

DEC 05 2014



No 5-149440  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *PERSONAL PROPERTY SECURITY ACT*, RSBC 1996, c.359

OCION WATER SCIENCES GROUP LTD.

PETITIONER

PETITION TO THE COURT

ON NOTICE TO: Miller Montgomery Holdings S.A.  
AND TO: Darren Romansky  
AND TO: Zuzana Chisholm  
AND TO: Quantus Capital Corporation  
AND TO: William Lightowlers  
AND TO: Frank Varsveld and Annemarie Varsveld  
AND TO: Michael Savage  
AND TO: Peter Rossing  
AND TO: Aquamet Consulting, Attention: Don Francis

**This proceeding is brought for the relief set out in Part 1 below by The Bowra Group Inc. in its capacity as Receiver and Manager of the Petitioner, Ocion Water Sciences Group Ltd. (the "Receiver")**

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the Receiver
  - (i) 2 copies of the filed response to petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the Receiver,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,

- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

- (1) The address of the registry is: 800 Smithe Street, Vancouver BC
- (2) The ADDRESS FOR SERVICE of the Receiver is: BORDEN LADNER GERVAIS LLP  
1200 Waterfront Centre  
200 Burrard Street  
P.O. Box 48600  
Vancouver BC V7X 1T2  
Attention: Kendall Andersen and Lisa Hiebert

Fax number address for service (if any) of the Receiver: None

E-mail address for service (if any) of the Receiver: [kandersen@blg.com](mailto:kandersen@blg.com) and [lhiebert@blg.com](mailto:lhiebert@blg.com)

- (3) The name and office address of the Receiver is: BORDEN LADNER GERVAIS LLP  
1200 Waterfront Centre  
200 Burrard Street  
P.O. Box 48600  
Vancouver BC V7X 1T2  
Attention: Kendall Andersen and Lisa Hiebert

#### CLAIM OF THE PETITIONER

##### PART 1: ORDERS SOUGHT

1. An Order abridging the time for service such that this Petition is properly returnable on Thursday, December 18, 2014.
2. An Order permitting the Receiver to serve this Petition by posting a copy of the Petition and Affidavit on the creditors' information website maintained by the Receiver and by emailing a copy of the Petition and Affidavit to the parties listed above at the email addresses used in past communications with the Receiver.
3. The Receiver brings this application seeking the directions and assistance of this Honourable Court and in particular, Orders:

- (a) confirming the appointment of the Receiver;
- (b) confirming the validity of the following security interests asserted against Ocion Water Sciences Group Ltd. (the “Debtor”), and their relative priority:

	<b>Creditor</b>	<b>Security Agreement Date</b>	<b>PPR Registration Date</b>
1.	Miller Montgomery Holdings S.A.	December 11, 2013	August 7, 2014
2.	Zuzana Chisholm	February 14, 2014 February 19, 2014 June 25, 2014	August 8, 2014
3.	Darren Romansky	January 22, 2014	August 8, 2014
4.	Quantus Capital Corp.	December 19, 2013 June 16, 2014 July 21, 2014 July 23, 2014 July 25, 2014	September 2, 2014
5.	William Lightowlers	June 16, 2014 August 25, 2014 October 8, 2014	October 17, 2014

- (c) approving the sale of the Debtor’s assets by the Receiver to JRC Management Consulting Inc. (“JRC”) pursuant to the terms set out in the JRC offer dated November 24, 2014; and,
- (d) authorizing the Receiver to pay the net proceeds of the sale of the Debtor’s assets and all other amounts realized by the Receiver to the secured creditors in accordance with the various priorities as follows:
  - (i) first, to all costs, charges and expenses in connection with realization and enforcement;
  - (ii) second, to Miller (as defined below) for its indebtedness pursuant to the Miller Credit Agreement (defined below);

- (iii) third, to Chisholm and Románsky (as each is defined below) for their indebtedness pursuant to the Chisholm Notes and the Románsky Note (as each is defined below);
- (iv) fourth, to Quantus (as defined below) for the indebtedness pursuant to the Quantus Notes (as defined below);
- (v) fifth, to Lightowlers (as defined below) for the indebtedness pursuant to the Lightowlers Notes (as defined below); and,
- (vi) sixth, the balance, if any, to The Bowra Group Inc. in its capacity as trustee in bankruptcy of the Debtor.

