

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

NOTICE OF MOTION

TAKE NOTICE that an application will be made by the Petitioner, Hydroxyl Systems Inc., to the Honourable Mr. Justice Hinkson sitting in Chambers at the Courthouse at 800 Smithe Street, Vancouver, British Columbia, at 9:00 a.m. on Friday, May 29, 2009, for an order:

1. Approving that certain Settlement Agreement between the Petitioner and Krüger Kaldnes AS dated as of May 29, 2009, a copy of which is attached to this Notice of Motion.

AND TAKE NOTICE that in support of this application will be read the following:

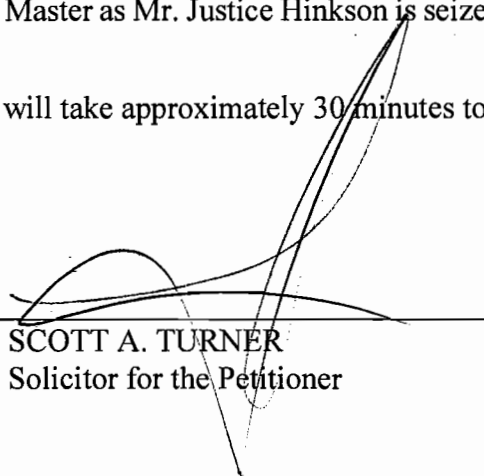
1. Affidavit #7 of David Gray, sworn May 27, 2009; and
2. other documents as counsel may see fit.

AND FURTHER TAKE NOTICE that this application is made pursuant to Section 11 of the *Companies' Creditors Arrangement Act* and the inherent jurisdiction of the Court.

This matter is not within the jurisdiction of a Master as Mr. Justice Hinkson is seized of the matter.

The Petitioner estimates that the application will take approximately 30 minutes to be heard.

Dated: May 27, 2009



SCOTT A. TURNER
Solicitor for the Petitioner

Name and address of solicitor:

Scott A. Turner
Burns, Fitzpatrick, Rogers & Schwartz LLP
Barristers & Solicitors
1400 - 510 Burrard Street
Vancouver, BC V6C 3A8
Telephone: 604.685.0121

AGREEMENT

THIS AGREEMENT made as of the _____ day of May 2009

BETWEEN:

Hydroxyl Systems Inc.
Suite 202 – 26 Bastion Square
Victoria, BC V8W 1H9

(“Hydroxyl”)

OF THE FIRST PART

AND:

Krüger Kaldnes AS
Hegnasletta 11 - 3217 Sandefjord
Norway

(“Krüger Kaldnes”)

OF THE SECOND PART

WHEREAS:

- A. Hydroxyl commenced legal proceedings against Krüger Kaldnes in the Helsinki City Court (the “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.
- B. On March 13, 2009, the Court dismissed Hydroxyl’s claims in the Invalidity Proceedings (the “Decision”), and awarded costs against Hydroxyl in the amount of €277,486.02, 10,000 Swedish krona and 25, 000 Norwegian krone (the “Costs Award”).
- C. Hydroxyl has appealed from the Decision to the Helsinki Court of Appeals (the “Court of Appeal”), under docket no. S 09/1003 (the “Appeal”).
- D. On or about April 19, 2007, STX 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 Finland Cruise Oy (“STX”) at the STX Yards in Turku, Finland (the “Supply Contract”).
- E. 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.

- F. 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"), and STX has paid certain monies otherwise owing to Hydroxyl under the Supply Contract to the Execution Authority.
- G. 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").
- H. Hydroxyl and Krüger Kaldnes wish to resolve their differences relating to the Invalidity Proceedings, the Costs Award, the Appeal, the Execution Proceedings and the Patent Infringement Claims on the terms set out herein.

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged by the parties, the parties agree as follows:

Settlement Amount

1. Hydroxyl agrees to pay Krüger Kaldnes the sum of three hundred and three thousand Euros (€303,000) (the "Settlement Amount"), on the terms set out in this Agreement, in full and final satisfaction of Krüger Kaldnes' claims under the Costs Award and in connection with the Execution Proceedings and the Patent Infringement Claims. Hydroxyl also agrees to withdraw the Appeal, without costs to Krüger Kaldnes.
2. In consideration of the promise by Hydroxyl to pay the Settlement Amount and withdraw the Appeal, Krüger Kaldnes agrees that, forthwith after receiving STX's Consent and a confirmation of withdrawal of the Appeal, it will notify the Execution Authority that STX will be making payments directly to Krüger Kaldnes (and that this is acceptable to Krüger Kaldnes), and agrees that it will not, from and after the date of this Agreement, take any further steps to enforce the Costs Award, unless Hydroxyl defaults as specified in this Agreement.

