File No. CI 12-01-79231

THE QUEEN'S BENCH
WINNIPEG CENTRE

IN THE MATTER OF THE: *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as Amended

AND IN THE MATTER OF: A Proposed Plan of Compromise or Arrangement of The Puratone Corporation, Pembina Valley Pigs Ltd. and Niverville Swine Breeders Ltd. (the "Applicants")

Application under the: *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as Amended

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AFFIDAVIT OF RAYMOND ALAN HILDEBRAND
SWORN THE 11TH DAY OF SEPTEMBER, 2012
DATE OF HEARING: 10:00 A.M. ON THE
12TH DAY OF SEPTEMBER, 2012

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AFFIDAVIT OF RAY HILDEBRAND

I, RAYMOND ALAN HILDEBRAND, of the Rural Municipality of Springfield, in the Province of Manitoba, Businessman,

MAKE OATH AND SAY THAT:

1. I am the President, Chief Executive Officer and Secretary of The Puratone Corporation ("TPC"), and the President of both Pembina Valley Pigs Ltd. ("PVP") and Niverville Swine Breeders Ltd. ("NSB") (TPC, PVP and NSB being hereinafter collectively referred to as the "Applicants") and as such, I have personal knowledge of this intended application by the Applicants under the *Companies Creditors Arrangements Act* R.S.C. 1985 c.C-36 as amended ("CCAA") and the facts and matters

hereinafter deposed to by me, except where stated to be based upon information and belief and in those I do verily believe.

2. I have been employed with TPC since 1987, primarily in financial management. Over the years I have been promoted within the organization to Chief Financial Officer (1995–2003), Chief Operating Officer (2004-2007), Interim Chief Executive Officer and, in November, 2008, Chief Executive Officer.

Introduction

3. The Applicants seek an Initial Order under CCAA to enable them to continue business operations while they complete a sales process and restructuring. The immediate problem is a liquidity crisis prompted by escalating feed costs due in part to the drought in the United States. However, this is but the latest of the series of misfortunates which have befallen the hog industry in this country over the past 5 years and undermined the working capital of a well-managed, nationally renowned and, previously profitable, business.

4. Despite these financial difficulties, Puratone enjoys a leading market position in Canada. I believe that if the Applicants can be properly marketed through a transparent Court sanctioned process the value of an

otherwise viable business can be realized and restructured for the benefit of its stakeholders.

Structure and History

5. All three of the Applicants are corporations incorporated or amalgamated pursuant to the laws of the Province of Manitoba with their head offices in the Town of Niverville, in the Province of Manitoba.

6. Now shown to me and marked as **Exhibit "1"** to this my Affidavit is a true copy of the corporate organization chart for TPC and its subsidiaries, joint ventures and investments (hereinafter collectively referred to as "Puratone").

7. Puratone is a world class agribusiness and one of the largest agricultural enterprises in Manitoba. Since its inception in 1973, Puratone has grown into one of Canada's leaders in the hog industry.

8. TPC was founded in 1973 and operated primarily as a single feed milling operation in Niverville. In 1975 it constructed a new feed production mill in Niverville and subsequently purchased controlling interest in two additional feed mills located in Arborg and Winkler. In 1982 TPC built on the foundation of its established feed production expertise by

contracting hog production. The vertical integration provided in both feed and hog production yielded an economic advantage that supported further capital investment through the construction of modern hog farming operations. TPC continued to seek vertical integration opportunities in other aspects of production leading to the development of a fully integrated hog production operation under the Puratone name.

9. In the early 1990's, TPC began joint venturing with other investors to establish numerous independent hog production companies that were centrally managed through TPC's hog production system. During this time, TPC's core business began to shift from feed retailing activities to primary hog production. Subsequently, many of the joint venture hog production companies amalgamated into TPC. For example, in the mid 2000's TPC acquired the shares of other commercial hog production operations including K Line Management Ltd., Border Bacon Growers Ltd., Premier International Genetics Ltd., Killarney Shamrock Genetics Ltd., Rosenfeld Piglets Ltd., Darling Pigs Ltd. and Premium Pork Producers Ltd. which were ultimately amalgamated into PVP in or about October, 2007. TPC also acquired the shares of NSB.

10. Puratone currently has approximately 29,000 sows in its breeding herd representing approximately 2.2 percent of Canada's entire sow herd and produces in excess of 500,000 slaughter hogs per year. It has related business interests in animal nutrition (including three feed mills), farm supply outlets (including three retail stores) as well as agro-environmental research and development. In 2006 Puratone was awarded the Manitoba Chamber of Commerce outstanding large business award and was named to the list of Canada's 50 best managed companies. It is ISO 14001 Certified for all of its owned operations, feed mills and offices. All of its hog production facilities have been registered with the Canadian Pork Council's Canadian Quality Assurance ("CQA") Program which requires all registered hog production facilities to maintain the highest standards of animal healthcare, sanitization and biosecurity.

11. The Board of Directors of TPC consists of four members, Keith Kuhl (who serves as Chair of the Board), John Dakers, Peter Dueck and Ivan Balenovic. In addition to me, members of TPC's executive management team consist of Larry Johnson, the Chief Financial Officer, Treasurer and Vice-President, Finance; and Lyle Loewen, Vice-President Production. PVP and NSB each have three directors, Larry Johnson, Lyle Loewen and me,

and we are also the only officers of those subsidiaries (I am the President, Larry Johnson is the treasurer and Lyle Loewen is the secretary).

12. TPC has 163 common shareholders comprising three primary investor groups:

Founders and related family members	31%
Current Employees	23%
Past Employees and arm's-length investors	46%

Many of the arm's-length investors are crop farmers who required TPC shares through the amalgamation of farms in which they initially invested as joint venture partners. Other arm's-length investors consist of sophisticated investors who purchase common shares from other shareholders or from treasury. The only registered common shareholders holding greater than 5% are myself (11.2%), Koslowsky Corporation (8.32%), J &W Enterprises (1993) Ltd. (7.70%) and Wal-co Holdings Ltd. (5.59%). TPC has 5 classes of common voting stock, of which 2,323,687 common voting shares are currently issued and outstanding. In addition, TPC is authorized to issue Class B, C and D Preference Shares (all non-voting), of which there are currently issued and outstanding 232,180 Class C Preference Shares, 5,478,641 Class D Series 1 Preference Shares, 1,039,931 Class D Series 2 Preference Shares, and 479,090 Class D Series 3 Preference Shares.

Business Operations

13. Puratone's principal Canadian operating entities are the Applicants. As detailed in Exhibit "1", TPC is the parent corporation and PVP and NSB are wholly-owned subsidiaries. Although separate legal entities with their own facilities, animals and employees, there is little to distinguish the Applicants' hog operations. But for certain financial benefits that flow from maintaining the separate entities, in particular AgriStability benefits, PVP and NSB would be amalgamated into TPC.

14. The Applicants own and operate 41 hog production facilities in Manitoba. Utilizing the genetics it licenses from Newsham Choice Genetics LLP, PIC Canada, Ltd. (formerly, Pig Improvement Company) and Topigs, TPC maintains its own boar stud facilities which supply the semen for the production of hogs by artificial insemination at the hog barns described above as well as to PVP, NSB, other Puratone hog production entities described below, as well as 27 contract barns throughout the province, including 3 sow facilities, 4 nurseries and 20 finishing barns. It also owns and operates three feed mills which produce over 230,000 tons of feed

annually and are FeedAssured Certified. TPC also provides the administrative and management services which centralize and facilitate operations, purchasing, selling, marketing, Human Relations and transportation for PVP, NSB, other subsidiaries, joint ventures and investments (hereinafter "Puratone Subsidiaries) described below, as well as the contract barns referred to above.

Puratone Subsidiaries Not Filing for Protection

15. Bond Hog Ventures Ltd. ("Bond") is 50 percent owned by TPC and 50 percent by Bruce and Murray Bond. I am the President of Bond. Bond is a finishing hog business which, *inter alia*, purchases weanlings from TPC and participates in TPC's Hog Marketing Program[1] for marketing its finished hogs.

16. Heritage Hogs Limited ("Heritage") is 50 percent owned by TPC; 50 percent by members of the Jacob Kasdorf family. I am the President. Heritage is also a finishing hog business which, *inter alia*, purchases weanlings from TPC and participates in TPC's Hog Marketing Program for selling its finished hogs.

