

**SUPERIOR COURT
(COMMERCIAL DIVISION)**

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

NO: 500-11-022700-047

DATE: June 8, 2004

IN THE PRESENCE OF FRANÇOIS ROLLAND S.C.J.

IN THE MATTER OF THE ARRANGEMENT OF :

EAUX VIVES HARRICANA INC., legal person, duly constituted under the laws of Québec, having its head office at 11 Chemin des Sablières, St-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 PERIGNY INC., legal person, duly constituted under the laws of Quebec, having a place of business at 11 Chemin des Sablières, St- Mathieu-D'Harricana, Province of Quebec, District of Abitibi, JOY 1M0

Petitioners

-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

ORDER

- [1] I, the undersigned, Judge of the Superior Court, in and for the District of Montréal, after having examined the Motion to Obtain an Order to Set Forth the Claims Bar Date and to Establish a Claim Determination Process (the “**Motion**”):
- [2] **GIVEN** the reasons alleged in said Motion;
- [3] **GIVEN** the fact that said Motion is well founded;
- [4] **FOR THESE REASONS:**
- [5] **GRANT** the present Motion (the “**Motion**”);
- [6] **GRANT** the remedies and relief sought by Petitioners;
- [7] **EXEMPT** the Applicants from the service of this Motion and of any notice or delay of presentation;
- [8] **ORDER** that the Monitor, in addition to its prescribed rights and obligations under the CCAA and under the Initial Order (as amended and extended), shall assist the Applicants in connection with the administration of the Claims Process provided for herein, including the determination of Claims of Creditors, as requested by the Applicants from time to time, and is hereby directed and empowered to take such other actions and fulfill such other roles as are contemplated by this Order;

DEFINITIONS

- [9] **ORDER** that the following terms in this Order, unless otherwise defined, shall have the following meanings ascribed thereto and any terms in capitalized letters in the following definitions not defined therein shall have the meaning described thereto in the Plan (as defined below):
- (a) “**Applicants**” means Eaux-Vives Harricana Inc.; EVH U.S.A. Inc. and Les Sources Périgny Inc., or any of them, as the case may be;
- (b) “**Business Day**” means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Montreal, Quebec;
- (c) “**Bar Date**” means 5:00 p.m. Eastern Standard Time on July 30, 2004;
- (d) “**Claim**” means any right of any Person against the Applicants, or any of them, in connection with any indebtedness, liability or obligation of any kind of the Applicants, in existence at the Determination Date and any interest then accrued thereon, whether or not such indebtedness, liability or obligation is reduced to

judgment, or is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known, unknown, by guarantee, by surety or otherwise and whether or not such right is executory in nature, including without limitation, the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future based in whole or in part on facts which existed prior to or at the Determination Date and, without limitation, shall include any (i) Secured Claim, (ii) Crown's Claim, (iii) Employees' Claim, (iv) Unsecured Claims, (v) Intercompany Claim, or (vi) any other claims that would have been claims provable in bankruptcy had the Applicant become bankrupt on the Determination Date, but a "Claim" does not include an Unaffected Obligation. Any Claim shall not include any interest from and after the Determination Date, or any costs, except as expressly provided for in this Plan;

- (e) "**CCAA**" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 as from time to time amended;
- (f) "**Court**" means the Quebec Superior Court (Commercial Division);
- (g) "**Creditor**" means any Person having a Claim and may, if the context requires, mean an assignee of a Claim or a trustee, receiver, receiver manager or other Person acting on behalf of such Person. A Creditor includes a Creditor of Repudiated Contract. A Creditor shall not include an Unaffected Creditor in respect of that person's Claim resulting from an Unaffected Obligation;
- (h) "**Creditor of Repudiated Contract**" means a person with a Claim which results from a Repudiated Contract in respect of that Claim.
- (i) "**Creditor Document Package**" means a document package which includes a Proof of Claim (including an instruction letter explaining how to complete the Proof of Claim) and a copy of this Order;
- (j) "**Determination Date**" means March 19, 2004;
- (k) "**Effective Date**" means the latest of the following dates:
 - (i) the first Business Day following the date on which the delay to appeal the final Order issued under the CCAA approving the Plan (as hereinafter defined) has expired without any appeal having been instituted; or
 - (ii) the first Business Day following the day where all the conditions that must be fulfilled for the Plan to be implemented (as may be

described in the Plan to be filed) are properly fulfilled, or waived in writing;