## **PART 2: FACTUAL BASIS**

1. The Debtor is a company incorporated pursuant to the laws of British Columbia. The Debtor is in the business of developing technology and products for the treatment and protection of water, soil livestock, crops and foods.
2. The Debtor is indebted to various parties, including Miller Montgomery Holdings S.A. ("**Miller**").
3. On or about December 11, 2013, the Debtor and Miller entered into a general security agreement (the "**Miller Security**"). The Miller Security was perfected by the registration of a financing statement in the BC Personal Property Registry on August 7, 2014.
4. The terms of the Miller Security included:
  - (a) the Debtor could borrow up to \$500,000 from Miller;
  - (b) as security for payment of the outstanding balance owed to Miller, the Debtor granted Miller a security interest in all of the present and after acquired property of the Debtor (the "**Collateral**");
  - (c) upon an event of default, Miller could, *inter alia*, appoint by instrument a receiver, receiver and manager or receiver-manager of the Collateral;
  - (d) a receiver, receiver and manager or receiver-manager appointed pursuant to the Miller Security would be the agent of the Debtor, and not of Miller, except that it would have all of the powers of Miller pursuant to the Miller Security, including

the right to exercise all of the rights and remedies of a secured party under the *Personal Property Security Act* (British Columbia);

- (e) subject to the claims, if any, of creditors ranking in priority or *pari passu* with the Miller Security, the amounts realized from the disposition of the Collateral would be applied as follows: first, to all costs, charges and expenses in connection with realization and enforcement, including the appointment of a receiver, receiver and manager or receiver-manager; second, to Miller for the principal indebtedness and other amounts (except interest) secured by the Miller Security and third to Miller for the interest remaining unpaid in respect of the indebtedness secured by the Miller Security; and
- (f) subject to applicable law and claims of other creditors, if any, any surplus would be paid to the Debtor.

5. On or about October 1, 2014, Miller delivered a Notice of Intention to Enforce Security to the Debtor.
6. On or about October 20, 2014, Miller appointed the Receiver as receiver and manager of the assets, collateral and undertaking of the Debtor.
7. On or about November 6, 2014, the Debtor made a voluntary assignment under Section 49 of the *Bankruptcy and Insolvency Act* and appointed The Bowra Group Inc. as trustee in bankruptcy of the Debtor's estate.

#### **Sales Process**

8. Shortly following its appointment, the Receiver offered the Debtor's assets for sale, and in doing so conducted the following marketing:
  - (a) the Receiver prepared a request for offers to purchase package (the "ROP") to be distributed to interested parties;
  - (b) the Receiver advertised the sale in one local and one national newspaper;
  - (c) the asset sale was advertised on the Receiver's website;
  - (d) the ROP was sent to all interested parties who contacted the Receiver;

- (e) the Receiver researched competitors in the industry and contacted them to solicit interest in the assets; and,
- (f) interested parties were invited to tour the Debtor's facilities and view the assets (one interested party attended such a tour).

(collectively, the "**Marketing Process**")

9. The Marketing Process began immediately after the Receiver's appointment on October 17, 2014, and continued until the end of November 2014.

10. As a result of the Marketing Process, the Receiver received three offers to purchase the assets of the Debtor. The purchase price for the three offers was \$541,000, \$400,000 and \$375,000.

11. The Receiver determined that the offer with the highest purchase price, the offer dated November 24, 2014 from JRC for a total purchase price of \$541,000, was the highest and best offer, and that it ought to be accepted and concluded to achieve the greatest possible recovery for the Debtor's stakeholders and creditors.

