

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-022700-047

SUPERIOR COURT

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

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

EAUX VIVES HARRICANA INC.;

-and-

EVH U.S.A. INC.;

-and-

LES SOURCES PERIGNY INC.

Petitioners

-and-

RSM RICHTER INC.

Monitor

**MOTION FOR THE EXTENSION OF TIME
FOR THE FILING OF THE PLAN OF ARRANGEMENT
(Article 11(4) of the *Companies' Creditors Arrangement Act*)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL,
PETITIONERS, EAUX VIVES HARRICANA INC. AND EVH U.S.A. INC.,
RESPECTFULLY SUBMIT THAT:**

INTRODUCTION

1. Petitioners are seeking an extension of the Initial Order (as defined below) for a period of sixty-two (62) days, expiring on Monday, November 1, 2004 (the "Extended Period") in order, *inter alia*, to complete a transaction with respect to their assets and present a plan of arrangement to its creditors;

Eaux Vives Harricana Inc.

2. Eaux Vives Harricana INC. ("EVH INC."), is a legal person, duly constituted under the laws of Quebec;
3. EVH INC. is in the business of harnessing, bottling, distributing and marketing bottled water;

EVH U.S.A. Inc.

4. EVH U.S.A. INC. ("EVH U.S.A."), is a legal person, duly constituted under the laws of Delaware, U.S.A.;
5. EVH U.S.A. solely acts as a marketing, sales and distributing agent for EVH INC. and has no customers other than EVH INC.;
6. As such, EVH U.S.A. is dependent upon EVH INC., which explains the present joint filing;

Les Sources Périgny Inc.

7. Les Sources Périgny Inc. ("**Sources Périgny**") is a legal person, duly constituted under the laws of Quebec;
8. Sources Périgny is a wholly-owned subsidiary of EVH INC.;
9. While Sources Périgny is a distinct legal entity from EVH Inc., it has no cash other than EVH Inc.'s and its assets and liabilities cannot be dissociated from EVH INC.'s assets and liabilities, which explains the present joint filing;
10. Petitioners therefore hereby request this Court to grant Source Périgny the same reliefs granted to EVH INC. and EVH USA by virtue of the Initial Order (as defined below), as extended, renewed and amended;

THE CCAA PROCEEDINGS

11. EVH INC. and EVH U.S.A. (collectively, "EVH", which may from time to time refer to EVH INC. and/or EVH U.S.A. and/or Sources Périgny) are currently unable to meet their liabilities generally as they become due and have sought the issuance of an initial order under the CCAA, as more fully appears from the Court record;
12. Indeed, on March 19, 2004, EVH filed a Motion for the Issuance of an Initial Order (the "**Initial Motion**"), the whole as more fully appears from the Court record;
13. As per the terms of the order rendered by Mr. Justice François Rolland, dated March 19, 2004 (the "**Initial Order**"), the remedies provided for by the CCAA are applicable to EVH;
14. The Initial Order granted EVH, amongst other things, a stay of proceedings for thirty (30) days, allowed for the filing of a plan of arrangement, appointed RSM Richter Inc. as Monitor and granted other reliefs, as more fully appears from the Court record;
15. Within ten (10) days from the Initial Order and in accordance with same, the Monitor sent a copy of it to every known creditor of EVH;

16. On April 15, 2004, pursuant to a Motion for Extension of Time for the Filing of the Plan of Arrangement (the "**First Motion for Extension**"), Mr. Justice François Rolland rendered an order extending and amending the Initial Order until Tuesday, June 2, 2004 (the "**First Extension Order**"), as more fully appears from the Court's record;
17. On June 1, 2004, pursuant to another Motion for Extension of Time for the Filing of the Plan of Arrangement (the "**Second Motion for Extension**"), Mr. Justice François Rolland rendered an Order extending and amending the Initial Order until Tuesday, August 31, 2004, as more fully appears from the Court's record;
18. EVH hereby reiterates any and all of the allegations of the Initial Motion, the First Motion for Extension and the Second Motion for Extension;
19. EVH is now seeking a further extension of the Initial Order for a period of sixty-two (62) days, expiring on Monday, November 1, 2004 (the "**Extended Period**") in order, *inter alia*, to complete a transaction with respect to its assets and present a plan of arrangement to its creditors;

