

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
COURT NO. : 500-11-022700-047

SUPERIOR COURT

**(Sitting as Tribunal designated under the
Companies' Creditors Arrangement Act)**

**IN THE MATTER OF THE PLAN OF
ARRANGEMENT OF:**

Eaux Vives Harricana Inc., legal person duly constituted under the laws of Québec, having its head office at 11 Chemin des Sablières, Saint-Mathieu-d'Harricana, Province of Québec, District of Abitibi, JOY 1M0;

- and -

EVH U.S.A. Inc., legal person, duly constituted under the laws of Delaware, U.S.A., having a place of business at 17821 East 17th Street, Suite 193, Tustin, California, 92780, U.S.A.;

- and -

Les Sources Périgny Inc., legal person duly constituted under the laws of Québec, having its head office at 11 Chemin des Sablières, Saint-Mathieu-d'Harricana, Province of Québec, District of Abitibi, JOY 1M0;

Debtors

- and -

RSM Richter Inc., a body politic and corporate, duly incorporated according to law, having a place of business at 2 Place Alexis-Nihon, 3500 de Maisonneuve Blvd. West, 22nd Floor, in the City of Montréal, Province of Québec, H3Z 3C2;

Monitor

**EIGHTH REPORT OF THE DESIGNATED MONITOR
ON THE STATE OF DEBTORS' FINANCIAL AFFAIRS
(July 28, 2005)**

I. INTRODUCTION

1. On March 19, 2004, Eaux Vives Harricana Inc. ("EVH INC."), EVH U.S.A. Inc. ("EVH USA") and Les Sources Périgny Inc. ("Sources Périgny") (collectively "Debtors" or "EVH") filed with the Québec Superior Court, a "Motion for the Issuance of an Initial Order" pursuant to the *Companies' Creditors Arrangement Act* (the "CCAA"). On that same date, the Honourable Justice François Rolland (as he then was) issued an Initial Order (hereinafter the "Initial Order"), *inter alia* appointing RSM Richter Inc. (formerly known as Richter & Associés Inc.) as monitor (the "Monitor");

2. Debtors have filed to date seven (7) motions for the extension of time for the filing of the Plan of Arrangement which have all been granted in the past. The last Order rendered was on May 27, 2005, extending the Initial Order, as amended and extended, and the stay of proceedings included therein until Friday, July 29, 2005;
3. This eighth report of the Monitor is to report and inform the Court of the following:
 - Activities of the Monitor;
 - Current operations;
 - Current financial situation;
 - Debtor in possession financing;
 - Sale of EVH's assets;
 - Plan of Arrangement to be filed;
 - Motion for the extension of time for the filing of the plan of Arrangement;
4. We hereby inform the Court that the Monitor has not conducted an audit or investigation of the books and records or the receipts and disbursements of Debtors and that, accordingly, it cannot render an opinion regarding the accuracy or completeness of the information contained herein. The present information emanates from the books and records that have been made available to the Monitor, as well as from discussions with the management of Debtors;

II. ACTIVITIES OF THE MONITOR

- **Communication**

5. The Monitor has replied on a timely basis, to all queries from creditors;
6. The Monitor deployed efforts to ensure that any affected parties would have access to the relevant available information on a timely manner. This included amongst others the posting of all relevant documentary information on the Monitor's website (i.e. www.rsmrichter.com);

- **Monitoring**

7. The Monitor has maintained its procedures to insure a proper monitoring of the receipts and disbursements, as provided by the CCAA;
8. The Monitor has assisted the Debtors' Management in dealing with any important issues that have arisen since the rendering of the Initial Order;

- **Sale Process**

9. The Monitor was involved in the sale process and assisted EVH in dealing with the offers submitted for the purchase of assets and, as such, issued on July 28, 2005 a report which submits the Monitor's conclusion and recommendation concerning the Asset Purchase Agreement entered into between EVH and Eaux Vives Water Bottling Corp., dated July 15, 2005 for which the Debtors have filed a motion on July 22, 2005 to obtain the Court authorization to complete the sale of their assets;