12. In particular, the Receiver determined that the offer was an improvement upon the results likely to be achieved in a liquidation sale. The Receiver had obtained an appraisal estimating the likely recovery on a forced-liquidation basis at approximately \$29,560.

### **Claims against the Debtor**

13. The Debtor is indebted to the following parties for which it has granted security to secure repayment of the amounts owed:

- (a) Miller pursuant to in the amount of \$105,526.13, secured by the Miller Security;
- (b) Quantus Capital Corp. ("**Quantus**") in the amount of \$250,000, secured by five general security agreements;
- (c) Zuzana Chisholm ("**Chisholm**") in the amount of \$160,000, secured by three general security agreements;
- (d) Darren Romansky ("**Romansky**") in the amount of \$25,000 secured by a general security agreement; and,

- (e) William Lightowlers (“**Lightowlers**”) in the amount of \$91,000 secured by three general security agreements.

### **Miller Loan**

14. Miller loaned funds to the Debtor pursuant to a Credit Facility Agreement between Miller and the Debtor dated December 9, 2013 (the “**Miller Credit Agreement**”). Pursuant to the terms of the Miller Credit Agreement, interest accrues on all outstanding amounts at a rate of 6% per annum.

15. Pursuant to the Miller Credit Agreement, Miller advanced funds to the Debtor on or about the following dates:

- (a) \$50,000 on December 9, 2013;
- (b) \$35,000 on December 17, 2013; and
- (c) \$15,000 on December 17, 2013;

(collectively, the “**Miller Advances**”).

16. The Debtor has failed to repay any portion of the Miller Advances. As of November 13, 2014, the interest accrued on the Miller Advances was \$5,526.13.

17. The Debtor entered into the Miller Security to secure performance of the obligations pursuant to the Miller Credit Agreement.

18. A financing statement in respect of the Miller Security was registered in the BC personal property registry (the “**PPR**”) on August 7, 2014.

### **Quantus Loan**

19. Quantus loaned funds to the Debtor pursuant to the following:

- (a) a Promissory Note in the amount of \$50,000 dated May 28, 2013,
- (b) an Amendment to Promissory Note dated June 16, 2014 extending the term of the May 2013 Promissory Note;
- (c) a Promissory Note in the amount of \$50,000 dated July 21, 2014;
- (d) a Promissory Note in the amount of \$50,000 dated July 23, 2014; and,

(e) a Promissory Note in the amount of \$25,000 dated July 25, 2014.

(collectively, the “**Quantus Notes**”).

20. Quantus advanced funds to the Debtor on or about the following dates:

(a) \$50,000 on April 25, 2013;

(b) \$25,000 on September 25, 2013;

(c) \$25,000 on September 30, 2013;

(d) \$25,000 on October 17, 2013;

(e) \$50,000 on July 21, 2014;

(f) \$50,000 on July 23, 2014; and,

(g) \$25,000 on July 25, 2014

(collectively, the “**Quantus Advances**”).

21. The Debtor has failed to repay any portion of the Quantus Advances.

22. The Debtor entered into the following security agreements as security for the obligations pursuant to the Quantus Notes.

(a) a general security agreement in favour of Quantus dated December 19, 2013 in the amount of \$75,000;

(b) a general security agreement in favour of Quantus dated June 16, 2014 in the amount of \$50,000;

(c) a general security agreement in favour of Quantus dated July 21, 2014 in the amount of \$50,000;

(d) a general security agreement in favour of Quantus dated July 23, 2014 in the amount of \$50,000; and,

(e) a general security agreement in favour of Quantus dated July 25, 2014 in the amount of \$25,000

(collectively, the “**Quantus Security**”).



23. The Quantus Security was made on substantially the same terms and conditions as the Miller Security.

24. The Quantus Security was perfected by registration in the PPR on September 2, 2014.

#### **Romansky Loan**

25. Romansky loaned funds to the Debtor pursuant to the terms of a Promissory Note in the amount of \$25,000 dated January 31, 2014 (the "**Romansky Note**").