THE OPERATIONS SINCE THE INITIAL ORDER

20. After the rendering of the Initial Order, EVH maintained for a while the operations it then had and took all the necessary steps in order to continue such operations;
21. Shortly after the rendering of the Initial Order, EVH laid-off seven (7) employees in order to reduce its expenses, in accordance with its forecasts. In addition, two (2) employees, including the plant manager Réjean Parent, since departed for personal reasons. Mr. Parent's supervisory functions are currently occupied by Mrs Julie Cadorette. EVH currently has three employees, including one on a part-time basis;
22. After the rendering of the Initial Order, EVH's inventory continued to be sold, and receivables to be collected. As of now, the sale of the remaining inventory under EVH's control is now finalized and the recoverable receivables have been collected;
23. In addition, efforts to conclude a transaction and obtain DIP Financing continued and were successful, as explained further below;
24. The employees of EVH that worked during that period have been fully paid;
25. EVH has paid its suppliers, or made arrangements, for services rendered or goods provided after the rendering of the Initial Order;
26. As of today, all payments to the Crown (as defined in the Initial Motion) are current;

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27. Since the rendering of the Initial Order, EVH has honoured its ongoing obligations;
28. EVH has taken, and will continue to take, all the available measures and steps required in order to maximize the payment to its creditors;
29. EVH has already filed its internal financial statement in support of the Initial Motion;
30. EVH files in support thereto, as **Exhibit R-1**, its latest cash flow forecast;
31. EVH has prepared Exhibit R-1 to the best of its knowledge, given the information available;

FINANCIAL SITUATION SINCE THE INITIAL ORDER

32. As stated earlier, the employees, the suppliers and the others creditors with claim that arose after the Initial Order have been paid. In addition, the Crown's claims are current.
33. EVH is not in breach of any of its obligations towards any third party for the period beginning after the Initial Order;
34. The sale of the inventory under EVH's control has been finalized and EVH has collected its recoverable account receivables;

SALE OF EVH OR ITS ASSETS

35. As stated in the Initial Motion, EVH concluded that it was in the best interest of its creditors to terminate its operations and to sell all of its assets or otherwise conclude a transaction;
36. Scotia Capital Inc. ("**Scotia**") was retained to find a buyer;
37. Scotia discussed the possibility of the purchase of the assets with over 60 prospective purchasers including North American and international beverage companies, bottled water companies, bottled water industry participants, financial buyers and distressed asset purchasers and liquidators;
38. Between April 6, 2004 and June 16, 2004 in excess of 30 parties received information packages from Scotia;
39. During the same time period as aforesaid, 14 parties executed confidentiality agreements and out of such 14 parties 9 visited the data room established for the sale process, in order to examine the books, records and other documents regarding the Petitioners therein contained and 7 such parties conducted site visits of EVH Inc.'s plant;

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40. Scotia has informed EVH that it is of the opinion that the public disclosure of the identity of any of the aforementioned parties would be prejudicial to the process. The Monitor has informed EVH that it agrees with the foregoing assessment;
41. On or about June 3, 2004 upon the recommendation of Scotia, EVH and Scotia extended the delay within which offers were to be filed to June 23, 2004;
42. A total of 4 formal offers were received by Scotia through the aforementioned process;
43. Further to the receipt of the offers and pursuant to the recommendation of Scotia, EVH has had discussions with the offeror it felt would provide the best purchase price;
44. On July 30, 2004, the offeror submitted a revised offer, which was accepted by EVH (the "**Accepted Offer**");
45. Some unexpected problems have been encountered since the acceptance of the said offer;
46. The negotiations between EVH and the offeror are still ongoing;
47. A demand letter has just been sent, seeking resolution of the said problems;
48. EVH, Scotia and Monitor believe it is necessary to pursue the possible conclusion of the existing Accepted Offer and/or to explore other options with any other party. Such a transaction is expected to be concluded prior to the end of October;
49. The purchase price from any such transaction will be distributed in accordance with the plan of arrangement to be filed;
50. Subject to the transaction being completed in the expected time frame, EVH expects to be in a position to submit a plan of arrangement to its creditors before the end of November;

DEBTOR IN POSSESSION FINANCING

51. Given the limited revenues generated from the sale of the remaining inventory and the collection of the residual accounts receivables, and the fact that EVH INC. has ceased to operate, additional funds became necessary;
52. On June 9, 2004, in order to meet EVH's urgent need of money pending the completion of a financing agreement, EVH and Parmalat Canada Limited (the "**Temporary DIP Lender**") concluded a Temporary DIP Financing Agreement providing for an advance of up to \$100,000 (the "**Temporary DIP Financing Agreement**"), as it appears from the Court's record;