III. CURRENT OPERATIONS

- **Activities**

10. The activities since the issuing of our seventh Monitor's report have consisted of the safeguarding of the facilities located in Saint-Mathieu d'Harricana, maintaining the plant in good state and participating in the process for the sale of its assets. This situation will not change until the sale of assets is completed;

- **Employees**

11. As forecasted, only two (2) employees remain in Saint-Mathieu d'Harricana, including one (1) on a part-time basis. All of the American employees were terminated in May 2004 and since June 2004 the Vice-President and General Manager was on a working severance which expired on June 17, 2005;

- **Facilities**

12. EVH has disclaimed all leases for premises in Canada and in the USA it no longer required in view of the restructuring of its affairs. The remaining facilities to date are the plant in Saint-Mathieu d'Harricana and the Sources Périgny plant also in Saint-Mathieu d'Harricana;

IV. CURRENT FINANCIAL SITUATION

- **Funding**

13. In view of the fact that EVH is no longer in operation and that the sale of the remaining inventory as well as the collection of the residual accounts receivable are completed, EVH could not cover its current expenses without obtaining DIP financing. The DIP financing is provided by the Royal Bank Asset Based Finance, for up to \$3,578,000, (as authorized by the Court on June 15, 2004), to support the current limited activities;
14. To date, approximately \$2,805,705 as been drawn on the DIP credit facility, including accrued interests, bank charges and fees;

- **Cash Flow Projections**

15. The Debtors had filed with the "Motion for the Extension of Time for the Filing of the Plan of Arrangement" on May 26, 2005 a cash-flow statement covering the period from May 18, 2005 to July 29, 2005. We submit below a summary comparison of projected and actual results as at July 14, 2005:

(in \$)	Projected May 18, 2005 to July 29, 2005	Actual May 18, 2005 to July 14, 2005	Variances
Receipts	225,360	160,439	(64,921) ⁽¹⁾
Disbursements	<u>156,664</u>	<u>114,688</u>	<u>(41,976)</u> ⁽²⁾
Variances	68,696	45,751	(22,945) ⁽³⁾
Opening bank balance	<u>18,087</u>	<u>22,271</u> ⁽⁴⁾	<u>4,184</u>
Closing bank balance	<u>86,783</u>	<u>68,022</u> ⁽⁴⁾	<u>(18,761)</u>

Notes:

- 1) *The unfavorable variance of \$64,921 in the receipts is mainly due to timing issues;*
 - 2) *The overall favorable variance of \$41,976 in the disbursements is explained by:*
 - a) *Personnel expenses: Unfavorable variance of \$3,220 due to timing issues regarding CSST current charges for post filling period;*
 - b) *Operating expenses: Favorable variance of \$9,031 due to timing issues;*
 - c) *Professional fees: No variance ;*
 - d) *DIP financing costs: Favorable variance of \$42,013 due to timing issues ;*
 - e) *Other expenses: Unfavorable variance of \$7,890 due to timing issues and as a result of lightning strike that caused damages to part of the equipment;*
 - f) *USA expenses: Favorable variance of \$2,042 due timing issues;*
 - 3) *The resulting Unfavorable cash flow variance is \$22,945;*
 - 4) *The bank balance does not take into consideration the "net" funds held in trust by the Monitor (totaling \$630,284) resulting from the unsuccessful Quebec Waters, Inc.'s transaction. Some of the funds received in conjunction with the previously authorized Quebec Waters Inc. transaction were used and will continue to be used to cover current operating expenses and professional fees.*
16. Included as **Appendix A** of this report is a summary of Debtors' cash flow forecast for the period July 15, 2005 to December 16, 2005;
17. EVH's cash flow projections for the period ending December 16, 2005 indicate that the funds presently held by EVH and the Monitor will be sufficient to support the operating expenses relating to the safeguard of assets;

- **Post-Filing Obligations**

18. Debtors have been paying the post-filing obligations as they become due. In addition, the Crown's claims are current. Certain expenses, interest charges and professional fees have yet to be billed to the Company and as such have not been paid;

