

**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

NOTICE OF MOTION

(Fourth Extension and Amendment of Monitor's Powers)

**DATE OF HEARING: FRIDAY, THE 4TH DAY OF JANUARY, 2013 AT 9:00 A.M.
BEFORE THE HONOURABLE MR. JUSTICE DEWAR**

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Client File No. 15611-250 DJAC

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The Applicants will make a motion before the Honourable Mr. Justice Dewar on Friday, January 4, 2013 at 9:00 o'clock in the forenoon or as soon after that time as the motion can be heard, at the Law Courts Building, 408 York Avenue, Winnipeg, Manitoba.

THE MOTION IS FOR:

1. An Order substantially in the form attached as Appendix 1:
 - a) Abridging the time for service of the Notice of Motion such that the motion is properly returnable January 4, 2013 and dispensing with further service thereof;
 - b) Extending the stay period ("**Stay Period**") as defined in paragraph 18 of the Initial Order of the Honourable Mr. Justice Dewar dated September 12, 2012 ("**Initial Order**") from January 15, 2013 to February 28, 2013;

c) Amending the Monitor's powers to authorize and empower, but not obligate, the Monitor to:

(a) act as the agent for each of the Applicants in order to discharge certain of their obligations under the following agreements made during the course of these proceedings, namely the Asset Purchase Agreement made as of the 1st day of November, 2012 and First Amendment to Asset Purchase Agreement made as of the 14th day of December, 2012 (collectively, the “**Sale Agreement**”);

(b) conduct or assist in the process of dealing with or realizing upon assets of the Applicants that were excluded from the Sale Agreement and remain as assets of the Applicants (“**Excluded Assets**”); and

(c) provide certain administrative assistance to the Applicants.

d) directing that the Monitor, after the Final Cash Purchase Price (as defined in the Sale Agreement) has been determined, bring a Motion (or Motions as the case may be) for a Distribution Order (or Interim Distribution Order as the case may be) for the distribution of monies from the sale of assets under the Sale Agreement, the realization of Excluded Assets, the collection of accounts receivables or otherwise, which shall be supported by a Report from the Monitor including, *inter alia*, the opinion of counsel to the Monitor as to the validity and priority of all claims to monies being held by the Monitor pursuant to the Sale Agreement; and

- (e) Approving the Third, Fourth and Fifth Reports of the Monitor.
- 2. Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- 1. Sections 11, 11.02 and 23(1)(k) and other provisions of the *Companies Creditors Arrangements Act* R.S.C. 1985 c.C-36 amended ("**CCAA**") and the inherent and equitable jurisdiction of the Court.
- 2. Queen's Bench Rules 2.03, 3.02 and 37.08(2).
- 3. This is an urgent matter, however, notice of this hearing date was circulated to the stakeholders on November 22, 2012 when the Order (Assignment of Assumed Contracts) dated November 22, 2012 was served.
- 4. On September 12, 2012 the Court granted the Initial Order which included a stay of proceedings as against the Applicants (as defined in the Initial Order). On September 10, 2012 the stay of proceedings was extended through to November 2, 2012. On October 30, 2012 the stay was extended through to November 12, 2012. On November 8, 2012 the stay was extended until January 15, 2013 to enable the Applicants to conclude the transaction ("**Transaction**") between the Applicants and Maple Leaf Foods Inc. or its permitted assignee ("**Purchaser**") under the Sale Agreement, which was approved by this Honourable Court by the Approval and Vesting Order of November 8, 2012 ("**Approval and Vesting Order**").

5. On December 17, 2012 the Applicants and the Purchaser closed the Transaction with an effective date of December 14, 2012 with the consent and approval of the Monitor and the Secured Lenders.

6. Pursuant to the Transaction substantially all of the assets and undertaking of the Applicants have been transferred to the Purchaser including most of the employees. The Purchaser now carries on the business formerly carried on by the Applicants.

7. Although the Transaction has closed there still remain (i) Excluded Assets, (ii) a number of obligations of the Applicants pursuant to the Sale Agreement which are to be performed after closing, and (iii) various usual administrative functions dealing with the filing of tax returns, employment related documentation, the “Inactive Employees” and other usual administrative matters. Furthermore, in accordance with the Approval and Vesting Order, it is a requirement that application be made for the Distribution Order.

8. The Boards of Directors of the Applicants remain in place, however, the Applicants are no longer carrying on business in the ordinary course and the number of their active employees has been reduced to one, Larry Sveinborn Johnson, who is the Chief Financial Officer of the Applicants. Should Mr. Johnson, for any reason, cease being an employee, there would be no employees of the Applicants to deal with the Excluded Assets and otherwise discharge the post-closing obligations.

9. The Applicants currently have sufficient liquidity to continue their activities during the requested Stay Period.

10. The Monitor and the Secured Lenders are supportive of the requested extension of the Stay Period and amendments to the powers of the Monitor contemplated herein.