[1] Under the Puratone Umbrella, TPC coordinates the marketing of most of the animals produced by the Applicants, other subsidiaries and investments as well as a few independent producers who have contracted with TPC to market their animals. Further details of which are set out in paragraph 110 below.

17. Paradigm Farms Ltd. ("Paradigm") is approximately one-third owned by TPC on a non-diluted basis – the exact percentage has fluctuated due to other shareholders exercising warrants. No other shareholder currently holds as many shares as TPC. I am the secretary and treasurer of Paradigm. Paradigm is a farrow to finish swine operation in the Interlake region operating on four sites. TPC markets Paradigm's slaughter hogs through the Hog Marketing Program.

18. Forest Lane Farm Ltd. ("Forest Lane") owns a nursery barn which is leased to TPC. It is a wholly-owned subsidiary of TPC. Forest Lane recently acquired the nursery barn from the Niverville Credit Union Limited early in 2012 following a foreclosure and was financed by a Vendor Take Back Mortgage from Niverville Credit Union. I am President of Forest Lane.

19. Pura Organics Limited Partnership ("Pura") is a Manitoba limited partnership which is 72.5% owned by TPC. Other limited partners include Bond, Heritage, Paradigm Farms Ltd., and NSB. The general partner of Pura is 3898220 Manitoba Ltd., a company which is wholly-owned by TPC. I am the President of this general partner company. Pura provides manure management services, and crop application services,

including lagoon cleaning, to the Applicants, other Puratone Subsidiaries and their customers. Pura operates a fleet of 4 tractors, 3 pump systems and 2 agitation systems.

20. JVCO Transport Ltd. ("JVCO") is 50 percent owned by TPC and 50 percent owned by Steve's Livestock Transport (Blumenort) Ltd. I am not an officer of JVCO. JVCO provides specialized and dedicated livestock transportation services with a fleet of 5 highway tractors and 8 trailers to the Applicant, Puratone Subsidiaries and their customers.

21. Horizon Livestock and Poultry Products Ltd. ("Horizon") is 50 percent owned by TPC and 50 percent by 5074401 Manitoba Inc. (a leading Veterinarian supply company unrelated to TPC). I am the Secretary of Horizon. It is a one stop wholesale and retail shop for care of livestock, poultry and swine operations including critical health care supplies, pharmaceuticals, disinfectants, medications, specialized feed and watering equipment, soaps and other supplies essential for livestock maintenance. It also has 3 retail outlets in Winnipeg, Niverville and Steinbach.

22. Parks Livestock of Canada, Limited Partnership ("Parks") is an Alberta limited partnership of which TPC holds 14 percent of the issued and outstanding partnership units. Parks is a mass marketer of cull sows for

various hog producers including the Applicants, Hylife and others for which there is a profit sharing component. I am not an officer of the general partner 1838668 Ontario Ltd.

23. As noted previously, TPC provides administration and management services related to the operations, human resources, purchasing, selling, marketing and transportation to PVP, NSB and most of the Puratone Subsidiaries – JVCO is managed by Steve's Livestock while Parks is not managed or administrated by TPC. However, each of the Puratone Subsidiaries other than NSB and PVP are separately financed with different financial institutions and are not joined as applicants in this intended Application. For example, Horizon and Paradigm are financed by National Bank; Bond by TD Bank; Heritage by Steinbach Credit Union; Forest Lane by Niverville Credit Union; and JVCO by Royal Bank.

24. There is one other entity identified in Exhibit "1" that should be explained: Coren Holdings Ltd. ("Coren"), is a holding company wholly-owned by TPC. Its only assets are 50 percent of the shares of NSB – the other 50 percent of the NSB shares are directly owned by TPC. All of the shares of NSB are pledged to Cornelius Loeppky as security for amounts

owing pursuant to a promissory note from TPC to Loeppky in the principal amount of $2.2 million.

Financial Statements and Security

25. Attached hereto are copies of all of the Applicants' financial statements, audited and unaudited, during the year before this Application:

a) Now shown to me and marked as **Exhibit "2"** to this my Affidavit is a true copy of the 2011 audited financial statements prepared by Management and audited by Ernst & Young LLP together with the Independent Auditor's Report which inter alia states:

> "Without qualifying our opinion, we draw attention to note one of the consolidated financial statements which indicate that there is uncertainty as to the company's ability to continue as a going concern due to commodity market uncertainty and a highly leveraged balance sheet."

b) Now shown to me and marked as **Exhibit "3"** is a true copy of TPC's unaudited Consolidated Financial Statements for 2012 year to date as at July 28, 2012;

c) Now shown to me and marked as **Exhibits "4A, 4B, 4C"** respectively are the unaudited individual financial statements of TPC, PVP and NSB for 2012 year to date as of July 28, 2012.

TPC's fiscal year end is September 30. Puratone updates its unaudited statements monthly but as of preparation of this Affidavit the August statements are not yet complete.

Assets

26. As of the 28th day of July, 2012 Puratone had total consolidated assets with a net book value of $101,084,243 (decreased from $104,654,034 as at March 31, 2012). This included consolidated current assets of $26,714,238 and consolidated non-current assets of $74,370,005. The values for inventories are valued at the lower of cost and market; breeding herd investments at depreciated cost; other assets and capital assets are on a net book value basis.

Liabilities

27. As of the 28th day of July, 2012 Puratone has total consolidated liabilities (excluding advances from shareholders as well as redeemable and retractable preference shares) of $111,267,061 (increased from $108,589,119 as at March 31, 2012). These liabilities consist of consolidated current liabilities of $32,361,367 and consolidated non-current liabilities of $78,905,694.

28. The unaudited Individual Unconsolidated Financial Statements for each of the Applicants as of July 28th, 2012, previously marked as Exhibits 4A, 4B and 4C disclose that:

a) TPC has total assets of $99,813,770 and liabilities of $109,996,586 (excluding advances from shareholders as well as redeemable and retractable preference shares);

b) PVP has assets of $19,616,009 and liabilities of $17,023,060(excluding redeemable and retractable preference shares);

c) NSB has assets of $5,667,338 and liabilities of $3,897,211.

Banking and Credit Facilities

BMO

29. The Applicants bank with the Bank of Montreal ("BMO") with its commercial banking centre in Winnipeg. With respect to cash management, I highlight the following:

a) The Applicants make their actual deposits into separate accounts with the Niverville Credit Union Limited in Niverville which are in turn swept into separate accounts for each of the Applicants maintained at BMO's commercial banking centre in Winnipeg on a daily basis;

b) The Applicants' accounts are not consolidated by BMO;

c) TPC administers and manages each of the accounts on behalf of the Applicants and effects transfers between the Applicants manually;

d) In addition, TPC maintains a separate account numbered 100100109348 with the Niverville Credit Union Limited to administer segregated funds for the benefit of participants in the Hog Marketing Program detailed in paragraph 110 below.

30. With respect to the Applicants' credit facilities with BMO, now shown to me and marked as **Exhibit "5"** is a true copy of the "HILLRP" Term Sheet between TPC and BMO as amended and restated on March 22, 2012 which term sheet also provided for the restructuring of prior BMO credit facilities and amended, replaced and superceded prior credit agreements (hereinafter "BMO Facilities"), the BMO Facilities provide the following credit facilities to TPC:

a) An operating credit facility up to the maximum of $13 million or its U.S. equivalent;

b) A 15 year term facility of $28,905,000.00 representing the prior existing indebtedness of TPC to BMO refinanced under the Government of Canada's Hog Industry Loan Loss Reserve Program ("HILLRP")[2];

c) A risk management facility for up to $5 million to support foreign exchange and hedging programs, subject to the conditions set out therein; and

d) A $150,000.00 corporate MasterCard.

These BMO Facilities are guaranteed by all of the wholly-owned subsidiaries of TPC, including PVP[3] and NSB copies of which are attached hereto as **Exhibits "6" and "7"**to this my Affidavit. The security in support of the BMO Facilities is listed in Exhibit 5 and includes, *inter alia,* general security agreements over all of the Applicants' undertaking, property and assets pursuant to which BMO also claimed an equitable mortgage over the real property of the Applicants. Attached hereto as **Exhibit "8", "9"and "10"**to this my Affidavit are true copies of the general security

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[2] This program is detailed further in paragraph 61(b).

