid

certain monies otherwise owing to Hydroxyl under the Supply Contract to the Execution Authority.

10. As well, Krüger Kaldnes has alleged that the systems being installed or installed by Hydroxyl in three of STX's ships, known as the "Enchantment of the Seas", the "Oasis of the Seas" and the "Allure of the Seas", infringe Krüger Kaldnes' rights under the 112 Patent (the "Patent Infringement Claims").
11. As has been reported to the Court in previous Affidavits, Hydroxyl's primary source of revenue, at the present, is the payments it is entitled to receive under the Supply Contract with STX. Because those payments are now being diverted to the Execution Authority, Hydroxyl is essentially being starved of cash.
12. Hydroxyl has attempted through legal means to prevent STX from having to make payments to the Execution Authority, without success. Accordingly, on May 10, 2009, Charles Croft travelled to Finland to meet with representatives of Krüger Kaldnes and STX, to see if he could reach some resolution to this situation.
13. The result of Mr. Croft's meetings is the Settlement Agreement attached to the Notice of Motion.
14. In essence, the Settlement Agreement provides that Hydroxyl will instruct STX to pay 22% of future payments due to Hydroxyl under the Supply Agreement to Krüger Kaldnes, until the Settlement Amount of €303,000 is paid in full. (The Settlement Amount is approximately €20,000 more than the Costs Award, after conversion of the Swedish and Norwegian currency components of that award. This additional amount is to compensate Krüger Kaldnes for costs that it has incurred since the Decision, including costs in relation to the Appeal).
15. It is of course unfortunate that Hydroxyl is faced with having to pay the Costs Award. However, in the absence of a stay of proceedings in Finland pending the Appeal, which Hydroxyl was not able to obtain, Hydroxyl had little alternative but to agree to payment terms with Krüger Kaldnes. Again, without the money from the Supply Contract, Hydroxyl cannot continue in business.

- 16. With the Settlement Agreement, Hydroxyl should have sufficient cash to allow it to continue to operate.
- 17. The reason Hydroxyl is applying for approval of the Settlement Agreement is that STX has requested such approval. STX has expressed concern, in this regard, that because Hydroxyl is under CCAA protection, any payments that it makes directly to Krüger Kaldnes may be construed as preferring Krüger Kaldnes over other creditors of Hydroxyl.
- 18. As well, I am informed by our counsel, Scott Turner, that the Monitor, through his counsel, William Roberts, has expressed the view that the Settlement Agreement could be construed as a disposition by Hydroxyl of an asset, namely the money it expects to receive from STX under the terms of the Supply Contract.
- 19. Accordingly, Hydroxyl is applying for this Court's approval of the Settlement Agreement.
- 20. I should add, that Hydroxyl has been asked to bid on, and expects to be awarded, a contract to supply a further wastewater treatment system for a fourth Genesis class ship to be built by STX.
- 21. As well, I and Mr. Croft and Harvey Lee have had a number of encouraging discussions with a prospective purchaser of Hydroxyl's business, and I expect that a deal can be finalized once this Settlement Agreement is approved.

SWORN BEFORE ME at the City of )  
 Vancouver, British Columbia, )  
 on May 27, 2009 )  
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A Commissioner for taking )  
 affidavits in British Columbia )

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**DAVID GRAY**

**SCOTT A. TURNER**  
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