

**SUPERIOR COURT**  
**(Commercial Division)**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
No. 500-11- *045554-132*  
DATE: October 28, 2013

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PRESIDING : THE HONOURABLE JEAN-YVES LALONDE, J.S.C.

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IN THE MATTER OF THE PLAN OF ARRANGEMENT AND COMPROMISE OF:

PROSEP INC.

Debtor/Petitioner

-and-

KPMG INC.

Monitor

-and-

PWA PROSEP, INC.

-and-

THE QUEBEC PERSONAL AND MOVABLE REAL RIGHTS REGISTRAR

Impleaded Parties

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**APPROVAL AND VESTING ORDER**

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- 5L3280
- [1] **ON READING** ProSep Inc. (the "**Debtor**")'s *Motion for the Issuance of an Initial Order and for the Approval of a Sale of Assets and Vesting Order* (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the Report of the KPMG Inc. (the "**Monitor**") dated October 25, 2013 (the "**Report**");
  - [2] **SEEING** the service of the Motion;
  - [3] **SEEING** the submissions of the respective attorneys of the Debtor, the Monitor and of PWA ProSep, Inc. (the "**Purchaser**");

- [4] **SEEING** that it is appropriate to issue an order approving the transaction(s) (the "**Transaction**") contemplated by the *Asset Purchase Agreement* (the "**Purchase Agreement**") dated October 23, 2013 by and between the Debtor, as vendor, PWA ProSep, Inc., as purchaser, and Produced Water Absorbents, Inc., a copy of which was filed as Exhibit P-7 to the Motion, and vesting in the Purchaser the assets described in the Purchase Agreement (the "**Purchased Assets**").

**WHEREFORE THE COURT:**

- [5] **GRANTS** the Motion;

**SERVICE**

- [6] **ORDERS** that any prior delay for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

- [7] **PERMITS** service of this Order at any time and place and by any means whatsoever.

**SALE APPROVAL**

- [8] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Debtor is hereby authorized and approved, with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to by the Debtor and the Purchaser but only with the consent of the Monitor.

**INTERVENTION APPROVAL**

- [9] **AUTHORIZES** the Monitor to intervene to the Purchase Agreement and to fulfill its obligations thereunder.

**EXECUTION OF DOCUMENTATION**

- [10] **AUTHORIZES** the Debtor to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in the Purchase Agreement (Exhibit P-7) and any other ancillary document which could be required or useful to give full and complete effect thereto.

## AUTHORIZATION

- [11] **ORDERS** and **DECLARES** that this Order shall constitute the only authorization required by the Debtor to proceed with the Transaction and that no shareholder or regulatory approval, if applicable, shall be required in connection therewith.

## VESTING OF PURCHASED ASSETS

- [12] **ORDERS** and **DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear of and from any and all claims, liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, deemed trusts, judgments, executions, writs of seizure or execution, notices of sale, options, adverse claims, levies, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, security interests or charges evidenced by registration, publication or filing pursuant to the *Civil Code of Québec* or any other applicable legislation providing for a security interest in personal or movable property and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.
- [13] **DECLARES** that the sole liabilities or obligations of the Debtor that are assumed by the Purchaser are the ones expressly provided for as "Assumed Liabilities" under the Purchase Agreement.
- [14] **APPROVES** and **ORDERS** that an amount of \$100,000 out of the portion of the Purchase Price payable pursuant to section 2.4 of the Purchase Agreement be set in an escrow fund with the Monitor until the "Employee Obligations" (as defined in the Purchase Agreement) are paid in their entirety to the employees of the Debtor and/or until the Purchaser obtains, in its satisfaction in its sole discretion, acting reasonably, a full and final release of any and all obligations in connection with the Employee Obligations or any other successor employer obligations, as the case may be.
- [15] **AUTHORIZES** the Debtor to file articles of amendment to change its name following the closing of the Transaction, without the requirement (if any) of obtaining director or shareholders' approval pursuant to any federal or provincial legislation.
- [16] **ORDERS** and **DIRECTS** the Monitor to file with the Court a copy of the Certificate, forthwith after issuance thereof.