[3] The PVP guarantee and general security agreement are actually executed by K Line Management Ltd. K Line Management Ltd. as well as Border Bacon Growers Ltd., Premier International Genetics Ltd., Killarney Shamrock Genetics Ltd. and Rosenfeld Piglets Ltd. (each of whom have previously provided separate General Security Agreements and guarantees to the TPC debt to BMO) were subsequently amalgamated into PVP in or about March, 2007.

agreements provided by the Applicants. In addition to the General Security Agreement NSB granted to BMO as referenced above, NSB also granted collateral mortgage security on its real property, copies of which are not attached.

FCC

31. Now shown to me and marked as **Exhibits "11" and"12"** are true copies of the Credit Agreement between TPC, PVP and Farm Credit Canada ("FCC") dated February 12, 2010, and the subsequent Amending Agreement dated July 25, 2011, which replaced prior Credit Agreements ("FCC Facilities"). The FCC Facilities provide TPC and PVP with $42 million in credit including *inter alia*:

a) $7 million, refinance of prior FCC facility under HILLRP amortized over 13 years; and

b) $36 million for various term loans.

The FCC Facilities are secured by a collateral first charge mortgage on TPC's lands in the amount of $35 million plus interest, a first charge collateral mortgage on PVP's lands in the amount of $7.5 million plus interest, General Security Agreements as well as other specific Security detailed therein. Now shown to me and marked as **Exhibits "13" and "14"** are copies of the General Security Agreements granted to FCC by TPC and PVP. Copies of the required real property mortgages have been granted but are not attached to this Affidavit. FCC does not have a guarantee or security over NSB.

MASC

32. Now shown to me and marked as **Exhibits "15" and "16"** to this my Affidavit are true copies of the loan commitment letters from MASC dated May 6, 2008 and August 11, 2008 respectively for 2 separate credit facilities ("MASC Facilities") totaling $5 million with security to be provided on the personal and real property of TPC and personal guarantees from PVP and NSB supported by collateral security on PVP's and NSB's real and personal property as particularized therein. Now shown to me and marked as **Exhibits "17" and "18"** to this my Affidavit are true copies of Guarantees in favour of MASC from PVP and NSB dated September 8, 2008. These loans from MASC were made pursuant to MASC's Hog Loan Assistance Program. Now shown to me and marked as **Exhibits "19" and "20"** are true copies of two security agreements granted by TPC to MASC dated May 9, 2008 and September 8, 2008, respectively. Now shown to me

and marked as **Exhibits "21" and "22"** to this my Affidavit are true copies of the Security Agreements granted by PVP and NSB to MASC dated September 8, 2008. The real property mortgages required under the MASC Facilities were also provided to MASC but are not attached to this Affidavit.

Summary of Priorities

33. Now shown to me and marked as **Exhibit "23"** to this my Affidavit is the Intercreditor and Priority Agreement dated March 17, 2010 between BMO, FCC, MASC, TPC and PVP disclosing *inter alia*:

a) With respect to receivables, inventory, breeding stock and proceeds thereof of TPC and PVP:

   i) BMO has first priority for up to $47,055,000.00;

   ii) FCC has second priority thereon up to $43,000,000.00;

   iii) MASC has third priority thereon up to full extent to the indebtedness to MASC;

   iv) BMO has fourth priority thereon for the balance of the indebtedness to BMO; and

v) the FCC has fifth priority thereon for the balance of the indebtedness to FCC;

b) With respect to all other property[4] of TPC and PVP and proceeds thereof:

i) FCC has first priority to the other property of TPC and PVP and proceeds thereof up to $43,000,000.00;

ii) BMO has second priority thereon up to $47,055,000.00;

iii) MASC has third priority thereon up to full extent to the indebtedness to MASC;

iv) FCC has fourth priority thereon for the balance of the indebtedness to FCC; and

v) BMO has fifth priority thereon for the balance of the indebtedness to BMO.

34. Now shown to me and marked as **Exhibit "24"** to this my Affidavit is the Intercreditor and Priority Agreement dated March 17, 2010 between MASC, BMO and NSB disclosing *inter alia* that:

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[4] It should be noted with respect to the real property of TPC, that FCC registered a first charge mortgage on all of TPC's real property with the exception of the two titles where TPC's head office is located.

a) with respect to NSB, BMO has priority over MASC's personal property security for up to the full amount of NSB's indebtedness to BMO;

b) with respect to real property BMO's mortgage security has a priority position up to a maximum of $1 million; MASC has second priority thereon up to the full extent of its debts; and BMO has third priority for the balance of its debt.

Credit Summary

35. As at July 31st, 2012 the Applicant's records disclose secured indebtedness owed to BMO, FCC and MASC as follows:

a) Bank of Montreal:

i)	Operating	$12,712,839
ii)	HILLRP	$28,163,846
iii)	Risk Management Facility	$Nil.
iv)	Mastercard	$Unknown
	Total	$40,876,685

b) FCC:

i)	Term	$33,384,567
ii)	HILLRP	6,897,852
	Total	$40,282,419

c) MASC: $ 5,000,000

PPSA and LTO Registrations

36. Attached hereto and marked as **Exhibit "25"** to this my Affidavit is a true copy of a summary of Personal Property Security Registry of Manitoba search results ("PPSA Summary") as of September 6, 2012 which I am informed and do verily believe was prepared by Sean Hicks, an associate at Taylor McCaffrey LLP, and summarizes the search results from the Personal Property Security Registry of Manitoba for the Applicants. (I am advised that Taylor McCaffrey LLP also conducted a *Bank Act* security search which revealed only registrations for Bank Act Security by BMO.)

37. Now shown to me and marked as **Exhibit "26"** to this my Affidavit is a true copy of an Index of real property searches for lands in Manitoba for the Applicants as of September 6, 2012, which was also prepared by Sean Hicks and, *inter alia*, details the registration affected by BMO, MASC and FCC with respect to the Applicants' real property.

Other PPSA Security

38. In addition to the registrations for BMO, FCC and MASC against the Applicants, the PPSA summary discloses registrations in favour of the following parties claiming security and/or lease interests in specific items of collateral of TPC pursuant to leasing and/or equipment finance

arrangements:

a) GE Canada Leasing Services Company (with respect to serial numbered goods which I understand include leased farm machinery, equipment and trucks);

b) GE Canada Equipment Finance GP (with respect to serial numbered goods and intellectual property);

c) General Motors Acceptance Corporation of Canada Limited (with respect to serial numbered goods being leased motor vehicles);

d) Royal Bank of Canada (with respect to an equipment lease that I understand has been completed and should be discharged);

e) CNH Capital Canada Ltd. (with respect to serial numbered goods by way of motor vehicles);

g) National Leasing Group Inc. (with respect to a leased telephone system); and

h) Ally Credit Canada (with respect to serial numbered goods).

39. In addition, the PPSA Summary reveals that there is a separate registration against TPC by the Royal Bank of Canada with respect to a Postponement and Assignment of Claim of JVCO Transport Ltd.; National Bank of Canada has a registration against TPC with respect to a Subordination Agreement covering redemption of preferred shares and payment of debts due to Horizon; and Toronto-Dominion Bank has a registration against TPC with respect to an Assignment of Debts and Accounts of Bond.

Unsecured Creditors

40. As of June 30, 2012, the Applicants were liable for accounts payable and accrued liabilities in the amount of $11,665,115. The largest unrelated trade creditors (with claims over $100,000) include:

a) BP Grain - $105,749.31;

b) Commodities Specialist Company - $316,339.42;

c) FDGI, A Division of Agrex - $115,132.15;

d) JEFCO Nutrition - $265,931.75;

e) Lansing Grain Co. - $137,362.07;

f) Manitoba Hydro - $107,737.75:

g) Rothsay - $165,300.53;

h) Silver Weanlings - $114,581.60;

i) Tradex - $169,173.60 U.S.

j) Westaqua Commodity Group Ltd. - $118,808.75

k) Wiens Prairie Acre - $260,077.32

Other Claims

41. The records of TPC disclose that it is indebted to Cornelius Loeppky pursuant to a Promissory Note outstanding in the amount of $2.2 million arising from TPC's purchase of the shares of Coren (the entity which holds 50 percent of the shares of NSB). Loeppky holds security over the shares of NSB.

