

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**S U P E R I O R C O U R T  
(Commercial Division)**

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**No.:**

**IN THE MATTER OF THE RECEIVERSHIP  
OF:**

**PATELLA MANUFACTURING INC.,** a legal person duly constituted having its domicile at 161 Sterling Avenue, in the city of Lasalle, district of Montréal, province of Québec, H8R 3P3

**Debtor/Respondent**

-and-

**HSBC BANK CANADA,** a legal person having a place of business at 2001 McGill College, in the city and district of Montréal, province of Quebec, H3A 1G1

**Petitioner**

-and-

**RSM RICHTER INC.,** a legal person having a place of business at 2 Place Alexis Nihon, suite 2200, in the city and district of Montreal, province of Quebec H3Z 3C2

**Receiver**

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**MOTION FOR THE APPOINTMENT OF A RECEIVER  
(Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3  
("BIA"))**

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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTRÉAL, OR TO THE REGISTRAR OF THIS COURT, HSBC BANK CANADA (THE "PETITIONER") RESPECTFULLY SUBMITS THE FOLLOWING:**

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1. **INTRODUCTION**

1. By the present Motion for the Appointment of a Receiver (the "**Motion**"), the Petitioner seeks, *inter alia*, the appointment of RSM Richter Inc., through its representative, Mr. Philip Manel, CA, CPA, to act as receiver (the "**Receiver**") of the assets of Patella Manufacturing Inc. (the "**Borrower**").

2. **FACTUAL BACKGROUND**

2. Petitioner is a Canadian chartered bank duly constituted and having a place of business at 2001 McGill College Avenue, in the city and district of Montréal, province of Quebec, H4N 3K1.
3. In the normal course of business, Petitioner had business dealings with the Borrower as the Borrower's banker.
4. On April 30, 2010, the Borrower entered into a facility letter (the "**Credit Facility**"), with Petitioner providing for various credit facilities, the whole as appears from a copy of the Credit Facility communicated herewith as **Exhibit R-1**.
5. As at October 28, 2010, the Borrower is indebted under the Credit Facility in an amount of at least CDN\$6,128,088.18 (the "**Indebtedness**").
6. The Indebtedness is secured by all of the movable assets of the Borrower, the whole as appears from copies of the security documents communicated herewith *en liasse* as **Exhibit R-2**.
7. Petitioner is the first ranking secured creditor on all of the Borrower's moveable assets, save some specific pieces of equipment.
8. The Indebtedness is also guaranteed by corporate guarantees from various corporate entities (collectively the "**Corporate Guarantors**"), including 3746600 Canada Inc. ("**Canada Inc.**"), the whole as appears from copies of said corporate guarantees communicated herewith *en liasse* as **Exhibit R-3**.
9. Canada Inc. is controlling directly or indirectly almost all the other Corporate Guarantors and the Borrower. An organization chart of the group is communicated herewith as **Exhibit R-4**.
10. Concurrently with the filing of this Motion, Petitioner is filing a Petition in Bankruptcy against Canada Inc.

3. **EVENTS LEADING TO THE PRESENT MOTION**

11. During the last 2 years, the Borrower did not make any profit and incurred a loss of approximately \$6.5 million in 2009 and the expected loss for 2010 is \$5.5 million.

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12. Given that Petitioner was dissatisfied with the Borrower financial and security position, it requested a meeting with them.
13. On October 12, 2010, a meeting took place amongst the Borrower (represented by Mr. Perlinger), Petitioner (represented by Mr. Brian Petit and Mr. Stephen Wayland) and RSM Richter Inc. in its capacity as consultant to Petitioner (represented by Philip Manel) as well as the Borrower's and Petitioner's legal advisors.
14. During said meeting, the Borrower advised Petitioner of the following:
  - (i) the Borrower does not have the money required to provide for the payroll of October 14 and will be forced to lay off the employees if they cannot meet the payroll;
  - (ii) the shareholders and principal directors of the Borrower and Canada Inc. do not intend to invest any further money in the Borrower;
  - (iii) the Borrower will be forced to terminate its operations if it does not find new money and for the time being cannot foresee any such funds as forthcoming;
  - (iv) the Borrower is insolvent; and
  - (v) the Borrower cannot meet its obligations as they become due.
15. Given the foregoing, the situation became unacceptable to Petitioner and it immediately served by hand to the Borrower on October 12, 2010 a Notice of Intention to Enforce its Securities pursuant to section 244 *BLA* (the "Notice"), the whole as appears from copies of said Notice communicated herewith as Exhibit R-5.
16. On the same day, Petitioner also gave by hand to the Borrower a demand letter asking for the repayment of the Indebtedness given *inter alia* the following defaults:
  - (i) the financial ratios have not been met for quite some time;
  - (ii) the Borrower is unable to meet its obligations as they become due;
  - (iii) the Borrower has exceeded its authorized advance limit; and
  - (iv) the Borrower has admitted its insolvency.