## CANCELLATION OF SECURITY REGISTRATIONS

- [17] **ORDERS** the Quebec Personal and Movable Real Rights Registrar, upon presentation of the required form with a true copy of this Order and the Certificate, to strike any registration, as the case may be, in connection with the Purchased Assets, in order to allow the transfer to the Purchaser of the Purchased Assets free and clear of such registrations.

## NET PROCEEDS

- [18] **ORDERS** that the Purchase Price (as adjusted in accordance with sections 2.6, 2.7 and 2.8 of the Purchase Agreement, the "**Net Proceeds**") shall be remitted to the Debtor.
- [19] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon payment of the Purchase Price (as defined in the Purchase Agreement) by the Purchaser, all Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

## PROTECTION OF PERSONAL INFORMATION

- [20] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or any similar provision of any applicable provincial legislation, the Monitor is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor;

## VALIDITY OF THE TRANSACTION

- [21] **ORDERS** that notwithstanding:
- (i) the pendency of these proceedings;
  - (ii) any petition for a receiving order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* ("**BIA**") and any order issued pursuant to any such petition; or
  - (iii) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement pursuant to this Order, are to be binding on any

trustee in bankruptcy that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Debtor, the Purchaser or the Monitor.

#### **LIMITATION OF LIABILITY**

- [22] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Monitor to occupy or to take control, or to otherwise manage all or any part of the Purchased Assets. The Monitor shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA;
- [23] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph;

#### **GENERAL**

- [24] **ORDERS** that the Purchaser or the Monitor shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.
- [25] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada;
- [26] **DECLARES** that the Monitor shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and, without limitation to the foregoing, an order under Chapter 15 of the U.S. Bankruptcy Code, for which the Monitor shall be the foreign representative of the Debtor. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose;
- [27] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order;
- [28] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever;

THE WHOLE WITHOUT COSTS.

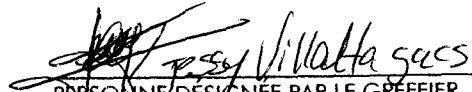
  
JEAN-YVES LALONDE, J.S.C.

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COPIE CERTIFIÉE CONFORME AU  
DOCUMENT DÉTENU PAR LA COUR

  
PERSONNE DÉSIGNÉE PAR LE GREFFIER  
EN VERTU DE 44 C.P.C.

**SCHEDULE "A"**  
**DRAFT CERTIFICATE OF THE MONITOR**

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
Commercial Division

File: No: 500-11-

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IN THE MATTER OF THE PLAN OF  
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REAL RIGHTS REGISTRAR

Impleaded Parties

**CERTIFICATE OF THE MONITOR**

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**RECITALS:**

**WHEREAS** on ●, the Superior Court of Quebec (the "**Court**") issued an Initial Order (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act* (the "**Act**") in respect of ProSep Inc. (the "**Debtor**");

**WHEREAS** pursuant to the terms of the Initial Order<sup>¶</sup>, KPMG Inc. (the "**Monitor**") was named Monitor of the Debtor; and

**WHEREAS** on ●, 2013, the Court issued an Order (the "**Vesting Order**") thereby, *inter alia*, authorizing and approving the execution by the Debtor of an agreement entitled *Asset Purchase Agreement* (the "**Purchase Agreement**") by and between the Debtor, as vendor, PWA Prosep, Inc. (the "**Purchaser**"), as Purchaser, and Produced Water Absorbents, Inc. and copy of which was filed in the Court record, and into all the transactions contemplated therein (the "**Transaction**") with such non-material alterations, changes, amendments, deletions or additions thereto, as may be agreed to by the Debtor and the Purchaser with the consent of the **Monitor**.

**WHEREAS** the Vesting Order contemplates the issuance of this Certificate of the Monitor once the (a) the Purchase Agreement has been executed and delivered; and (b) the Purchase Price (as defined in the Purchase Agreement) has been paid by the Purchaser; and (c) and all the conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

**THE MONITOR CERTIFIES THE FOLLOWING:**

- (a) the Purchase Agreement has been executed and delivered;
- (b) the Purchase Price (as defined in the Purchase Agreement) payable upon the closing of the Transaction has been paid; and
- (c) all conditions to the closing of the Transaction have been satisfied or waived by the parties thereto.

This Certificate was issued by the Monitor at \_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

KPMG Inc. in its capacity as Monitor, and not in its personal capacity.

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

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