42. The records of TPC disclose that it owes various shareholders $1,832,670, for advances as of July 28, 2012.

43. The records of TPC also disclose that there are two outstanding unsecured loans to spouses of shareholders as of July 28, 2012 as follows:

a) Elizabeth Koslowsky $305,456;

b) Anne Hildebrand $314,318.

44. TPC also owes its preferred shareholders $319,763 arising from arrears of dividends as well as $202,230 for arrears on redemption of Class C shares. Both of these numbers are as of September 30, 2011.

45. PVP also owes an aggregate amount of $658,938 as of July 28, 2012 to the vendors of the shares of Darling Pigs Ltd. that were acquired by PVP pursuant to promissory notes issued on closing of the acquisition, prior to the amalgamation of Darling Pigs Ltd. into PVP.

Landlords/Contract Barns

46. In addition to the hog facilities owned by the Applicants and Puratone Subsidiaries, TPC leases and contracts for additional sow, nursery and finishing barn space for its livestock. Now shown to me and marked as **Exhibit "27"** are particulars of the leased and contract barns.

Remittance and Other Statutory Obligations

47. The Applicants are generally current with payment of all statutory obligations including employee remittances for source deductions.

Employees

48. As of June 27, 2012 Puratone employs 327 employees (part-time and full-time), particulars of which include:

TPC	228
PVP	44
NSB	4
Pura	6
Horizon	23
Heritage	1
Bond	1
Paradigm	20

None of the employees are unionized. All reside in Manitoba. There are also two independent contractors on staff.

49. Puratone's payroll obligations exceed $13.8 million per annum (including salaries for full-time and part-time workers, independent contractors, commissions and bonuses which are administered through a payroll services provider, ADP). Puratone entities offer benefits to their eligible salaried and hourly employees including benefits provided through group insurance programs. These benefits include, but are not limited to, employee medical, dental, disability, life insurance and similar benefit plans, automobile allowances and employee assistance programs. There are no Pension Plans but there is a group RRSP for Puratone's employees. The total amount paid by Puratone for group and other benefits are over $1.8 million per year.

50. With respect to the above-noted employees, it is important to note that all job offers to the employees were made on TPC letterhead, save

and except for the Horizon employees. Due to economies of scale, payment for all of the above-noted employees' wages is made by TPC to the payroll services provider on the various subsidiaries' behalf. These are ultimately responsible to TPC for the employees' wages. The pay stubs issued by ADP to the employees indicates "The Puratone GRP OF Companies"; T4's issued to each employee identify the particular subsidiary that they work for.

Outstanding Litigation

51. There are two outstanding Court proceedings against Puratone:

a) 4541775 Manitoba Ltd. v. Premium Pork Producers Ltd., Premium Pig Producers Ltd., Pembina Valley Pigs Ltd. and the Puratone Corporation, Queen's Bench, Winnipeg Centre, File No. CI 11-01-74443;

The Plaintiff seeks damages for an alleged breach of contract arising from TPC's and/or PVP's terminating their agreement and removing its hogs from the plaintiffs' barn. This proceeding is in the discovery stage;

b) Ben Bueckert and Eagledale Farms Ltd. v. TPC, Queen's Bench File No. CI 01-01-23245.

The plaintiff seeks damages for an alleged breach of contract. Discoveries have been completed and this matter is in the pre-trial conference stage.

Hog Production and Marketing

52. Over the past decade, there has been a shift to fewer and larger hog operations in Western Canada. In 2011, it was reported that the five largest network producers owned approximately 193,000 sows. Puratone was one of those top five producers.

53. The following summarizes the estimated typical time limes for the breeding and growth of a hog:

Breeding and Gestation	16 weeks
Birth and Weaning	2 to 3 weeks
Nursery Stage	8 weeks
Finishing Stage	17 weeks
Total	43 to 44 weeks

The majority of Puratone's operations would be characterized in the industry as farrow-to-finish operations which means that the hog is raised from birth to slaughter weight (approximately 240 to 270 pounds). A smaller portion of Puratone's production is sold at the nursery stage where the piglet is sold to other producers for finishing. These piglets are sold at the 20 to 50 pound range.

54. The slaughter weight of 240 to 270 pounds set out above is the general weight required by the meat packers in Western Canada. As a result, there is virtually no market for hogs when they are between the 50 pound and slaughter weights. This creates periodic financial challenges in the industry, particularly in situations where producers have not locked in fixed priced contracts and where there has been a significant reduction in hog prices and/or increase in feed prices. In simple terms, a producer has no choice but to complete the finishing of the hog through the finishing stage (approximately 17 weeks) even though it will incur losses as the ultimate sale price will be less that the cost of the feed, labour and overhead inputs.

Environmental & Herd Health

55. Three ongoing imperatives in the hog production industry are maintaining the health of the herd, maintaining a suitable physical environment for the comfort of the herd, and managing the environmental impact of each livestock production operation with particular attention given to the environmental risks associated with the management of animal manure. Each barn produces manure which is stored in lagoons and in most cases is spread onto adjacent fields in late autumn – to the extent that such fields are not owned by the Applicants, such spreading is pursuant to various

manure sales, spreading and management agreements with the adjacent land owners. Under various laws and regulations, Puratone is required to and maintains standards with respect to such things as Manure Management, Odours, Disease, Ground Water Supply and Quality, Surface Water Quality and Soil Quality.

Issues in the Hog Industry & Impact Upon Applicants

56. It is a matter of public record that the Canadian hog industry has been in crisis for some time. In or about the beginning of 2007 a number of factors came together which undermined the past success of that industry. In particular, the decline of the U.S. dollar which is the basis upon which prices are paid in the hog industry, significantly reduced the actual price realized by Canadian hog producers on their animals. Furthermore, the price of feed began to escalate primarily in response to the dramatic increase in corn demand arising from the growth of the U.S. ethanol industry. By in or about the fall of 2007 virtually every hog sold in this country was sold at a loss. By late 2007 and continuing to the time of deposing this Affidavit it is apparent there continues to be a world surplus of hogs (primarily due to significant advances in genetics and animal health which has increased the average number of slaughter hogs per sow and weak economies in the

countries consuming the majority of meat proteins). To complicate matters in or about March, 2009, the Government of the United States announced and then effectively implemented a Country of Origin Labeling ("COOL") requirement which has significantly impacted the marketability of Canadian hogs in the U.S. Escalation of fuel prices also increased the transportation costs of taking hogs to market, further adding to the losses on hog operations. While COOL was successfully challenged in the World Trade Organization, the United States has appealed and continues to apply COOL to Canadian hogs. In addition, the H1N1 pandemic in 2009 (misdescribed as "Swine Flu"), combined with the global economic recession, prompted governments of countries that typically import North American pork to impose trade barriers on Canadian and U.S. pork which further depressed demand.

57. The impact on Puratone was devastating: while fiscal year end 2005 witnessed profits of approximately $8.7 million, by 2007 Puratone had lost $4.7 million. Combined 2008 and 2009 net losses were approximately $39.1 million.

58. By in or about the month of March, 2008, BMO transferred administration of the Applicants' accounts to its Special Accounts

Management Unit in Toronto. In or about April, 2008, at BMO's direction Puratone engaged PricewaterhouseCoopers Inc. ("PWC") to monitor its financial situation and report to BMO on an ongoing basis until in or about March 2009 when BMO agreed to accept reporting from Deloitte & Touche Inc. ("Deloitte") after that firm was engaged on the Applicants' behalf.

59. The Applicants' management implemented strategies to preserve Puratone's viability and took steps to reduce expenses wherever possible. Cost reduction efforts were implemented to streamline operations and financial support obtained through the Federal and Provincial Governments' Agristability Programs. A feed mill was sold along with other redundant assets. Puratone (U.S.A.) Inc. was wound down and the Applicants looked into the possibility of a new share offering which unfortunately did not prove viable. In 2008 additional credit was obtained from FCC as well as $5 million from MASC under its Hog Loan Assistance Program. Unfortunately, by late fall of 2009 the Applicants were suffering a cash flow shortfall of approximately $500,000.00 per week and consideration was being made as to whether or not it might be necessary to file for creditor protection.

