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Le 11 juin 2004

PAR TÉLÉCOPIEUR

L'Honorable François Rolland
PALAIS DE JUSTICE
1 rue Notre-Dame est
Montréal (Québec) H2Y 1B6

Objet : Eaux Vives Harricana Inc.
Notre dossier: 88345-107428

Monsieur le Juge,

Vous trouverez ci-joint notre Requête intitulée « *Motion to Obtain an Order Approving a DIP Financing Agreement* », laquelle sera présentée devant vous ce mardi, 15 juin, à 9h30, en chambre 15.09.

Veillez noter que l'affiant, M. Mark Mangelsdorf, a approuvé le contenu de la Requête mais n'est pas en mesure de nous faire parvenir un affidavit signé devant notaire aujourd'hui. Nous vous ferons parvenir l'affidavit de M. Mangelsdorf dûment signé au cours de la journée de lundi.

Vous noterez de la Requête que la Banque royale du Canada a exigé que l'entente entre les débitrices et cette dernière demeure confidentielle et soit transmise à la Cour sous scellé. En conséquence, nous n'avons pas signifié copie de la pièce R-1 aux autres parties intéressées.

Veillez agréer, monsieur le Juge, l'expression de nos sentiments les meilleurs.

DAVIES WARD PHILLIPS & VINEBERG s.r.l.



Louis-Martin O'Neill

LMON/

Pièce jointe

c.c. Me Denis Ferland
M. Christopher Besant (par courriel)
Me Barry Landy (par courriel)
Me Stéphane Hébert (par courriel)
Me Sylvain Rigaud (par courriel)
RSM Richter Inc. (par courriel)
Eaux Vives Harricana Inc. (par courriel)

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MH # 1017711.1

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 PÉRIGNY INC.

Petitioners

-and-

RSM RICHTER INC.

Monitor

MOTION TO OBTAIN AN ORDER APPROVING A DIP FINANCING AGREEMENT
(Articles 4, 5 and 9 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., EVH U.S.A. INC. AND LES
SOURCES PÉRIGNY INC., RESPECTFULLY SUBMIT THAT:**

INTRODUCTION

1. Petitioners respectfully ask that this Honourable Court, *inter alia*, approves a debtor in possession ("DIP") financing agreement and renders the necessary orders so as to enforce this agreement, the whole as more fully set out in the conclusions below;

BACKGROUND

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;

The CCAA Proceedings

10. EVH INC., EVH U.S.A. and Sources Périgny (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 order under the CCAA, as more fully appears from the Court record;
11. Since the issuance of the Initial Order, EVH continues to act in good faith and with due diligence;
12. EVH refers this Court to the content of its *Motion for the Issuance of an Initial Order* dated March 19, 2004 and of its *Motion for the Extension of Time for the Filing of the plan of arrangement* dated May 28, which provide the Court with the complete background of this matter;

DEBTOR IN POSSESSION FINANCING

13. 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 suspended the plant's operations, additional funds are necessary;
14. As this Court was previously informed, EVH has been seeking financing since the rendering of the Initial Order;
15. In addition, as per the Initial Order, this Court has already authorized EVH to:

[16] ALLOW EVH to enter into, at a later date, a DIP financing agreement with any party ready to advance such funds, on such terms and conditions as this Court may later approve;

16. 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;
17. On June 10, 2004, Mr. Justice Rolland rendered an Order approving the Temporary DIP Lender and granting a first ranking charge (the "**Temporary DIP Charge**") over all of the assets of EVH to secure the repayment of such advance by the Temporary DIP Lender, the Temporary DIP Charge ranking only after the Administrative Charge and the Directors Charge (as defined in the Initial Order, as extended and renewed), as it appears from the Court's record;
18. 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 \$5,000,000 (the "**DIP Financing Agreement**"), as more fully appears from a copy of the DIP Financing Agreement attached hereto as **Exhibit R-1** (to be filed and kept under seal);
19. As per the DIP Financing Agreement, the DIP Lender has specifically requested that the DIP Financing Agreement be kept confidential, and Exhibit R-1 is therefore filed under seal. Petitioners therefore respectfully submit that given the DIP Lender's request, the DIP Financing Agreement should be kept under seal in the Court's record so as to preserve its confidentiality;
20. The funds to be advanced to EVH pursuant to the DIP Financing Agreement are necessary to allow EVH to continue to assume its current liabilities during the completion of the CCAA process including, without limitation, its payroll;
21. Without such advance of funds, EVH will not be able to make said payments nor will it be able to file a plan of arrangement, the whole to the prejudice of its creditors;
22. It is absolutely essential for EVH to receive said advance;
23. As per the DIP Financing Agreement, the DIP Lender has asked, before advancing funds to EVH, that an order of this Court be rendered;
24. It is a condition of such advance that an order of this Court be rendered granting a first ranking charge (the "**DIP Charge**") over all of the assets of EVH Inc. and Sources Périgny (the "**DIP Borrowers**") to secure the repayment of such advance by the DIP Lender, the DIP Charge ranking only after the Administration