- (l) “**Initial Order**” means the Order rendered by Mr. Justice François Rolland, dated March 19, 2004 in Superior Court File no. 500-11-022700-047, as extended and renewed;
- (m) “**Notice of Revision or Disallowance**” means a Notice advising a Creditor that the Applicants have revised or rejected all or part of such Creditor’s claim as set out in the Proof of Claim;
- (n) “**Person**” means any individual, partnership, joint venture, entity, corporation, unincorporated organization, government or agency or instrumentality thereof, or any other juridical entity howsoever designated or constituted;
- (o) “**Plan**” means any plan of arrangement which the Applicants, or any of them, will file in the future under the CCAA;
- (p) “**Proof of Claim**” means a Proof of Claim Form filed by a Creditor in accordance with this Order or any other Order and the Plan;
- (q) “**Proof of Claim Form**” means the form of Proof of Claim as prepared by the Monitor;
- (r) “**Proven Claim**” means the amount and status of a Claim of a Creditor as determined in accordance with the procedure described herein; and
- (s) “**Repudiated Contract**” means any agreement and contract of any nature whatsoever, whether verbal or written, (including but not limited to a contract of employment), to which any of the Applicants is a party and which has been terminated, repudiated, resiliated, cancelled, amended or withdrawn by any of the Applicants as per the terms of the Initial Order as amended and extended;
- (t) “**Unaffected Creditor**” means a Person having a Claim in respect of an Unaffected Obligation but only in respect of such Unaffected Obligation and to the extent that this Plan does not affect said Claim;
- (u) “**Unaffected Obligation**” means the obligations of the Applicant towards the DIP Lenders and any creditor so defined in the Plan to be filed;

PROOF OF CLAIM FILING

- [10] **ORDER** that the Claims of Creditors who do not file a Proof of Claim by the Bar Date be and are thereafter prevented from doing so, and the Claims be forever barred, prescribed and extinguished;
- [11] **ORDER** that the value and status of every Claim of a Creditor for voting and for distribution purposes under any Plan shall be finally determined in accordance with the forms and procedures hereby authorized and shall be the Proven Claim for such Creditor;
- [12] **ORDER** that any Creditor (unless dealt with differently in this Order) that has not duly submitted a Proof of Claim by the Bar Date in accordance with the instructions therein and with supporting documentation in respect of its Claim:
- (a) shall not be entitled to any further notice;
 - (b) shall not be entitled to participate as a Creditor in these Proceedings;
 - (c) shall not be entitled to vote on any matter in these Proceedings, including the Plan;
 - (d) shall be barred from receiving and distribution in respect of such Claim; and
 - (e) shall be barred from seeking payment of said Claim;
- and further **ORDER** that in any such case, the Applicants shall forever be discharged of said Claim;
- [13] **ORDER** that any Creditor of Repudiated Contract which does not file a Proof of Claim by the Bar Date in accordance with the instructions therein and with supporting documentation in respect of its claim:
- (a) shall not be entitled to any further notice; and
 - (b) shall not be entitled to participate as a Creditor in these proceedings (which may, by way of example, include, but shall not be limited to, the right to vote on the Plan or the right to receive any distribution under the Plan), until such time as such Creditor of Repudiated Contract has filed a Proof of Claim, whereupon such Creditor of Repudiated Contract shall be entitled to participate in all steps which remain outstanding in the proceedings as long as such Creditor of Repudiated Contract has filed a Proof of Claim by a date which is the earlier of:

- (i) thirty (30) days from the date at which its contract has been repudiated; or
- (ii) the Effective Date;

failing which the claim of such Creditor of Repudiated Contract shall be forever barred, prescribed and extinguished;