60. The difficulties in the hog industry placed severe pressure on not only the Applicants but its competitors as well. In March of 2008 Stomp Pork Farm Ltd. filed for an Initial Order in CCAA in Saskatchewan. Although it reorganized and exited under the CCAA process, by 2009 a Receiver was appointed and the business liquidated resulting in significant losses to its secured creditors not to mention the consequences to the other stakeholders. In November, 2009 Big Sky Farms Inc. from Saskatchewan also sought protection under CCAA and ultimately exited after receiving the benefit of the HILLRP Program detailed below.

61. Over 2008 and 2009, the Government of Canada announced a number of new programs to assist the Canadian hog industry in this crisis:

a) In February of 2008, the Government of Canada announced the creation of what became known as the Cull Sow Program to encourage reduction of Canada's breeding herd. This program was essentially designed to allow small/family hog operators to exit the business and reduce the industry's excess capacity;

b) In August of 2009 it announced creation of the Hog Industry Loan Loss Reserve Program ("HILLRP"). The basic concept behind this program was to assist the working capital position of hog operations in the form of government loan loss guarantees to lenders – in essence allowing existing lenders to convert short term debt into long term loans. The HILLRP Program contemplated a qualified borrower to apply for an initial funding allocation provided the borrower met the initial HILLRP viability criteria which were in part based upon the government's market forecasts for the industry. The HILLRP Program would enable the borrower to convert a portion of the current debt into subordinated term facilities which would be subject to a portional guarantee from reserves set up by Ag Canada. Ag Canada would be subrogated to the lender's security position on the HILLRP. This conversion of current debt to term would enable the lenders to provide fresh additional working capital to fund the further cash requirements anticipated until the hoped for recovery of margins. Another advantage of this program was a several year deferral of principal repayment.

c) In or about 2009, it also announced the creation of the Hog Farm Transition Program, which was designed to help eligible producers by providing payments to those who agreed to set aside hog production in their enterprise for a minimum of three years. While producers could apply for both this program and HILLRP, they were only allowed to receive the benefits from one program.

62. In or about October, 2009 the Applicants engaged Deloitte to assist it in its ongoing restructuring efforts and to complete the HILLRP loan application process, part of which required verification that the borrower could meet the viability test contemplated under the HILLRP Program. With the help of Deloitte and with the active participation of BMO and FCC the Applicants were able to agree to a restructuring of its main secured debt obligations by converting $28,905,000 of its BMO operating debt into an HILLRP term facility as well as $7,000,000 of the FCC debt to an HILLRP facility which enabled them to continue to carry on business without filing for creditor protection at that time. In addition, Puratone took numerous other operational restructuring and austerity measures in response to this crisis, including:

a) reduced sales, general and administrative expenses (overhead) by 20% during the period 2008 to 2010 ($12.4 million to $9.9 million);

b) reduced staffing levels for the 3 applicant corporations by 47 employees;

c) secured new contracts for 48% of market hog production to targeted specialized markets which yielded improved gross margins in excess of $1 million per year;

d) implemented changes to production practices which have provided additional net income in excess of $7 million from 2008 to 2011 (in aggregate);

e) initiated a hedging program which has yielded in excess of $4 million of improved gross profit from 2008 to 2011 (in aggregate);

f) divested its retail poultry feed business unit through an earn-out structure;

g) divested all non-core assets which yielded receipts of $2.5 million for an investment Puratone held in an egg laying company and $0.8 million for a feed mill asset sold in Alberta; and

h) wound down its U.S. operations to yield receipts in excess of $8 million through related asset divestitures.

63. Since the completion of that informal restructuring, the continuation of high feed costs, surplus live hog supplies arising from exceptional productivity of North American herds, weak domestic demand for pork due to prolonged challenges with the U.S. economy, and the persistence of a strong Canadian dollar relative to U.S. currency have all interacted to create economic conditions which did not meet the government forecasts and the Applicants have not been able to generate sufficient operating cash to cover debt service particularly with the commencement of principal repayment obligations under HILLRP in March, 2012.

64. Although Puratone experienced a $4.4 million profit in 2010 (which was in part due to government AgriStability payment of approximately $3.8 million), by 2011 its losses were in excess of $3.5 million.

Current Financial Position of the Applicants

65. The Applicants' management continue on an ongoing basis to develop strategies to improve Puratone's viability and continue to take steps to reduce expenses wherever possible. In 2010 the Applicants wound up the

operations of Puratone (U.S.A.) Inc., a wholly owned subsidiary of TPC incorporated in Delaware and registered in Iowa. (The corporate entity continues to exist with substantial tax losses.) Despite these efforts, the Applicants' position has deteriorated to the point where insufficient working capital remains to provide for periods of loss that are typical of the volatile market conditions reflective of the commodity nature of the business. An inability to meet immediate operating requirements could compromise the Applicants' ability to meet government regulatory requirements and maintain the high standards of animal care required in the livestock production business.

66. By the Spring of 2012, TPC was in breach of its minimum debt service coverage ratios and minimum EBITDA loan covenants with BMO. Now shown to me and marked as **Exhibit "28"** is a true copy of the June 11, 2012, letter from BMO notifying TPC of the breach.

67. The current drought in the United States has resulted in a drastic increase in feed prices which exacerbates the financial predicament of the hog industry. As noted in the August 13, 2012 Globe and Mail, [5] corn prices have gone up 58% since the beginning of June. Wheat is up 37% over the same period. Since June, 2012, many of the suppliers that provided

[5] Globe and Mail, August 13, 2012, Report on Business p B2.

grain to the Applicants for processing into feed for the livestock throughout the system have insisted on cash payments and significantly strained our liquidity. I should also point out that we are approaching the Fall when hog prices tend to cycle downward.

68. I am advised by TPC's Chief Financial Officer, Larry Johnson, that over the past few months the Applicants have been suffering a cash flow shortfall of approximately $150,000 to $200,000 per week and by August frequently come close to exceeding their authorized operating line. The Applicants took the steps necessary to conserve cash flow to essential items only to endeavour to operate within the authorized limits.

69. The Applicants' primary lenders, BMO and FCC, acknowledge the strength and expertise of Puratone's management team in endeavouring to work through this unprecedented crisis in the hog industry. These lenders have been very supportive throughout these difficult times, providing accommodations and payment deferrals over and above that contemplated by the Credit Agreements.

70. In order to get through this crisis BMO, with FCC's concurrence, agreed to defer the payment of principal and interest due in June and July. While this enabled the Applicants to meet the initial crisis, it

was a significant default in their obligations and I understand triggers certain default provisions with HILLRP which, if not remedied, oblige BMO to take steps to enforce its security.

71. Now shown to me and marked as **Exhibit "29"** is a true copy of a letter from BMO dated August 13, 2012 confirming additional breaches under the BMO Facility.

72. There has been an open dialogue between the Applicants, BMO and FCC with respect to the Applicants' financial situation. Cash flow projections disclosed that the maximum operating credit facility would be exceeded before the end of August. During that month discussions involved consideration as to whether or not it might be necessary for the Applicants to file for CCAA protection and the need for additional working capital, typically only available through debtor in possession financing ("DIP Financing"). Although a tentative hearing date for a CCAA application was scheduled during August, it was apparent that certain prerequisites including a DIP Financing facility and events unfolding on the SISP could not be finalized in time following which BMO, with the participation of FCC, agreed to provide a temporary bulge of up to $1 million on the operating line to enable the Applicants to continue to operate until the intended application

could be brought before this Honourable Court. Now shown to me and marked as **Exhibit "30"** to this my Affidavit is a true copy of the Term Sheet Amending Agreement dated August 31, 2012 which provided TPC with the temporary bulge.

73. Now shown to me and marked as **Exhibit "31"** is a true copy of a cash flow projection for the Applicants through to December 2, 2012, together with a signed letter from the Applicants to Deloitte as the proposed Monitor setting out the Prescribed Representations regarding preparation of CCAA Projections. This cash flow projection provides the projected cash flow for the thirteen weeks assuming a CCAA initial order is granted. This cash flow projection was prepared with the assistance of Deloitte and I believe it to be reasonable.