V. DEBTOR IN POSSESSION FINANCING

19. With the assistance of the Monitor, on June 10, 2004, EVH and Royal Bank Asset Based Finance, a division of RBC, concluded a DIP Financing Agreement providing for an advance up to \$3,578,000. On June 15, 2004, the Honourable Justice François Rolland (as he then was) rendered an Order approving the DIP Financing Agreement;
20. To date, EVH has drawn \$2,805,705 from the \$3,578,000 available DIP financing including approximately \$305,705 of interests, fees and bank charges;
21. Pursuant to the failure of the Quebec Waters, Inc. sale transaction, EVH, in dealing with RBC, agreed to pay a one time forbearance fee of \$100,000 which will be paid when the DIP financing is reimbursed;
22. EVH is in compliance with the terms of the DIP financing agreement;
23. The DIP financing advances made by RBC will be reimbursed from the proceeds of the sale of EVH's assets;

VI. SALE OF EVH'S ASSETS

24. EVH terminated its operations in early 2004. EVH initially retained the services of Scotia Capital Inc. ("Scotia") to market its assets and find a buyer;

- **Initial Marketing Process**

25. Scotia advised the Monitor that the results of the initial marketing process can be summarized as follows:
 - a) They discussed the possibility of the purchase of the assets with over sixty (60) prospective parties, including North American and international beverage companies, bottled water companies, bottled water industry participants, financial buyers and distressed asset purchasers and liquidators;
 - b) Between April 6, 2004 and June 16, 2004, more than thirty (30) parties received the information packages from Scotia;
 - c) During the same time period, fourteen (14) parties executed confidentiality agreements and, out of such fourteen (14) parties, nine (9) visited the data room established for the sale process in order to examine the books, records and other documents regarding EVH therein contained, and seven (7) such parties conducted site visits of EVH's plant;
 - d) A total of four (4) formal offers were received on or before June 23, 2004 by Scotia pursuant the aforementioned marketing process;
 - e) Further to the receipt of the offers and pursuant to the recommendation of Scotia, EVH had discussions and negotiations with the retained offeror in order to obtain the most favorable offer;

26. We are further advised by the representatives of EVH that:

- a) On July 30, 2004, an offeror, pursuant to the initial marketing process, submitted a revised offer, which was accepted by EVH;
- b) Some unexpected financing problems have been encountered by the offeror;
- c) Despite a demand letter and further communications, the offeror did not comply with its obligations pursuant to the offer, and EVH had no choice but to terminate the negotiations with the offeror and to pursue other options;

- **Second Marketing Process**

27. As a result of the failure to close the contemplated sale transaction, throughout the months of October and November 2004, Scotia and EVH re-established communications with all those parties that had been identified as potential buyers;

28. After having examined the alternatives available and due to the fact that interested parties had manifested their interest to acquire EVH's assets, EVH decided, in collaboration with the Monitor and Scotia, to launch a new sale process and, as such, to canvass, once again, the market in order to attempt to complete a transaction;

29. The highlights of the second marketing process initiated by Scotia, EVH and the Monitor can be summarized as follows:

- a) The delay to submit offers was set to November 30, 2004;
- b) Several new parties, as well as those previously contacted, were canvassed by either EVH, Scotia or the Monitor;
- c) The Monitor, EVH and Scotia have dealt with six (6) interested parties and potential buyers;
- d) The most favorable offer was not retained since the offeror was unable to make a deposit to secure its undertaking under the offer as well as to provide the proof of availability of funds to complete the transaction;

- **Extension of Marketing Process**

30. The initial intention of the Monitor, EVH and Scotia was to make a final decision regarding the offers received by December 20, 2004. However, in the interests of fairness to the parties remaining in the process and with a view of concluding a transaction, it appeared that it would be beneficial to pursue such discussions through January 2005. The interested parties were advised by a letter sent on December 22, 2004 that it was the Monitor's intention to deal with those offerors who would submit an acceptable offer in form and substance by January 21, 2005;