11. Following closing, the Applicants paid out the obligations under the KERP with the direction and approval of the Monitor and Secured Lenders.

12. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE
USED AT THE HEARING OF THE MOTION:**

1. The pleadings and proceedings herein including the Initial Order.
2. The Affidavit of Larry Sveinbjorn Johnson sworn the day of January, 2013.
3. The Sixth Report of the Monitor to be filed.

4. Such further and other materials as counsel may advise and this Court may permit.

December 21, 2012

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TO: THE ATTACHED SERVICE LIST

APPENDIX 1

No. CI 12-01-79231

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ORDER

(Fourth Extension and Amendment to Monitor's Powers)

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THE HONOURABLE MR.)
JUSTICE DEWAR) The 4th day of January, 2013

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

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THIS MOTION made by the Applicants for an Order extending the Stay Period ("**Stay Period**") as defined in paragraph 18 of the Initial Order of the Honourable Mr. Justice Dewar dated September 12, 2012 ("**Initial Order**") until February 28, 2013, amending the Monitor's powers and other relief was heard this day at the Law Courts Building at 408 York Avenue, in the City of Winnipeg, in the Province of Manitoba.

ON READING the pleadings and proceedings herein and in particular the Affidavit of Larry Sveinbjorn Johnson sworn the day of January, 2013 and the Sixth Report of the Monitor ("**Sixth Report**") provided by Deloitte & Touche Inc. in its capacity as Monitor of the Applicants ("**Monitor**") and on hearing the submissions of counsel for the Applicants, the Monitor, the Bank of Montreal and Farm Credit Canada

("Secured Lenders"), no other stakeholders appearing although duly served as appears from the Affidavits of Service of Laura Leigh Buley sworn January , 2013 and Ross McFadyen sworn January , 2013:

SERVICE

1. THIS COURTS ORDERS that the time for service of the Notice of Motion and the supporting materials is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

STAY EXTENSION

2. THIS COURT ORDERS that the Stay Period is hereby extended until and including February 28, 2013.

AMENDING MONITOR'S POWERS

3. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under CCAA, the Initial Order and the Approval and Vesting Order dated November 8, 2012 ("**Approval and Vesting Order**") is hereby authorized and empowered, but not obliged, to:

(a) assist the Applicants, or act as agent for each of the Applicants, for the purpose of discharging such of their obligations under the Sale Agreement that are to be performed after closing ("**Post-closing Matters**") and, subject to the proviso which follows, for the purpose of dealing with, pursuing, recovering, realizing upon and(or) collecting each of the Excluded Assets. Provided that, with respect to the Excluded

Assets which consist of assets, including monies held in trust, in the possession of the Applicants but owned by third parties, (“**Trust Assets**”), if there are competing claims of ownership, the Monitor shall prepare a report to the Court with respect thereto and the Court shall either decide on the merits of such claims or give directions as to the manner in which such claims shall be determined;

(b) assist the Applicants to prepare and file various returns, remittances, statements, records or other documentation on behalf of Applicants, including but not limited to, tax returns, employee-related remittances, T4 statements, and other forms and records of employment for the Applicants’ former employees based solely upon information provided by the Applicants and perform other necessary administrative functions on the basis that the Monitor shall incur no liability or obligation to any person or entity with respect to such returns, remittances, statements, records or other documentation; and

(c) monitor and report on the Post-closing Matters and activities in relation to the Excluded Assets.

4. THIS COURT ORDERS that the Monitor, after the Final Cash Purchase Price (as defined in the Sale Agreement) has been determined, shall bring a Motion (or Motions as the case may be) for a Distribution Order (or Interim Distribution Order as the case may be), for the distribution of monies from the sale of assets under the Sale Agreement, the realization of Excluded Assets, the collection of accounts receivables or otherwise, which shall be supported by a Report from the Monitor including, *inter alia*,

the opinion of counsel to the Monitor as to the validity and priority of all claims to monies sought to be distributed.

5. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA, or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of the expansion of its powers hereunder or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

6. THIS COURT ORDERS that, without limiting the provisions of the Initial Order, the Applicants shall remain in possession and control of the Excluded Assets and the Monitor shall not be deemed to be in possession and/or control of any the Excluded Assets.

7. THIS COURT ORDERS AND DECLARES that nothing in this Order shall constitute or be deemed to constitute the Monitor as a trustee, receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of any of the Applicants within the meaning of any relevant legislation.

DISCHARGE OF KERP CHARGES

8. THIS COURT ORDERS that the KERP Charge is hereby released and discharged.

AID AND RECOGNITION

9. THIS COURT hereby requests the aid and recognition of any other Court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States to give effect of this Order and to assist the Monitor and its agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such Orders and to provide such assistance to the Monitor as an officer of this Court, as may be necessary or desirable to give effect to this Order or assist the Monitor and its agents in carrying out the terms of this Order.

January , 2013

J.