26. Pursuant to the Romansky Note, Romansky advanced \$25,000 to the Debtor on or about January 22, 2014 (the "**Romansky Advance**").

27. The Debtor has failed to repay any portion of the Romansky Advance.

28. The Debtor entered into a general security agreement in the amount of \$25,000 dated January 22, 2014 to secure performance of the obligations pursuant to the Romansky Note.

29. The Romansky Security was made on substantially the same terms and conditions as the Miller Security.

30. The Romansky Security was perfected by registration of a financing statement in the PPR on August 8, 2014.

#### **Chisholm Loan**

31. Chisholm loaned funds to the Debtor pursuant to the terms of a Promissory Note in the amount of \$110,000 dated June 25, 2014, a Promissory Note in the amount of \$25,000 dated February 14, 2014 and a Promissory Note in the amount of \$25,000 dated February 19, 2014 (collectively, the "**Chisholm Notes**").

32. Pursuant to the Chisholm Notes, Chisholm advanced funds to the Debtor on or about the following dates:

(a) \$25,000 on or about February 10, 2014;

(b) \$25,000 on or about February 19, 2014; and,

(c) \$110,000 on or about June 25, 2014

(collectively, the "**Chisholm Advances**").

33. The Debtor has failed to repay any portion of the Chisholm Advances.

34. The Debtor entered into the following documents to secure performance of the obligations pursuant to the Chisholm Notes:

- (a) a general security agreement in favour of Chisholm dated February 14, 2014 in the amount of \$25,000;
- (b) a general security agreement in favour of Chisholm dated February 19, 2014 in the amount of \$25,000; and
- (c) a general security agreement in favour of Chisholm dated June 25, 2014 in the amount of \$110,000

(collectively, the “**Chisholm Security**”).

35. The Chisholm Security was made on substantially the same terms and conditions as the Miller Security.

36. The Chisholm Security was perfected by registration in the PPR on August 8, 2014.

#### **Lightowlers Loan**

37. Lightowlers loaned funds to the Debtor pursuant to:

- (a) a Promissory Note in the amount of \$25,000 dated May 23, 2013;
- (b) an Amendment to Promissory Note dated June 16, 2014 extending the term of the May 2013 Promissory Note;
- (c) a Promissory Note in the amount of \$30,000 dated August 25, 2014; and,
- (d) a Promissory Note in the amount of \$36,000 dated October 8, 2014.

(collectively, the “**Lightowlers Notes**”).

38. Lightowlers advanced funds to the Debtor on or about the following dates:

- (a) \$25,000 on May 23, 2013;
- (b) \$30,000 on August 25, 2014;
- (c) \$6,000 on October 8, 2014; and,
- (d) \$30,000 on October 8, 2014

(collectively, the “**Lightowlers Advances**”).

39. The Debtor has failed to repay any portion of the Lightowlers Advances.
40. The Debtor entered into the following documents to secure performance of the obligations pursuant to the Lightowlers Notes:
- (a) a general security agreement in favour of Lightowlers dated June 16, 2014 in the amount of \$25,000
  - (b) a general security agreement in favour of Lightowlers dated August 25, 2014 in the amount of \$30,000;
  - (c) a general security agreement in favour of Lightowlers dated October 8, 2014 in the amount of \$36,000
- (collectively, the “**Lightowlers Security**”, and together with the Miller Security, the Quantus Security, the Chisholm Security, the Romansky Security and the Lightowler Security, the “**Security Agreements**”).

41. The Lightowlers Security was made on substantially the same terms and conditions as the Miller Security.

42. The Lightowlers Security was perfected by registration in the PPR on October 17, 2014.

#### **Other Secured Creditors**

43. Based on the registrations in the BC personal property registry as of December 4, 2014, there are no other secured creditors of the Debtor other than Miller, Quantus, Chisholm, Romansky and Lightowlers pursuant to the Security Agreements.