31. A total of four (4) offers and two (2) letters of interest were submitted to the Monitor on or before January 21, 2005;

- **Quebec Waters Inc. Offer**

32. After having reviewed the offers, the Monitor and EVH, with the assistance of Scotia, came to the conclusion that the offer presented by Quebec Waters, Inc. was the best offer. Furthermore, the purchase price offered by Quebec Waters, Inc. was greater than that provided for in any other offer received;
33. On January 21, 2005, EVH accepted the offer submitted by Quebec Waters Inc., as amended;
34. An order was granted, on February 23, 2005, by the Quebec Superior Court approving the sale to Quebec Waters, Inc.;
35. The Debtors and the Monitor made arrangements for closing, ultimately scheduled for May 4, 2005. We were informed by the legal representative of the Debtors that a representative of Quebec Waters, Inc. arrived at the time and place scheduled for closing and indicated that no funds were available and that closing would not occur;
36. As a result of such a default, we were advised of Quebec Waters Inc.'s failure to complete the sale transaction and instructed by EVH to confiscate a \$1,000,000 deposit held in our trust account which deposit was previously advanced by Quebec Waters, Inc. pursuant to their offer to purchase;

- **Eaux Vives Water Bottling Corp. Offer**

37. On May 25, 2005 and as further revised on May 26, 2005, following discussions with Morgan Stanley & Co., the Monitor received a signed expression of interest, indicating that they were "highly interested" in acquiring EVH's assets (the "EOI");
38. In view of the content of the EOI, as well as taking into account previous canvassing results and terms and conditions of previous offers received, EVH and the Monitor concluded that it was not necessary to initiate a new sale process and canvass the market once again;
39. Pursuant to the EOI and further negotiations with Morgan Stanley & Co., on July 15, 2005, the entity affiliated with Morgan Stanley & Co. selected as its nominee for the transactions, Eaux Vives Water Bottling Corp., (the "Purchaser") entered into an asset purchase agreement ("APA") with EVH, pursuant to which EVH agreed to sell all of its assets to the Purchaser.
40. The financial considerations of the APA are summarized as follows:
 - a) The total purchase price is \$18,000,000 payable in cash for EVH's Assets as defined in the offer. It will be allocated between the assets at the discretion of the Offeror;
 - b) A deposit of \$500,000, advanced by the Purchaser upon signature of the APA, is being held in Trust by Davies Ward Phillips and Vineberg;
 - c) Within 24 hours of the obtainment of certain consents and authorizations, the balance of the purchase price shall be payable to the Monitor;

41. The conclusion of the transactions therein contained in the APA is also conditional, amongst others, on the following:
- a) The Superior Court shall authorize the sale of the assets to the Purchaser as contemplated, by way of final judgment without any possibility of appeal, or executory notwithstanding appeal;
 - b) The appointment of the Monitor as Interim Receiver to proceed to the sale of the assets to the Purchaser;
 - c) An authorization to be granted by the *Commission de protection du territoire agricole* pursuant to *An Act Respecting the Acquisition of Farm Land by Non-Residents (Quebec)* for the transfer of land, which was granted on July 22, 2005;
 - d) The sale of the assets shall convey to the Purchaser a good and valid title, free and clear of any prior claim, hypothec, encumbrance or other security;
 - e) The non-occurrence of a material adverse effect to the assets of EVH between the time of execution of the APA and the closing date;
 - f) Closing to take place no later than September 30, 2005;
42. The Debtors filed on July 22, 2005 with the Superior Court (sitting as Tribunal designated under the *Companies' Creditors Arrangement Act*) a motion with respect to the sale of certain assets and the appointment of an interim receiver;
43. The motion, which seeks the authorization to complete the sale to Eaux Vives Water Bottling Corp., will be heard by the Court on July 29, 2005;