the whole as more fully appears from a copy of the letter dated October 12, 2010 communicated herewith as Exhibit R-6.
17. On October 13, the Borrower (i) acknowledged that the amount mentioned in the Notice are due and payable and that it cannot pay the amount due, (i) waived any delay of repayment of the Indebtedness and (iii) consented to the immediate enforcement by the Petitioner of its securities, the whole as appears from Exhibit R-6.

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18. On October 20, 2010, another meeting took place between the financial and legal advisors of the Borrower and the Petitioner. The Borrower essentially reiterated what it had conveyed at the meeting of October 12, 2010, but added that the Corporate Guarantors would provide for the payroll of October 21, 2010.

**4. REASONS TO APPOINT A RECEIVER**

19. As previously mentioned, the Borrower, as at October 28, 2010, amongst other things, indebted to Petitioner in an amount of an amount of at least CDN\$6,128,088.18 (excluding any professional fees), the whole as more fully appears from a Statement of Account communicated herewith as **Exhibit R-7**.
20. Without having a receiver take the appropriate protective measures to control the receipts and disbursements and protect the assets, the security position of the Petitioner will be jeopardized and in peril.
21. Petitioner's securities charge all of the movable property of the Borrower.
22. The Borrower acknowledged that the Indebtedness is due and payable.
23. To the knowledge of Petitioner, the Borrower cannot continue its activities without incurring further losses which will seriously impair Petitioner's position.
24. Under those circumstances, Petitioner's securities over these assets, are at great risk and the need for this Court to appoint a receiver in regard thereto, warranted and imperative.
25. Indeed, Petitioner's position will deteriorate unless a receiver is appointed.
26. The Borrower has advised that it will imminently cease its operations.
27. Petitioner is very much concerned that the assets which are charged in its favour will not be dealt properly by the Borrower.
28. Petitioner has lost confidence in the Borrower which, in numerous occasions, has not abided by its obligations.
29. The appointment of a receiver to the assets of the Borrower is required to protect the interests of Petitioner.
30. Unless this Court appoints a receiver, the security and the position of Petitioner will be deteriorating on a daily basis and this situation cannot be tolerated nor accepted by Petitioner or by this Court.
31. It is essential that a receiver be appointed to protect the value of the security of Petitioner.
32. The present situation is unacceptable and seriously jeopardizes Petitioner's position and Petitioner cannot accept nor tolerate such situation.

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33. Petitioner proposes that RSM Richter Inc., through its representative, Mr. Philip Manel, CA, CPA, act as a receiver, which firm agrees to do so.
34. Given the urgency of the situation, Petitioner is well-founded to ask this Court to be dispensed of any service and of any notice of presentation, and any delay of service or presentation should be shortened, if need be.
35. Indeed the service of this motion prior to its presentation will only cause prejudice to Petitioner and will jeopardize the charged assets.
36. The present motion is well-founded in facts and in law.