74. As a result of these ongoing losses the Applicants lack the resources to pay their liabilities generally as they become due. Furthermore, the current market values of the assets are not sufficient to meet liabilities. As a result the Applicants are insolvent.

75. I must also state that notwithstanding the temporary bulge, the financial crisis the Applicants are in has not dissipated. We are past the stage where many suppliers will deliver even on a COD basis as they are trying to use their leverage to get their past due accounts paid. The unrelenting day to

day pressure on our CFO and accounts payable department cannot be ignored. The Applicants are under unrelenting financial stress and cannot continue to operate without immediate protection and a DIP facility.

76. Now shown to me and marked as **Exhibit "32A"** and **"32B"** respectively are true copies of the demand letters from BMO and FCC's counsel dated September 10, 2012 upon the Applicants together with the applicable notice of intention to enforce security under section 244 of the *Bankruptcy Insolvency Act* and section 21 of the *Farm Debt Mediation Act*.

Sales and Investor Solicitation Process

77. As indicated above, the Applicants have on an ongoing basis endeavoured to identify and assess strategic options to find a solution to their predicament. In or about the month of May, 2012 the Applicants engaged Ernst & Young Inc. ("EYI") to conduct a strategic review process. With the assistance of EYI the Applicants commenced a process to solicit potential interest either by way of equity investment or potential purchaser of assets in order to maximize stakeholder value ("Sale and Investor Solicitation Process" or "SISP"). Now shown to me and marked as **Exhibit "33"** is a true copy of the engagement letter between EYI and the Applicants dated May 1, 2012.

78. The Applicants and EYI developed an Investment Overview letter dated May, 2012, a true copy of which is attached hereto and marked as **Exhibit "34"** to this my Affidavit.

79. Using a database maintained by Standard & Poors / CapitalIQ, EYI generated a list of approximately 260 companies in Canada and the United States Midwest and Great Lakes regions that operated, held investments or expressed interest in companies in hogs, meat packing plants, or meat slaughtering. The vast majority of the companies on this listing were not approached due to their small size, single purpose nature of operations (i.e. beef slaughter, specialty meat production, etc.), or known subsidiaries of other companies on the listing of target companies to be approached. With the assistance of EYI, the initial listing was narrowed to twenty potential strategic investors/purchasers to be contacted.

80. The content list included large hog slaughtering companies in the immediate geographical vicinity as part of the universe of possible purchasers for the assets of the Applicants because packing companies are continually seeking security of hog supply within their supply chain.

81. In May 2012, I attended a pork industry conference in the United States. One of the presenters at this conference provided information

to the conference attendees on the top 10 Chinese-based pork producers (China is the world's largest market for pork products). To the extent that these producers were not already on the target list, the list was subsequently expanded.

82. Together with EYI, the Applicants made initial approaches to key customers and then initiated direct discussions with the target parties identified. In many cases, the target parties immediately declined any further interest in an investment in the Canadian hog industry. Other parties expressing interest were sent a Confidentiality Agreement, in order to facilitate disclosure of commercially-sensitive information about the Applicants and its financial position.

83. In or about the week of May 28, 2012 EYI and the Applicants finalized a Confidential Information Memorandum ("CIM") and made this available to the target parties who were prepared to sign a Confidentiality Agreement. The CIM described the process to be undertaken by the Applicants to solicit interest in its shares or assets, the background of the Applicants, as well as detailed operating and financial information on the business. Now shown to me and marked as **Exhibit "35"** is a copy of the Introduction, Executive Summary and Industry Overview of the CIM. The

complete CIM the Applicants proposed to file with this Court as Confidential Exhibit A. The financial and market information contained in the CIM is commercially sensitive and detailed disclosure of their contents could be highly prejudicial to the ongoing business operations of the Applicants and the integrity of the Sale Process. The Applicants request a sealing order from this Honourable Court with respect to those sections of the CIM.

84. In June, 2012, TPC wrote to its shareholders, to advise of the financial issues facing the industry generally and the need for the Applicants to solicit potential investors who might be interested in investing in Puratone, in the form of an equity or debt investment, or some other form of asset sale or business combination or joint venture. Now shown to me and marked as **Exhibits "36" and "37"** are true copies of the correspondence from TPC to its shareholders dated June 8, 2012.

85. I am advised by Joe Healey, senior vice president of EYI with primary responsibility for EYI's role in advising the Applicants on the SISP, that no shareholders have contacted him to express any interest in further investment. Additionally, I have not been contacted by any shareholders expressing any interest in further investment in Puratone.

86. By the last week of June three parties had signed Confidentiality Agreements, received the CIM and were proceeding with their due diligence. One of these parties was not on the original target list but approached EYI after learning from industry contacts that a solicitation process was being carried out. One target party had endeavoured to renegotiate the terms of the Confidentiality Agreement to significantly reduce the period of time information was to be treated as confidential but we were unable to reach an agreement at that time.[6] Two parties were still considering whether or not they wanted to participate. Seven parties declined to participate and no response was received from thirteen other targets. While the CIM set a deadline of June 28 for submissions of expressions of interest, at the request of one of the interested parties the deadline was extended to July 12, 2012.

87. Since July 12, 2012 , the Applicants and EYI have been working with interested parties to clarify expressions of interest with a view to concluding a transaction that would enable the business operations to continue on a going-concern basis. The Applicants propose to file EYI's Status Report on the SISP as Confidential Exhibit B and request that this Honourable Court accept that the exhibit be placed under seal as the

[6] Though it is interesting to note that party ultimately did agree to sign a Confidentiality Agreement just recently on September 7, 2012 and has now received a CIM.

information set out therein is commercially sensitive and public disclosure before the Sales Process is complete would be extremely prejudicial to the Applicants and their stakeholders.

Need for CCAA Protection

88. With the approval of BMO and FCC, and subject to the approval of this Court, the Applicants proposed to complete the Sales and Investor Solicitation Process by developing with the proposed Monitor a short term or expedited strategy to complete a sale of the business, or parts thereof in conjunction with reducing or ceasing operations as may be appropriate in the circumstances.

89. Because of the Applicants' financial difficulties, in particular, immediate liquidity crisis and the ongoing covenant breaches, the Applicants are insolvent and a stay of proceedings is essential for the Applicants to be able to continue to carry on business pending a going concern sale. Such a stay would create the necessary environment to allow the applicants to complete the Sales Process, carry out such reductions as necessary and develop a restructuring plan.

90. That said, in order for the Applicants to survive over the time period necessary to complete the Sales Process and reductions, additional

funding is required to cover the ongoing losses until the process can be completed.

91. While our existing lenders have been very supportive to date, I have been advised by BMO that given the Applicants' current financial situation it is not prepared to provide the additional working capital necessary for the Applicants to continue the restructuring process unless the Applicants file for CCAA protection and complete the restructuring under that legal framework. In particular, any new funding would only be extended by way of debtor in possession ("DIP") Financing under CCAA in priority to other security holders save and except the Administrative Charge detailed below. It is also my understanding that BMO requires the existing management team to stay intact and committed to completing the SISP.

92. Given the current state of the hog industry, I know from my own firsthand knowledge and experience, as well as the advice and counsel of Puratone's management team and its professional and financial advisors, that there are no other alternative sources of financing available to it save and except from a troubled company's existing lenders who are otherwise unable to extricate themselves from the hog industry.

93. I am further aware that given the Applicants' status as "farmers" we could seek a statutory stay of proceedings under the federal *Farm Debt Mediation Act* – though in consultation with the Applicants' professional advisors we have concluded that the *Farm Debt Mediation Act* would not provide a practical or realistic mechanism to restructure. The practical problem the Applicants have at this juncture is their inability to continue to carry on operations without additional funds. The only realistic source is DIP financing which BMO has indicated it will provide over the restructuring period if its conditions are met.

DIP Financing

94. As indicated above, BMO, with FCC's participation, has agreed to provide a DIP Financing facility. Based upon previous cash flow forecasts, the parties had agreed to a maximum DIP facility of $6,000,000.00 less the amount outstanding under the bulge and have been working to finalize the documentation necessary for some time. Attached hereto and marked **Exhibit "38"** to this my Affidavit is a redacted copy of the Term letter for the DIP Financing facility dated September 11, 2012 (the "Term Letter") which I understand to be the final version subject to signature. At the request of BMO, the Applicants propose that the unredacted Term Letter

be filed as a Confidential Exhibit C and request that this Honourable Court accept that the Exhibit be placed under seal as the redacted provisions are commercially sensitive and public disclosure would be prejudicial to the Secured Lenders. The Term Letter require that this DIP facility be in priority to the existing security of BMO, FCC and MASC. The Applicants have accepted the Term Letter as there are to my knowledge no other lenders who are prepared to provide DIP Financing on an expedited basis to the Canadian Hog Industry at this time.