VII. PLAN OF ARRANGEMENT TO BE FILED

44. As part of EVH's process to finalize the terms and conditions of its Plan of Arrangement the following steps must be completed:
- a) Update books and records and finalized list of creditors;
 - b) Analyze the proofs of claims received to identify any differences and, as such, deal with creditors' claims, with the objective to resolve issues and come to an agreement as to amounts owed by the Debtors to creditors, the whole subject to the Claim Bar Date of July 30, 2004;
 - c) Complete a sale transaction of EVH's assets;
 - d) Deposit the proceeds of such a sale with Richter, which will be used to satisfy the financial terms of the Plan of Arrangement, to reimburse the DIP loan and pay professional fees and other expenses;
 - e) Reimburse the DIP financing indebtedness to RBC;
45. The filing of a Plan of Arrangement by the Debtors to their creditors will occur following the closing of a sale transaction;

VIII. MOTION FOR THE EXTENSION OF TIME FOR THE FILING OF THE PLAN OF ARRANGEMENT

46. Pursuant to the Extension Order rendered on May 27, 2005, the stay period expires on July 29, 2005. Debtors are now seeking an extension of the stay period to December 16, 2005, inclusively;
47. An extension of the stay period is necessary for Debtors to complete a sale transaction with respect to its assets;
48. The conclusion of the contemplated sale should enable Debtors to finalize the terms of the Plan of Arrangement to be filed;
49. During this reference period, Debtors will rely on the funds presently available to support the safeguard measures;
50. The cash flow projections for the period July 15, 2005 to December 16, 2005 indicate that Debtors will have sufficient funds to support their current operating obligations;
51. The DIP lender does not contest the extension of a hundred and forty (140) days that would allow the parties to finalize a transaction with Eaux Vives Water Bottling Corp. and the Debtors to file a Plan of Arrangement;

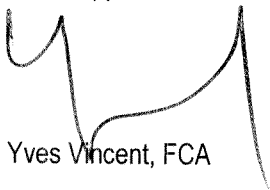
IX. MONITOR'S RECOMMENDATION

52. Based on our review of the information provided to us, as previously discussed in this Report, as well as our assessment of Debtors' good faith in dealing with its affairs, the Monitor recommends that Debtors' request for an extension of time for the filing of the Plan of Arrangement to December 16, 2005 be granted.

All of which is respectively submitted by RSM Richter Inc. in its capacity as Court-Appointed Monitor of EAUX VIVES HARRICANA INC., EVH U.S.A. INC. and LES SOURCES PÉRIGNY INC.

DATED AT MONTREAL, this 28th day of July, 2005.

RSM Richter Inc.
Court-Appointed Monitor



Yves Vincent, FCA

EAUX VIVES HARRICANA INC.

Cash flow projections

For the period December 14, 2005 to February 24, 2006

	CASH FLOW RANGE	
FUNDS ON DEPOSIT (OPENING BALANCE)	\$14,875,000	\$14,875,000
INFLOWS		
Interest revenue (Note 1)	100,000	100,000
TOTAL INFLOWS	100,000	100,000
CASH OUTFLOWS (Note 2)		
Professional Fees		
Davies, Ward Phillips & Vineberg	75,000	125,000
RSM Richter	75,000	125,000
Legal advisor to Monitor	10,000	20,000
Subtotal	160,000	270,000
Other Expenses		
Operations	Nil	Nil
Government Canada & Québec (capital tax) (Note 3)	460,000	500,000
Subtotal	460,000	500,000
TOTAL OUTFLOWS	620,000	770,000
FUNDS ON DEPOSIT (CLOSING BALANCE)	\$14,355,000	\$14,205,000

Note 1: Interest

Interest revenue is calculated for the period ended February 24, 2006.

Note 2: Professional fees

Since EVH has no commercial activities nor any assets to secure, the only expenses to be incurred relate to the finalization of the Plan of Arrangement and the filing of tax returns.

Note 3: Government Canada & Québec (capital tax)

EVH must file corporate tax returns for 2004 and 2005.

DATED AT MONTREAL, this 14 day of December, 2005

RSM Richter Inc.
Court-appointed Monitor

Yves Vincent, FCA