**WHEREFORE PETITIONER REQUESTS THAT THIS HONOURABLE COURT:**

- [1] **GRANT** the present Motion for the Appointment of a Receiver (the “**Motion**”);
- [2] **APPOINT** RSM Richter Inc., through its representative, Mr. Philip Manel, CA, CPA, to act as receiver (the “**Receiver**”) of the assets of Patella Manufacturing Inc (the “**Debtor**”), until the occurrence of any of the following events:
  - (a) all of the Debtor’s assets are sold, liquidated or realized upon;
  - (b) any other order rendered by this Honourable Court;
- [3] **GRANT** to the Receiver the right, but not the obligation, to exercise the following powers over the Debtor which, at the Receiver’s discretion, may be utilized :
  - (a) all the necessary powers to collect all the accounts receivables of the Debtor;
  - (b) all the powers necessary to the control of the receipts and disbursements of the Debtor;
  - (c) all the powers and discretion necessary to proceed, in the ordinary course of business, to the sale of the Debtor’s inventory in accordance with the conditions that it, in its sole opinion, shall consider appropriate without further order of this Court;
  - (d) all the powers necessary to continue the business and the operations of the Debtor, but only if it wishes, and with no obligation to do so;
  - (e) all the powers to sign and issue cheques on behalf of the Debtor;
  - (f) all the powers necessary to protect the interests of HSBC Bank Canada (the “**Petitioner**”);
  - (g) all the powers necessary to take safeguard measures in order to prevent that the Debtor squander its assets and/or erode the value of the security of the Petitioner;

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- (h) any other power necessary to the taking of safeguard measures regarding all of Debtor's assets and operations;
  - (i) open any required bank account, according to terms and conditions that it will, in its sole discretion, consider appropriate, with any Canadian chartered bank, including the Petitioner's, any bank operating in the United States or any other acceptable financial institution, in order to cash in any sum payable to Debtor, or to its benefit, and make any payment that, in its opinion, is necessary, to Petitioner or to the fulfilling of the Receiver's duties;
  - (j) contract any loan or other form of credit in order to allow the continuation of Debtor's operations, and any such debt or loan will be ranked in preference and priority to any other existing guarantee or security, of any nature whatsoever, and will be paid in preference and priority by the Receiver;
- [4] **AUTHORIZE** the Receiver to conduct and supervise a sale process of the Debtor;
- [5] **AUTHORIZE** the Receiver to solicit, through private or public call for tenders or through any other means, bids regarding the Debtor;
- [6] **DECLARE** that the Receiver has all the powers necessary, required or appropriate in order to:
- (a) solicit bids for the Debtor and, more generally, to manage the call for tenders process or any other sale process;
  - (b) determine the means to contact potential buyers, through private mailings, publication in newspapers or otherwise, and proceed accordingly;
  - (c) determine the means of commercializing the Debtor, and/or, amongst others, the groups of assets or the grouping of assets of the Debtor;
  - (d) allow any potential buyer or any person having demonstrated or demonstrating an interest in the Debtor to proceed to a due diligence or to any other analysis of Debtor; and
  - (e) conclude any agreement, of any nature whatsoever, with any person, in order to receive bids regarding the Debtor either collectively or individually;
- [7] **DECLARE** that:
- (a) the Receiver shall be entitled to institute appropriate proceedings, as the case may be and retain the services of legal advisors for the purposes of these proceedings or for any other need. Moreover, such Receiver shall be entitled to file any motion for directions within the meaning of section 34 of the *Bankruptcy and Insolvency Act* as if it were a trustee and if necessary, to execute document to place the Debtor into bankruptcy or to file a Notice of intention to make a proposal;

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- (b) in addition to the foregoing, the Receiver shall not be liable for any debt that came into existence prior to the service of the order to be rendered herein;

**[8] DECLARE that:**

- (a) the Receiver shall not be considered the employer, for all intents and purposes, and shall not incur any liability whatsoever regarding third parties, the Receiver acting for and on behalf of Debtor, among others, as if it were a taking of possession for purposes of administration within the meaning of articles 2773 of the *Civil Code of Quebec* and seq., or a sale by the creditor within the meaning of article 2786 *Civil Code of Quebec*;
- (b) the Receiver will not be considered as operating or continuing the enterprise of Debtor, for any purposes whatsoever;
- (c) the Receiver shall not incur any liability whatsoever regarding third parties for any act done under the present order;
- (d) all the powers, obligations and duties of the Receiver shall be exercised in its sole discretion and according to its judgment;
- (e) the Receiver shall benefit from the protection of sections 14.06 of the *Bankruptcy and Insolvency Act* and more particularly the Receiver shall not, as a result of the Order to be rendered herein or anything done in pursuance of the Receiver's duties and powers under the Order to be rendered herein, be deemed to be in possession of any of the property of the Petitioner within the meaning of any federal, provincial or other legislation, statute, regulation or rule of law or equity respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination and regulations thereunder;