95. With the ongoing deterioration of the industry the most recent cash flow forecast (previously marked as Exhibit "31") discloses that the Applicants will need to draw into the DIP facility by next week and, given the current cash burn, may exceed the $6 million by the week of November 19, 2012. I am advised by Steve Peleck at Deloitte that this current forecast does include $3.1 million in contingencies for decreases on prices of market hogs and feed increases as well as potential KERP payments. The Applicants are working with Deloitte to update the forecasts on a weekly basis for presentation to BMO for consideration and approval.

Administrative Charge

96. As indicated previously, the Applicants have requested Deloitte to assist it in its restructuring process and in that respect I have been advised that Deloitte is prepared to consent to serve as a Court Appointed Monitor in the event that the contemplated application for relief under CCAA is granted. I am advised by Mr. Steven Peleck, a Senior Vice-President of Deloitte, that as Monitor it will also require independent legal counsel.

97. The Applicants have previously engaged the law firm of Taylor McCaffrey LLP of Winnipeg, Manitoba, as its insolvency and restructuring counsel in regard to its application for relief under CCAA.

98. Given the very difficult financial circumstances currently faced by the Applicants, both Deloitte and Taylor McCaffrey LLP have requested, as a condition of accepting the engagement, that the Applicants request that this Court include a provision in the Initial Order for an Administrative Charge on the assets of the Applicants in priority to all other claims in an amount of $500,000. . This is to secure the payment of their professional fees and disbursements incurred for the purposes of the CCAA proceedings. The Applicants have agreed to request such a provision in the Initial Order as it is essential to its ability to restructure its business and financial affairs.

Directors and Officers Protection

99. A successful restructuring of the Applicants will only be possible with the continued participation of their Board of Directors, Officers and Key Management personnel. These personnel are essential to the continuing business of the Applicants. The Applicants' directors and officers have years of experience in the Canadian Agricultural economy. This specialized expertise and the relationships that they have forged with the Applicants' suppliers, employees and other stakeholders cannot be easily replaced.

100. I am advised by David R.M. Jackson of Taylor McCaffrey LLP, counsel for the Applicants, that in certain circumstances directors can be held personally liable for certain obligations of a company owing to:

a) Employees, including unpaid wages, salaries, accrued vacation pay, certain pension amounts and other benefits;

b) The federal and provincial governments and government agencies, including payroll remittances, sales taxes, goods and services tax ("GST"), withholding taxes and Worker's Compensation Remittances.

101. TPC maintains director's and officer's liability insurance (the "D & O Insurance") through Econ Group Inc. for the directors and officers of

TPC and its subsidiaries. The current D & O Insurance Policy provides $5 million in coverage and was recently renewed with an expiry of August 6, 2013. Obtaining the best available D&O Insurance has been a priority for the Applicants, particular given the ongoing difficulties with the hog industry over the last few years. I am advised by the Applicant CFO, Larry Johnson, that each year when the D&O Insurance policy comes up for renewal, this concern for obtaining the best available coverage was canvassed with the broker. Based upon the professional advice received, TPC has renewed the existing policy as we understand it is best policy available to TPC. Now shown to me and marked as **Exhibit "39"** to this my Affidavit is a true copy of the Policy.

102. In addition, there are contractual indemnities which have been given by the Applicants to their directors. The Applicants do not have sufficient funds to satisfy these indemnities should the directors be found responsible for the full amount of the potential directors' liabilities.

103. The directors of the Applicants have indicated that due to the potential significant personal liability, they cannot continue their services or involvement in this restructuring unless the Initial Order under the CCAA includes a charge on the assets, property and undertaking of the Applicants

in priority to all other charges except the Administration Charge and the DIP Charge to indemnity them for the potential liabilities. The Applicants have worked closely with the directors and the proposed Monitor in an attempt to quantify these potential director's liabilities. While there is D & O Insurance, it is subject to numerous limitations and exclusions that may potentially leave the Directors exposed to personal liability. The proposed charge is intended to protect the Directors against exposure only to the extent that it is not covered otherwise by the D & O Insurance. It is proposed that the directors and officers of the Applicants be granted a directors and officers charge in the amount of $1,000,000 ("Director's Charge") over the Applicants' property. The Applicants believe the Directors' Charge is fair, reasonable and necessary in the circumstances.

Key Employee Retention Plan

104. In order to facilitate and encourage the continued participation of the Applicants' officers and key management personnel who were required to guide the Applicants through a successful restructuring, the Applicants developed a "key employee retention plan" ("KERP"). The KERP was developed to provide the participants thereunder with a retention award as an incentive to continue their employment with TPC through the

SISP whether completed through a CCAA proceeding or otherwise. In total there are 10 participant employees who have extensive knowledge of the Applicants, were critical to the SISP and are crucial to the success of the Sales Process and any restructuring plan. TPC had previously been encouraged by BMO to develop a key employee retention plan to maintain the existing management team. The KERP has been approved by both BMO and FCC as well as accepted by TPC's Board of Directors.

105. Now shown to me and marked as **Exhibit "40"** to this my Affidavit is a true copy of the KERP, save and except for Schedule "A" thereto, which the Applicants propose to file as Confidential Exhibit D. The compensation information set out therein relates to specifically identifiable employees and is commercially sensitive information which would be harmful to the Applicants and its employees if it was publicly disclosed in the marketplace before the CCAA process is completed.

106. It is proposed that the KERP participants be granted a charge (the "KERP Charge") over the Applicants' property in the amount of the financial obligations that would be owed thereunder up to a maximum of $700,000 which will rank in priority after the Administration Charge, DIP Lenders Charge, Critical Suppliers' Charge and Directors' Charge.

107. All of the KERP participants are critical to the completion of a successful Sales Process and restructuring. The KERP participants all have extensive experience in the industry. The KERP participants have considered other employment options given the current crisis and are not likely to stay if the KERP is not granted and secured by a KERP Charge. Losing any of the KERP participants would undermine the Sales and restructuring process that is underway and would be a critical loss at a time when their experience and expertise are crucial to the sale and restructuring. It would be extremely difficult at this stage of the restructuring process to find adequate replacements for those key employees.

108. Accordingly, it is the belief of the Applicants that the KERP not only provide appropriate incentives for the KERP participants to remain in their current positions to preserve the overall business but also ensures that they are properly compensated for their assistance in the reorganization process. Both FCC and BMO have reviewed the KERP and support it.

Shared Services with Puratone Subsidiaries, Critical Suppliers, Etc.

109. Over the years Puratone has attempted to streamline processes and gain synergies by sharing administrative, advisory and other business critical services between not only the Applicants but the Puratone

Subsidiaries as well. Most of these inter-entity arrangements (the "Shared Services") are governed by various agreements including administration agreements, feed supply hog marketing contracts, weanling purchase hog marketing agreements, and so forth (hereinafter referred to as "Inter-Entity Agreements") which by their terms set out the mutual benefits to be derived and in particular reimbursement for the charges incurred in the provision of the shared services. The Inter-Entity Agreements provide for full recovery of any cash requirements that TPC incurs through the course of providing these services, such that the cash requirements for TPC are minimized through the economies of scale and efficiencies that are achieved through this cooperative and centralized administration.