53. On June 10, 2004, Mr. Justice François Rolland rendered an Order approving the Temporary DIP Lender, as it appears from the Court's record;
54. On June 10, 2004, EVH and Royal Bank Asset Based Finance, a division of Royal Bank of Canada (the "DIP Lender") concluded a DIP Financing Agreement providing for an advance of up to \$3,800,000 (the "DIP Financing Agreement"), as it appears from the Court's record;
55. On June 15, 2004, Mr. Justice François Rolland rendered an Order approving the DIP Financing Agreement, as it appears from the Court's record;
56. Since the approval of the DIP Financing Agreement, EVH has been using the DIP Financing provided by the Royal Bank of Canada to finance its funds requirements;
57. The advances provided in connection with the Temporary DIP Financing Agreement have now been entirely reimbursed to the Temporary DIP Lender;

EXTENSION OF THE ORDER ISSUED UNDER THE CCAA

58. EVH has, since the issuance of the Initial Order, acted in good faith towards its employees, creditors and customers and has done everything in its power in order to maximize the payment to its creditors;
59. EVH is confident that a transaction will be concluded and that it will file a plan of arrangement;
60. EVH and the Monitor intend to call a Meeting of all EVH's creditors to approve the plan to be filed;
61. Given the above, EVH hereby seeks that an order be rendered under the CCAA extending the time for the filing of plan of arrangement which will be submitted to all of its creditors and maintain the stay of proceedings and the various orders rendered, the whole for the length of the Extended Period;

THE MONITOR

62. EVH asks this Court to confirm the appointment of RSM Richter Inc., (Mr. Yves Vincent, C.A., C.I.R.P. being the officer responsible for the administration), to act as Monitor in conformity with the provisions of the CCAA and the order to be rendered herein;
63. In addition to any power or obligation provided for by the CCAA, EVH hereby requests this Honourable Court to grant the same powers and impose the same obligations upon the Monitor as in the Initial Order;

CONCLUSIONS SOUGHT

64. Given the fact that, as described in this Motion, the circumstances are such that an order should be rendered, and given the fact that EVH has acted and is acting in good faith and with due diligence, Petitioner respectfully submits that this petition should be granted as per its conclusions;
65. Indeed, an extension of the Initial Order during the Extended Period would be appropriate and for the best interest of EVH and its creditors;
66. It is in the best interests of EVH's employees, creditors and customers that the present Motion be granted as per its conclusions. Should the present Motion be granted as per its conclusions, EVH's creditors shall suffer no prejudice;
67. Considering the situation, EVH respectfully submits that the service of a notice of presentation of the present petition is not necessary and would not serve the interests of its creditors and/or of justice in general. In addition, no purported creditors, other than Robbie Manufacturing Inc. and Goodgoll Curtis Inc., have asked to be served with this Motion, or any motion made by EVH;
68. The present Petition is well-founded in fact and in law;

THEREFORE, PETITIONERS PRAY THIS HONOURABLE COURT TO:

GRANT the present "Motion for the Extension of time for the filing of the plan of arrangement" (the "**Motion**");

GRANT the remedies and relief sought by Petitioners, Eaux Vives Harricana Inc. ("**EVH INC.**"), EVH U.S.A., Inc. ("**EVH U.S.A.**") and Les Sources Périgny Inc. ("**Sources Périgny**") (collectively, "**EVH**" which may from time to time refer to EVH INC. and/or EVH U.S.A. and/or Sources Périgny);

EXEMPT EVH from the service of this Motion and of any notice or delay of presentation;

DECLARE that EVH INC., EVH U.S.A. and Sources Périgny are debtor companies within the meaning of Section 2 of the *Companies Creditors Arrangement Act* ("**CCAA**") and that said Act applies to them, as affiliated debtor companies in accordance with Section 3 of the CCAA;

DECLARE that EVH INC., EVH U.S.A. and Sources Périgny have acted and are acting in good faith and with due diligence and that, as appears from the Motion, the circumstances are such that the Order sought herein should be rendered (the "**Order**");

DECLARE that the allegations of EVH, and the affidavit in support thereof, are sufficient at this stage to grant the reliefs sought by EVH;

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EXTEND the Initial Order rendered on March 19, 2004 by Mr. Justice François Rolland, as amended and extended, and the stay of proceedings included therein until **Monday, November 1, 2004 inclusively**;

ORDER provisional execution of the Order, notwithstanding any appeal and without the necessity of furnishing any security;

THE WHOLE, without costs.

Montreal, August 27, 2004

DAVIES WARD PHILLIPS & VINEBERG

DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for Petitioners

TRUE COPY
Claver Ward
Phillips & Vineberg
DAVIES WARD PHILLIPS & VINEBERG LLP