#### **Distribution of Proceeds**

44. Based on the Receiver’s review of the books and records of the Debtor, each of Miller, Quantus, Chisholm, Romansky and Lightowlers advanced funds to the Debtor, and the Debtor has failed to repay any portion of the amounts advanced.

45. In its capacity as trustee in bankruptcy of the Debtor, the Receiver obtained independent legal opinions on the validity and enforceability of the Security Agreements. The legal opinions concluded that each of the Security Agreements is a valid and enforceable security interest.

46. The Receiver intends to distribute the proceeds in accordance with the terms of the Security Agreements, and in accordance with the priority rules established by the *Personal Property Security Act*:

- (a) first, to all costs, charges and expenses in connection with realization and enforcement;
- (b) second, to Miller for its indebtedness pursuant to the Miller Credit Facility;
- (c) third, to Chisholm and Romansky for their indebtedness pursuant to the Chisholm Notes and the Romansky Note;
- (d) fourth, to Quantus for the indebtedness pursuant to the Quantus Notes;
- (e) fifth, to Lightowlers for the indebtedness pursuant to the Lightowlers Notes; and,
- (f) sixth, the balance, if any, to The Bowra Group Inc. in its capacity as trustee in bankruptcy of the Debtor.

47. The Debtor is indebted to secured parties in the total amount of \$631,526.13. Accordingly, the proceeds of the sale to JRC will be insufficient to repay the amounts owing to the secured creditors in full. However, if a surplus remains after the secured creditors are paid in full, the Receiver will distribute those proceeds to the trustee in bankruptcy of the Debtor.

### **Urgency**

48. Certain unsecured creditors and one of the parties that bid on the Debtor's assets have expressed concerns to the Receiver regarding the receivership and/or the sales process.

49. The Receiver brings the within Petition to ensure that those parties, and all interested parties, have confidence in the process, and to prevent future disputes between JRC and the creditors of the Debtor.

50. However, costs and interest continue to accrue, thereby reducing the overall recovery. The Receiver is of the view that this application ought to be heard during the week of December 15. If the within application is not heard during the week of December 15, the next available date will be during the week of January 5, 2015.

51. The Receiver submits that it is in the best interests of all stakeholders, including the unsecured creditors, that the application be heard quickly to maximize recovery for all stakeholders.

## **Service**

52. The Receiver seeks leave of this Honourable Court to permit service of the Petition and Affidavit by posting a copy of the same on the creditors information website maintained by the Receiver and by emailing a copy of the Petition and the Affidavit to the parties listed above at the email addresses addresses at which they have communicated with the Receiver in the past. The Receiver submits that this method of service will be effective, timely and efficient, in addition to being effected at a lower cost than personal service.

## **PART 3: LEGAL BASIS**

### **Short Leave**

1. Pursuant to Rule 8-5 of the *Supreme Court Civil Rules*, this Honourable Court may order that a main application be heard on short notice, thereby abridging the time for service of the application. The Receiver submits that this is an urgent application: as time passes before the hearing of the Petition, costs and interest continue to accrue and the potential value for the Debtor's stakeholders is eroded.

### **Service**

2. Pursuant to Rule 4-4 of the *Supreme Court Civil Rules*, this Honourable Court may order service by alternate means where it is impracticable to serve a document by personal service. The Receiver submits that service of the Petition and Affidavit by posting the materials to the Receiver's website and by emailing the Petition and Affidavit to the notice parties is the most effective and efficient means of service. The Receiver submits that with a proposed hearing date of December 18, 2014, personal service is not practicable. The proposed method of service would also be significantly less expensive.

### **Jurisdiction of this Court**

3. The *Personal Property Security Act*, R.S.B.C. 1996, c.359 (the "PPSA"), section 70, permits interested parties apply to this Honourable Court for an Order determining questions of priority or entitlement to collateral.