- [9] ORDER** the Debtor and its representatives and employees to surrender all of their assets, of any nature whatsoever, to the Receiver upon service of the order to be rendered herein;
- [10] ORDER** the Debtor and its representatives and employees to fully collaborate and cooperate with the Interim Receiver and help and assist the Receiver in the fulfilling of its duties;
- [11] ORDER** the Debtor and its representatives and employees to grant access to and to surrender to the Receiver all of their respective accounting records, books and other accounting or financial documents of any nature whatsoever, notwithstanding their medium, and fully assist and help the Receiver in accomplishing its duties and in analyzing such documents;
- [12] AUTHORIZE** the Receiver to retain the services of any person or enterprise in order to effectively fulfill its duties and to delegate whenever suitable to the Receiver, such powers to any person or enterprise and appoint any agent or other representative;

- [13] **AUTHORIZE** the Receiver to pay out any advance regarding its fees and disbursements, with the agreement of the Petitioner without awaiting taxation thereof;
- [14] **EXEMPT** the Petitioner from serving any prior notice for the presentation of the Motion;
- [15] **ORDER** that these proceedings shall have full force and effect in all of the provinces and territories in Canada;
- [16] **DECLARE** that this Court seeks and requests the aid and recognition of any Court or administrative body in any province of Canada, and any Canadian Federal Court or administrative body as well as any Court or administrative body in any of the States of the United States of America and any Federal Court or administrative body of the United States of America, to assist the Petitioner and the Receiver to carry out the terms of this order;
- [17] **DECLARE** that the Receiver, with the prior consent of the Petitioner, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court and, without limitation to the foregoing, an order under Chapter 15 of the *U.S. Bankruptcy Code*, for which the Receiver shall be the foreign representative of the Petitioner. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Receiver as may be deemed necessary or appropriate for that purpose.
- [18] **ORDER** that the judgment to come be executory, notwithstanding appeal and without any need to give security;
- [19] **ALLOW**, as the case may be, a shorter time for presentation;
- [20] **RENDER** any other remedy appropriate in the circumstances;
- [21] **THE WHOLE**, with costs.

MONTREAL, November 2, 2010

  
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**DAVIES WARD PHILLIPS & VINEBERG LLP**  
 Attorneys for Petitioner, **HSBC BANK CANADA**



**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**S U P E R I O R C O U R T  
(Commercial Division)**

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OF:**

**PATELLA MANUFACTURING INC.**

**Debtor/Respondent**

-and-

**HSBC BANK CANADA**

**Petitioner**

-and-

**RSM RICHTER INC.**

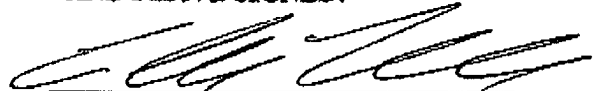
**Receiver**

**ATTESTATION OF AUTHENTICITY**

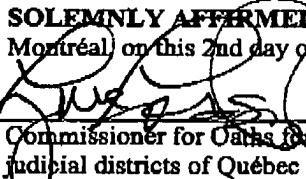
I, the undersigned, Christian Lachance, attorney, practising my profession with the law firm of Davies Ward Phillips & Vineberg LLP, having its principal place of business at 1501 McGill College Avenue, 26<sup>th</sup> Floor, in the City and District of Montréal, Province of Québec, solemnly affirm that:

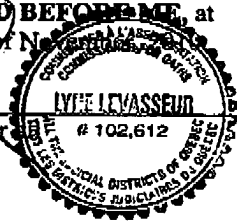
1. On November 2, 2010, at 2:23 p.m., Davies Ward Phillips & Vineberg LLP received by email an Affidavit signed by Stephen Wayland dated November 2, 2010, a copy of such Affidavit is attached to this Attestation of Authenticity;
2. All the facts alleged herein are true.