110. In particular:

a) In order to maintain reliable transportation of its products to various destinations at reduced costs TPC entered into a joint venture with Steve's Livestock Transport identified previously as JVCO. JVCO provides a high quality livestock transportation service to the Applicants and Puratone subsidiaries and has thereby enabled Puratone to adhere to high bio security standards and animal welfare codes of practice. JVCO is the exclusive transportation service of Puratone, is captive to it and has no other customers;

b) As a result of the number of pigs produced by the production facilities operated by Puratone generates over 150 million gallons of manure annually. Puratone requires reliable and consistent supply of environmental services in order for it and its customers to carry on business without environmental hazards and maintain compliance with manure handling and spreading regulations. These environmental services are provided by Pura. Pura is the exclusive supplier to Puratone of specialized environmental services including sewage and water lagoon servicing, line flushing, lift station maintenance and servicing of pumps and high pressure systems owned or operated by Puratone. Pura delivers services to Puratone through the use of specialized equipment and it is essentially "on call" and captive to Puratone. Its services are essential to Puratone being able to meet government environmental and animal welfare regulations as well as Puratone's own high bio security standards;

c) Horizon provides the retail supplies for livestock maintenance and health care and in particular pharmaceuticals, medications, feed and watering equipment and other products which are essential to the ongoing hog operations carried out by the Puratone entities and their customers. In this capacity, Horizon provides the procurement and inventory function for a significant portion of the products required to maintain animal health and welfare and, as such, represents an integrated component of Puratone's hog production system without which Puratone's ability to maintain appropriate standards of animal care would be disrupted;

d) TPC provides management and administration services for the Co-Applicants and Puratone subsidiaries in exchange for fees that have been designed to provide TPC full cost recovery. These services include operational oversight, as well as centralized procurement, information systems and financial record keeping including cash management. This structure provides cost reduction opportunities for TPC and all of the Puratone entities due to economies of scale that are achieved by aggregating the volume of these activities. In addition, the biological nature of Puratone's core activities of live hog production requires precise coordination of all inputs and product flows to ensure that animal well-being is optimized and to ensure the contractual commitments to its primary customers, are met in terms of quality and quantity of live animals supplied.

e) TPC coordinates the marketing of most of the animals produced in Puratone's sow production facilities of the Applicants, Puratone subsidiaries and contract farms ("Hog Marketing Program"). Market weight animals are sold to Maple Leaf Foods under various contracts between TPC and Maple Leaf. Commencing the month of August, 2012 a portion of these animals are also being sold to Hylife. Proceeds from the sale of all hogs sold for the benefit of the hog producers who participate in these marketing arrangements are deposited in a separate account no. 100100109348 in TPC's name with the Niverville Credit Union Limited ("Hog Marketing Account") segregated from the Applicants' other accounts. In that respect, now shown to me and marked as **Exhibit "41"** is a true copy of one Inter-Entity Agreement, that being the Weanling Purchase and Hog Marketing Contract between TPC and Bond dated December 31, 2004 which, *inter alia*, provides in paragraph 16 that:

> "All funds received from processors for disbursement to producers such as the producer, will be held in trust by (TPC) until settlement is completed provided, however, that (TPC) shall be entitled to deduct and retain from such funds any amounts owing by the producer to (TPC)."

There are similar obligations in the agreements with Heritage, Forest Lane, Paradigm PVP, NSB, as well as unrelated hog producers who contract under Puratone's Hog Marketing Program. On a weekly basis, TPC distributes the funds from the Hog Marketing Account to the appropriate beneficiaries.

Once TPC reconciles the participants' deliveries with funds received, the net proceeds from the sale are transferred from the Hog Marketing Account to the appropriate producing entity or contract barn which owned the animals at the time of delivery.

f) As pointed out previously, TPC's non-filing subsidiaries are financed with lenders other than BMO and FCC. While these entities also face difficulties arising from the financial crisis in the hog industry, I do not believe at this juncture that they are insolvent and it is my understanding that they continue to operate in the ordinary course without protection, at least at this time.

111. I have been informed by the restructuring professionals advising the Applicants that upon a Court granting an Initial Order under CCAA, the Applicants typically do not pay most pre-filing debt obligations. The Applicants submit that given the trust obligations under the Hog Marketing Program detailed above, that TPC be authorized to continue to administer the sale proceeds on behalf of the producers who are entitled inventory being sold and that such sale proceeds (whether pre or post filing) continue to be distributed in accordance with TPC's obligations from the Hog Marketing Account. This will result in PVP, NSB, Bond, Heritage and Paradigm recovering pre-filing as well as post-filing obligations from TPC at least to the extent of their beneficial interest of the funds in the Hog Marketing Account. It will also enable TPC to recover its share of the

proceeds due for its administrative and management services to those beneficiaries.

112. During the course of the CCAA proceeding it is also proposed that Horizon, JVCO and Pura (hereinafter "Critical Suppliers") be provided with a Critical Suppliers' Charge and to require the Critical Suppliers to continue to provide their goods and services in accordance with the current arrangements, payment terms and business practices, except as to payment terms which may be amended to provide for revised timing of reconciliations. The goods and services provided by the Critical Suppliers are absolutely essential for the proper care and maintenance of the Applicants' livestock as well as maintaining their environmental and transportation obligations and cannot be readily or economically replaced. The Applicants depend upon uninterrupted service and supply from the Critical Suppliers and any failure thereof would materially interfere with the Applicants' restructuring.

113. Although the Critical Suppliers are subsidiaries of TPC they are not wholly owned, are financed separately and may well have a separate future following the Applicants restructuring. They are not totally under the Applicants' control and are as likely as an unrelated supplier to exercise

whatever leverage they may have to restrict service or supply in response to the Applicants' proposed CCAA filing and failure to pay pre-filing obligations. The Applicants have reviewed this situation in detail with BMO, FCC and the proposed Monitor to find a workable solution including the option of seeking from this Court as part of the proposed Initial Order a Shared Services provider order that could authorize the Applicants to pay the pre-filing obligations in whole or in part to endeavour to maintain uninterrupted supply and service while minimizing the negative impact upon them. Fairness, DIP Lending and other concerns with the Shared Services approach have the led the Applicants to conclude that the solution which would be most likely to prevent service and supply interruption while at least provide some security for post-filing payment to the Critical Suppliers (and some comfort to their lenders) was a Critical Suppliers Charge.

Other Critical Suppliers

114. There are other suppliers whose goods and/or services may potentially be critical to the business operations of the Applicants. That said, the Applicants are cautiously optimistic that at least initially they should be able to operate without seeking a declaration that any additional suppliers be designated Critical Suppliers at this time provided that the

Applicants are afforded some limited flexibility to authorize payment of pre-filing obligations with the prior consent of the Monitor and Secured Lenders.

Redundant Assets

115. In the ordinary course of its business, the Applicants dispose of surplus or redundant assets on an ongoing basis. For example, TPC has with the consent of BMO, FCC and MASC recently completed a land sale involving the real property located at SW 14-23-1 EPM to Lorne and Lorna Floyd. In addition, there are other redundant asset sales pending again with the approval of the applicable secured creditors including the Emerson Quarantine Facility (SW 2-1-3 EPM). The Applicants request that they be permitted to continue this practice for individual transactions up to the amount of $175,000.00, up to a total aggregate amount of no more than $500,000.00 subject to the consent of the Monitor.

Conclusion

116. I submit that the granting of the Initial CCAA Order sought by the Applicants is in the best interests of the Applicants and its stakeholders. The Applicants require the stay of proceedings to complete the Sales Process and develop a restructuring plan. It is my understanding that BMO and FCC support this application provided the proposed Monitor is authorized to

pursue an expedited Sales Process and assist the Applicants with necessary retrenchment efforts and are cooperating with the Applicants in the restructuring effort. The additional funding necessary for the Applicants to continue is only available as part of this CCAA proceeding.

117. Without the breathing space afforded by a stay of proceedings to complete the Sales Process and the opportunity to restructure, the Applicants will not be able to continue on a going-concern basis and would have to proceed with a wind down of business operations. This would result in significant prejudice to all stakeholders. It must also be recognized that given animal health and environmental responsibilities, an immediate cessation of business is not possible. A carefully structured plan to depopulate the livestock in full compliance with the herd health and environmental requirements would need to be developed by the Applicants with the proposed Monitor's assistance to enable a wind down to proceed. The granting of the application will facilitate an orderly restructuring of the Applicants with minimal disruptions to their business and their stakeholders while maintaining appropriate environmental and animal welfare protection.

118. I make this Affidavit *bona fide* and in support of an intended application under the CCAA.

SWORN BEFORE ME at the City of Winnipeg, in the Province of Manitoba, this 11th day of September, 2012	))))	**RAYMOND ALAN HILDEBRAND**

A Notary Public in and for the Province of Manitoba.