Payment Terms

3. Hydroxyl will instruct STX to pay the Settlement Amount to Krüger Kaldnes in accordance with the payment schedule attached to this Agreement as Schedule "A" (collectively, the "Scheduled Payments"; and each such payment, individually, a

“Scheduled Payment”). Each payment by STX to Krüger Kaldnes will be treated as a payment by Hydroxyl to Krüger Kaldnes. All payments shall be made as directed by Krüger Kaldnes.

4. Hydroxyl shall forthwith after entering into this Agreement inform STX of the payment arrangements and Scheduled Payments specified in paragraph 3 above. Hydroxyl shall request STX’s acknowledgement and consent for the payment arrangement specified herein in writing (STX’s Consent) and Hydroxyl shall deliver STX’s Consent to Krüger Kaldnes on or before 31 May 2009. If Hydroxyl fails to deliver STX’s Consent as set forth in this paragraph, this Agreement shall terminate with immediate effect and Krüger Kaldnes may at its sole discretion decide to continue the Execution Proceedings, otherwise commence enforcement of the Cost Award, pursue the Patent Infringement Claims and otherwise enforce its rights under the 112 Patent.
5. Further Krüger Kaldnes will recover any monies already paid to the Execution Authority by STX, and remit on seventy-eight percent (78%) of that amount to Hydroxyl and credit the balance recovered of twenty-two percent (22%) towards one of the Scheduled Payments. The parties acknowledge, however, that monies already paid to the Execution Authority shall not be transferred to Krüger Kaldnes’ possession before Hydroxyl has withdrawn the Appeal and the Cost Award has become final and binding on the parties. Therefore, the parties agree that provisions specified in this paragraph shall be applied after Krüger Kaldnes has received monies from the Execution Authority.
6. The parties agree, notwithstanding paragraph 3, that Hydroxyl may at any time pay the entire Settlement Amount, or any balance owing in respect of the Settlement Amount, without pre-payment penalty or interest.

Notices

7. The Parties will keep one another informed at all times of the balance outstanding in respect of the Settlement Agreement, until paid in full.
8. Notices under this Agreement shall be in writing sent to the address first above written of the party to whom notice is to be given, with a copy sent [by email?], as follows:
 - (a) if to Hydroxyl to: tmajor@hydroxyl.com; and
 - (b) if to Krüger Kaldnes to: axel.ensinger@veoliawater.com.

9. Notices will be effective as of the date they are sent by email in accordance with paragraph 8.

No Interest without Default

10. Unless Hydroxyl defaults in the payment of a Scheduled Payment when due, interest will not accrue on the Settlement Amount, or any outstanding balance thereof. If Hydroxyl is in default, interest will accrue in accordance with the default provisions of this Agreement.

Default and Remedies for Default

11. It shall be a default under this Agreement if Hydroxyl (directly or by having STX pay Krüger Kaldnes) fails to make a Scheduled Payment when due.
12. If Hydroxyl fails to make a Scheduled Payment when due, Hydroxyl will have thirty (30) days to cure the default by making payment. Furthermore, Hydroxyl shall pay interest on the unpaid balance of the Settlement Amount then due, at the rate of ten percent (10%) per annum, from the date the overdue payment was originally due, until the date of payment. For clarity, any interest required to be paid by Hydroxyl pursuant to this paragraph shall be added to the overdue Scheduled Payment at the time of payment.
13. If Hydroxyl fails to make a Scheduled Payment when due, and fails to cure the default within thirty (30) days, Krüger Kaldnes may, at its option, either:
 - (a) terminate this Agreement forthwith by giving notice of termination to Hydroxyl; or
 - (b) elect to allow Hydroxyl additional time to pay, in which case Hydroxyl will pay interest on the unpaid balance of the Settlement Amount then due pursuant to paragraph 12 above.
14. For so long as a Scheduled Payment remains overdue for more than thirty (30) days, Krüger Kaldnes may at any time thereafter elect to terminate this Agreement by giving notice in accordance with paragraph 13(a). Until such notice is given, however, the Agreement will remain in full force and effect.
15. If Krüger Kaldnes elects to terminate this Agreement for non-payment, it may

immediately upon termination resume the Execution Proceedings or otherwise commence enforcement of the Cost Award, pursue the Patent Infringement Claims and otherwise move to enforce its rights under the 112 Patent, as it sees fit; provided, however, that nothing in this Agreement shall be taken or construed as an admission by Hydroxyl of any liability in respect of the Patent Infringement Claims or of the validity of the 112 Patent, and Krüger Kaldnes acknowledges that nothing in this Agreement shall prejudice in any way the rights of Hydroxyl to defend itself in any future proceedings by Krüger Kaldnes in respect of the 112 Patent.