**AND I HAVE SIGNED:**



**CHRISTIAN LACHANCE**

**SOLEMNLY AFFIRMED BEFORE ME, at  
Montréal on this 2nd day of November 2010.**  
  
Commissioner for Oaths for  
judicial districts of Québec



CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

SUPERIOR COURT  
(Commercial Division)

No.:

IN THE MATTER OF THE RECEIVERSHIP  
OF:

PATELLA MANUFACTURING INC.

Debtor/Respondent

-and-

HSBC BANK CANADA

Petitioner

-and-

RSM RICHTER INC.

Receiver

AFFIDAVIT OF STEPHEN WAYLAND

I, the undersigned, STEPHEN WAYLAND, Assistant Vice-President, Special Credit, exercising my occupation at, 70 York Street, 3<sup>rd</sup> Floor, Toronto, Ontario, M5J 1S9, solemnly declare as follows:

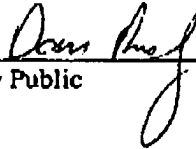
1. I am an Assistant Vice-President, Special Credit of the Petitioner, HSBC Bank Canada;
2. All the facts alleged in the attached Motion for the Appointment of a Receiver are true.

AND I HAVE SIGNED:

  
STEPHEN WAYLAND

SOLEMNLY DECLARED BEFORE ME,  
in the City of Toronto, Province of Ontario  
on this 28<sup>th</sup> day of ~~October~~, 2010

*28<sup>th</sup> day of November a.d.*

  
Notary Public

**CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL**

**S U P E R I O R C O U R T  
(Commercial Division)**

**No.:**

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**PATELLA MANUFACTURING INC.**

**Debtor/Respondent**

**-and-**

**HSBC BANK CANADA**

**Petitioner**

**-and-**

**RSM RICHTER INC.**

**Receiver**

**NOTICE OF PRESENTATION**

**TO: Me Luc Béliveau  
FASKEN MARTINEAU DUMOULIN LLP  
800 Squatre Victoria, Suite 3700  
Montréal QC H4Z 1E9  
Attorneys for Debtor/Respondent**

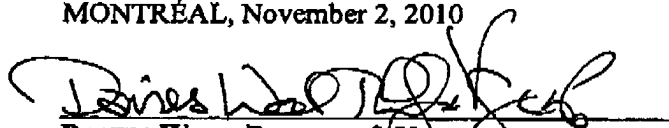
**AND TO: Mr. Philip Manel  
RSM Richter Inc.  
2 Place Alexis Nihon, suite 2200  
Montréal QC H3Z 3C2  
Receiver**

TAKE NOTICE that the attached *Motion for the Appointment of a Receiver* will be presented for adjudication before a Registrar sitting in the Commercial Division, in and for the judicial District of Montréal, at the Montréal Courthouse located at 1 Notre-Dame Street East, in the City of Montréal, Province of Québec, in room 16.12, on November 3, 2010 at ~~9:00 a.m.~~, or so soon thereafter as counsel can be heard.

*14:15pm*

**DO GOVERN YOURSELVES ACCORDING.**

MONTRÉAL, November 2, 2010

  
**DAVIES WARD PHILLIPS & VINEBERG LLP  
Attorneys for the Petitioner HSBC Bank Canada**

No.  
**S U P E R I O R C O U R T**  
 (Commercial Division)  
 District of Montréal

**IN THE MATTER OF THE RECEIVERSHIP  
 OF**

**PATELLA MANUFACTURING INC.**

Debtor/Respondent

and

**HSBC BANK CANADA**

Petitioner

and

**RSM RICHTER INC.**

Interim Receiver

**MOTION FOR THE APPOINTMENT OF A  
 RECEIVER (Section 243 of the *Bankruptcy and  
 Insolvency Act*), AFFIDAVIT AND NOTICE OF  
 PRESENTATION**

**ORIGINAL**

Attorneys for Petitioner  
 Per: **Me Denis Ferland**  
**Me Christian Lachance**  
 Dir 514 841 6423  
 O/F 233566



**DAVIES WARD PHILLIPS & VINEBERG s.e.n.c.r.l. s.r.l.**

1501, avenue McGill College      Tél. 514 841 6400  
 26<sup>e</sup> étage                              Téléc. 514 841 6499  
 Montréal Canada H3A 3N9      BP-0181