4. Similarly, the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c.B-3 (the "BIA"), section 249 permits a receiver to apply to this Honourable Court for directions, and empowers this Honourable Court to make such directions, if any, as it considers appropriate.

5. A privately appointed receiver may seek directions pursuant to the BIA section 249: *Graham Mining Ltd. (Re)* (2001), 26 C.B.R. (4<sup>th</sup>) 28.

#### **Appointment of Receiver**

6. A security holder may appoint a receiver if it is contractually provided in the security instrument. The authority to appoint a receiver must be express: *Ernst & Young Inc. (Liquidator of) v. Turner Crossing Inc.*

7. There is no ambiguity in the Miller Security, and that document authorized and empowered Miller to appoint a receiver, receiver and manager or receiver-manager.

8. The Bowra Group Inc. was duly appointed as receiver and manager pursuant to the Miller Security, and asks this Honourable Court to confirm its appointment to avoid future disputes regarding the authority of the Receiver to conduct the receivership and the sales process.

#### **Security and Priority**

9. The PPSA defines “security interest” as an interest in goods and intangibles (among other things) that secures payment or performance of an obligation. An independent legal opinion confirmed the validity and enforceability of the Security Agreements.

10. The PPSA governs the priority of security interests. The PPSA section 35(1)(a)(i) provides that priority as between perfected security interests is determined by the registration of a financing statement without regard to the date of attachment of the security interest. Accordingly, as among the parties with Security Agreements, the date of registration governs their respective priorities.

#### **Sale of Debtor’s Assets**

11. The Miller Security authorizes the secured party (or the Receiver) to sell, lease or otherwise dispose of all or any part of the Collateral in accordance with the PPSA.

12. The Receiver submits that the sale to JRC represents the greatest possible value to the Debtor’s stakeholders and creditors and, accordingly, it ought to be accepted and the transaction concluded at the earliest available date to maximize the recovery for the Debtor’s stakeholders.

#### **Distribution of Proceeds**

13. Pursuant to the PPSA section 59, a secured party (including a receiver) may dispose of collateral, and apply the proceeds first to the reasonable expenses of seizing, repossessing,

holding, repairing, processing or preparing for disposition and disposing of the collateral and any other reasonable expense of enforcing the security agreement incurred by the secured party, and second to the satisfaction of obligation secured by the security interest of the party making the disposition. The surplus, if any, is to be paid first to any creditors with perfected, but subordinate, security interests. This is consistent with the distribution set out in the Security Agreements.

14. The Receiver proposes to pay the proceeds of the sale first to the reasonable costs of realization and second to the secured creditors in accordance with their relative priority (as set out in Part 1).

#### **Miscellaneous Issues**

15. The Receiver relies upon the inherent jurisdiction of this Honourable Court, and may also rely on such further and other legal bases as counsel for the Receiver may advise and this Honourable Court may permit.

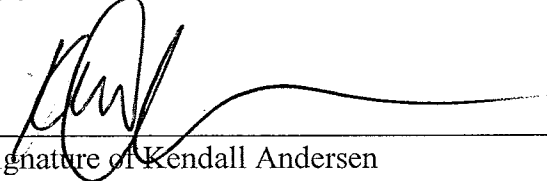
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**PART 4: MATERIAL TO BE RELIED ON**

1. The Affidavit #1 of Mario Mainella, sworn December 5, 2014; and,
2. Such further and other material as counsel for the Receiver may advise and this Honourable Court may permit.

The Receiver estimates that the hearing of the petition will take 45 minutes.

Date: December 5, 2014

  
\_\_\_\_\_  
Signature of Kendall Andersen  
 Petitioners  lawyer for the Receiver

***To be completed by the court only:***

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this petition

with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Signature of  Judge  Master



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No  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN THE MATTER OF THE *PERSONAL PROPERTY SECURITY*

*ACT, RSBC 1996, c.359*

OCION WATER SCIENCES GROUP LTD.

PETITIONER

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PETITION TO THE COURT

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KEA/LCH

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