Charge and the Directors' Charge (as defined in the Initial Order, as extended and renewed);

25. Said DIP Charge could be further evidenced by, inter alia, the execution and registration of security documents (the "**DIP Security**"), as per the DIP Financing Agreement;
26. The DIP Lender also requires an order of this Court declaring that the financing transaction contemplated by the DIP Financing Agreement and the granting of the DIP Charge and the DIP Security over the assets of the DIP Borrowers does not constitute a fraudulent preference or reviewable transaction, does not constitute illegal financial assistance by a subsidiary or could not otherwise be attacked or challenged under any applicable law and is otherwise valid for all intents and purposes;
27. The granting of such a prior first charge over the assets of the DIP Borrowers in favour of the DIP Lender would not cause prejudice to any creditors; quite to the contrary, it would be to the benefit of all of the creditors of EVH;
28. Thus, this Court should grant the conclusions sought in respect of the DIP Financing Agreement as it is the sole means available to allow EVH to complete the process undertaken;

CONCLUSIONS SOUGHT

29. 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, Petitioners respectfully submit that this motion should be granted as per its conclusions;
30. 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;
31. 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;
32. The present Motion is well-founded in fact and in law.

THEREFORE, PETITIONERS PRAY THIS HONOURABLE COURT TO:

GRANT the present "Motion to Obtain an Order Approving a DIP Financing Agreement" (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**") (sometimes, 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;

TEMPORARY DEBTOR IN POSSESSION FINANCING

AUTHORIZE EVH to reimburse all amounts owed to Parmalat Canada Limited in relation with the Temporary DIP Financing Agreement concluded on June 9, 2004 (the "**Temporary DIP Financing Agreement**");

DECLARE that the Temporary DIP Charge (as created in the Order rendered by Mr. Justice François Rolland on June 10, 2004) shall be extinguished upon the filing in this Court's record of a certificate by EVH or the Monitor stating that all amounts owed to Parmalat Canada Limited in relation with the Temporary DIP Financing Agreement have been reimbursed;

DEBTOR IN POSSESSION FINANCING

DECLARE that EVH Inc. and Sources Périgny (the "**DIP Borrowers**") are authorized and empowered to borrow from Royal Bank Asset Based Finance, a division of Royal Bank of Canada (the "**DIP Lender**"), such monies from time to time as the DIP Borrowers may consider necessary or desirable, up to an aggregate principal amount of \$5,000,000 or such lesser amount as calculated in accordance with the Commitment Letter entered into between the DIP Lender over the DIP Borrowers dated June 10, 2004 (the "**DIP Financing Agreement**"), to fund the ongoing costs and expenses, the restructuring, and/or the sale process (the "**DIP Loan**" or the "**DIP Financing**") on terms to be agreed upon between the DIP Lender and EVH, as per the terms of the DIP Financing Agreement, Exhibit R-1;

DECLARE that all of the DIP Borrowers present and future property, assets, immovable or movable, tangible and intangible, is hereby charged (hypothecated) in favour of the DIP Lender (the "**DIP Charge**") as security of the repayment of the DIP Loan and all other obligations of the DIP Borrowers under the DIP Financing Agreement, together with interest, fees, charges and other amounts payable in respect thereof without the necessity of executing or registering any further documents and that neither the DIP Borrowers nor the DIP Lender shall be required to file, register, publish, record or perfect the DIP Charge. However, this Court orders that EVH, is hereby authorized and directed to execute and deliver in favour of the DIP Lender all such security, subordination

and other documentation as may be contemplated or required by the DIP Lender, charging all of the existing and after-acquired property, assets and undertaking of the DIP Borrowers, (such security documents collectively referred to herein as the "**DIP Security**") and the DIP Lender is hereby authorized, but not obliged, to take such steps as it deems necessary or appropriate to register, publish, record or perfect the DIP Security;

DECLARE that the DIP Charge and the DIP Security shall have first priority over the universality of all of the present and future undertaking, property, rights and assets of the DIP Borrowers (the "**Property**") ranking in priority to all other charges, encumbrances, hypothecs or security but subject to the Administration Charge and the Directors' Charge created in the Initial Order rendered by Mr. Justice François Rolland on March 19, 2004 (as extended, amended and renewed);

DECLARE that the DIP Charge shall be deemed valid for all intents and purposes and does not have to be published or registered to be valid and opposable to any third parties;

DECLARE that notwithstanding the pendency of these proceedings and the declarations of insolvency made herein, the pendency of any petitions for receiving orders hereafter issued pursuant to the *Bankruptcy and Insolvency Act* in respect of EVH and any receiving orders pursuant to any petitions, and the provisions of any federal or provincial statute:

- a) the obligations of the DIP Borrowers pursuant to the DIP Loan, DIP Charge and DIP Security and all documents delivered pursuant thereto constitute legal, valid and binding obligations of the DIP Borrowers enforceable against them in accordance with the terms thereof; and
- b) the payments made by the DIP Borrowers pursuant to such documents, whether made before, on or after the date of this Order and the granting or assignment of the security constituted by the DIP Charge and DIP Security do not constitute fraudulent preferences, reviewable transactions and cannot be challenged or attacked under any other applicable law;

DECLARE that neither the DIP Financing Agreement nor any payment nor any transaction made by Sources Périgny in consequence thereof constitutes prohibited financial assistance by Sources Périgny in favour of EVH Inc. pursuant to Division III of the *Companies Act (Quebec)*;

DECLARE that the DIP Loan, DIP Charge and DIP Security shall be deemed to be valid and effective notwithstanding any negative covenants, prohibitions or other similar provisions with respect to incurring debt or the creation of liens,

hypothecs or security contained in any existing agreement between EVH and any lender, and that, notwithstanding any provision to the contrary in such agreements;

DECLARE that the DIP Lender and the directors of EVH shall have no liability to any person whatsoever as a result of any breach of any agreement caused by or resulting from the DIP Borrowers entering into the DIP Loan, the creation of the DIP Charge or the execution, assignment and delivery of the DIP Security;

DECLARE that the DIP Lender shall be treated as an unaffected creditor in these proceedings with regard to the DIP Loan, DIP Charge and DIP Security;

ORDER that the DIP Financing Agreement be kept under seal in this Court's record;

ORDER the provisional execution of the Order to be rendered herein notwithstanding appeal;

THE WHOLE without costs.

Montreal, June 11, 2004


DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for Petitioners

AFFIDAVIT

I, the undersigned, Mark Mangelsdorf, domiciled and residing at 304 Loring Avenue, Pelham, State of New York, 10803 solemnly declare the following:

1. I am the Vice-President and General Manager of Eaux Vives Harricana Inc. and EVH U.S.A. Inc. and a duly authorized representative of Les Sources Périgny Inc.;
2. I have taken cognizance of the Motion to Obtain an Order Approving a DIP Financing Agreement dated June 11, 2004 (the "**Motion**");
3. All the facts alleged in the Motion are true.

AND I HAVE SIGNED

Mark Mangelsdorf

SWORN TO BEFORE ME AT Wallington, New Jersey, U.S.A.

the ●th day of June 2004

Notary Public

NOTICE OF PRESENTATION

RSM RICHTER INC.
c/o **Mr. Yves Vincent**
2 Place Alexis-Nihon
3500, de Maisonneuve Blvd. West
22nd Floor
Montreal, Quebec H3Z 3C2

ROBBIE MANUFACTURING INC.
c/o: **Me Christopher Besant**
CASSELS BROCK
2100 Scotia Plaza
40 King Street West
Toronto, Ontario M5H 3C2

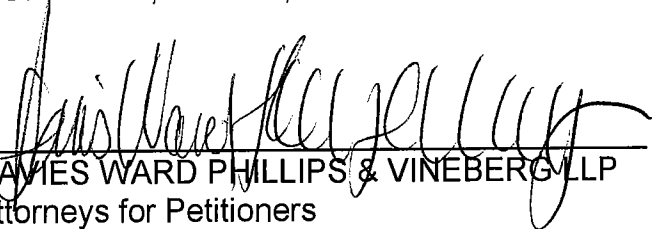
POULIOT MERCURE
c/o **Mr. Stéphane Hébert**
1155 René Lévesque blvd. W., 31 Floor
Montreal, Quebec H3B 3S6

GOODGOLL CURTIS INC.
c/o: **Me Barry Landy**
SPIEGEL SOHMER
5 Place Ville Marie, suite 1203
Montreal, Quebec H3B 2G2

OGILVY RENAULT
c/o **Me Sylvain Rigaud**
1981, McGill College Avenue
Suite 1100
Montreal, Quebec H3A 3C1

TAKE NOTICE that the present Motion to Obtain an Order Approving a DIP Financing Agreement will be presented on **June 15, 2004**, 9:30 a.m. or so soon thereafter as Counsel may be heard, at Montreal Courthouse located at 1 Notre-Dame Street East in Montreal, Room 15.09.

MONTREAL, June 11, 2004


DAVID WARD PHILLIPS & VINEBERG LLP
Attorneys for Petitioners

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-022700-047

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LES SOURCES PERIGNY INC.

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-and-

RMS RICHTER INC.

Monitor

LIST OF EXHIBITS

Motion to Obtain an Order Approving a DIP Financing Agreement

EXHIBIT R-1: Copy of the DIP Financing Agreement (under seal)

MONTREAL, June 11, 2004


DAVIES WARD PHILLIPS & VINEBERG LLP
Attorneys for Petitioners