16. Hydroxyl agrees that the running of any limitation period applicable to the installation of Hydroxyl's wastewater treatment systems in STX's ships as specified in the Patent Infringement Claims will be postponed from the date of this Agreement to the date on which Krüger Kaldnes elects to terminate the Agreement. For clarity, any limitations defence available to Hydroxyl as of the date of this Agreement with respect to the Patent Infringement Claims will still be available to Hydroxyl as of the date of termination, and any action commenced by Krüger Kaldnes with respect to the Patent Infringement Claims after the termination of this Agreement will proceed as though the time from the date of this Agreement to the date of termination had not elapsed.

Releases

17. Except for the rights and obligations arising under this Agreement, and subject to payment by Hydroxyl in full of the Settlement Amount, Krüger Kaldnes hereby releases Hydroxyl from all claims, differences, disputes, debts, demands, rights, causes of action and claims for legal costs which Krüger Kaldnes may have against Hydroxyl arising under or in connection with the Costs Award, the Execution Proceedings or the Patent Infringement Claims. For clarity, the release provided by Krüger Kaldnes herein will become effective only upon payment in full of the Settlement Amount; provided, however, that for so long as Hydroxyl shall continue to make the payment it is required to make pursuant to this Agreement, and provided Krüger Kaldnes shall not have elected to terminate this Agreement for non-payment in accordance with paragraphs 13(a) or 14, Krüger Kaldnes will not proceed in any way with the Execution Proceedings.
18. Except for the rights and obligations arising under this Agreement, Hydroxyl hereby releases Krüger Kaldnes from all claims, differences, disputes, debts, demands, rights, causes of action and claims for legal costs which Hydroxyl may have against Krüger Kaldnes arising under or in connection with the Invalidity Proceedings, the 112 Patent or the Appeal.

Miscellaneous

19. Hydroxyl has informed Krüger Kaldnes that it may in the future install its wastewater purification system in a ship (other than specified in the Patent Infringement Claims) which will be built by STX. Hydroxyl has inquired whether Krüger Kaldnes would be willing to grant a license for the 112 Patent for such delivery. The parties have tentatively negotiated on a possible license for the delivery. If Hydroxyl makes an offer to STX of the delivery, the parties will commence negotiations on terms and conditions for the license. However, this paragraph or this Agreement shall not be construed as an obligation for Hydroxyl to purchase or Krüger Kaldnes to grant such license.
20. From time to time each party will execute, deliver, do and make all such further instruments, deeds, documents, assurances, authorities, acts, matters and things as another party may reasonably require for the purpose of carrying out and giving effect to this Agreement including, without limitation, all documents required to be filed with the Execution Authority in order to discontinue the Execution Proceedings or with the Court of Appeal to discontinue the Appeal.
21. The Parties acknowledge that this Agreement has been entered into without any undue influence, fraud, coercion or misrepresentation whatsoever.
22. Each of the Parties acknowledges that it has had the opportunity to have this Agreement reviewed by independent counsel.
23. This document contains the entire agreement between the Parties with respect to its subject matter and there are no warranties, representations, terms, conditions or collateral agreements, expressed, implied or statutory, other than expressly set forth herein.
24. This Agreement will be governed by the laws of Finland.
25. In the event of any dispute arising under or in connection with this Agreement, the parties agree to submit such dispute to binding arbitration before, and in accordance with the Arbitration Rules of the Finnish Central Chamber of Commerce. The Award shall be final and binding on the parties. The place of arbitration shall be Helsinki, Finland and the arbitration shall be conducted in the English language.
26. This Agreement may be executed by counterparts and delivered by email or facsimile transmission and when so delivered this Agreement shall be deemed to be an original

executed and delivered Agreement and binding on the parties for all purposes as if originally executed and delivered.

IN WITNESS WHEREOF the parties have executed this Agreement the day and year first above written.

HYDROXYL SYSTEMS INC.

Per: _____
Name:
Title:

KRÜGER KALDNES AS

Per: _____
Name:
Title:

SCHEDULE "A"

SCHEDULE OF PAYMENTS BY STX TO HYDROXYL AND KRÜGER KALDNES

PROJECTED INVOICE PAYMENT DATE	INVOICE AMOUNT	KRÜGER KALDNES PAYMENT AMOUNT
May 31, 2009	€315,934	€69,505
August 31, 2009	€402,743	€88,603
September 30, 2009	€25,755	€25,666
October 31, 2009	€9,480	€2,086
December 31, 2009	€27,822	€6,121
May 31, 2010	€232,674	€111,019
TOTAL		€303,000