[14] **ORDER** that, for the purpose of facilitating the identification and settlement of the Claims of Creditors:

- (a) after the issuance of this Order, the Monitor will send a Creditor Document Package by ordinary mail to each known Creditor identified by the Applicants;
- (b) after the issuance of this Order, the Monitor shall cause to be published a notice to creditors (hereinafter the "Notice to Creditors") in the Globe and Mail (National Edition), and La Presse informing them of the Bar Date and whom to contact in order to obtain a Creditor Document Package; and
- (c) the Monitor shall dispatch by ordinary mail, courier, facsimile transmission or electronic mail following receipt of a request for same a copy of the Creditor Document Package to any Creditor requesting such material, provided such request is received in writing prior to the Bar Date;

[15] **ORDER** that:

- (a) each Proven Claim shall be reduced by the amount of any subsequent payment thereon, the application of any discount in respect thereof and any other subsequent credit against the Claim or the Creditor; and
- (b) any Claims denominated in any currency other than Canadian dollars shall, for the purposes of this Order, be converted to and constitute obligations in Canadian dollars, such calculation to be effected by the Monitor using the Bank of Canada noon spot rate on the Determination Date;

DISALLOWANCE AND REVISION:

[16] **ORDER** that the Monitor, with the assistance of the Applicants, shall review all Proofs of Claim filed on or before the Bar Date, and the Monitor, in consultation with the Applicants, shall accept, revise or disallow the amounts and/or terms set out therein for voting and distribution purposes under the Plan. The Monitor shall send to such Creditor a Notice of

Revision or Disallowance within a reasonable delay after a Claim has been revised or disallowed;

- [17] **ORDER** that the Monitor is hereby authorized and directed to use reasonable discretion as to the adequacy of compliance of the manner in which a Proof of Claim is completed and executed and may, where it is satisfied a Claim has been adequately proven, waive strict compliance with the requirements of this Order as to completion and execution of a Proof of Claim;

APPEAL OF NOTICE OF REVISION OR DISALLOWANCE:

- [18] **ORDER** that any Person who intends to dispute a Notice of Revision or Disallowance shall make a Motion to the Court, on notice to the Monitor and the Applicants, returnable as soon as reasonably possible but in any event within ten (10) days from service of the Notice of Revision or Disallowance;
- [19] **ORDER** that the Monitor, in conjunction with the Applicants, may consensually resolve and/or settle with any Creditor the amount of its Claim for voting and/or distribution purposes;
- [20] **ORDER** that where a Creditor receives a Notice of Revision or Disallowance and fails to make a Motion to the Court within the time limited therefore, the value and status of such Creditor's Claim for all purposes under the Plan shall be deemed to be as set out in the Notice of Revision or Disallowance and such value and status, if any, shall constitute such Creditor's Proven Claim;
- [21] **ORDER** that if the holder of a Claim or any subsequent holder of the whole of a Claim who has been acknowledged by the Monitor as the Creditor in respect of such Claim, transfers or assigns the whole of such Claim to another Person, neither the Monitor nor the Applicants shall be obligated to give notice to or to otherwise deal with a transferee or assignee of a Claim as the Creditor in respect thereof unless and until actual notice of transfer or assignment, together with satisfactory evidence of such transfer or assignment, shall have been received and acknowledged by the Monitor and thereafter such transferee or assignee shall for the purpose hereof constitute the Creditor in respect of such Claim. Any such transferee or assignee of a Claim shall be bound by any notices given or steps taken in respect of such Claim in accordance with this Order prior to receipt and acknowledgement by the Monitor of satisfactory evidence of such transfer or assignment;
- [22] **ORDER** that if the holder of a Claim or any subsequent holder of the whole of a Claim who has been acknowledged by the Monitor as the Creditor in respect of such Claim, transfers or assigns the whole of such

Claim to more than one Person or part of such Claim to another Person or Persons, such transfer or assignment shall not create a separate Claim or Claims and such Claim shall continue to constitute and be dealt with as a single Claim notwithstanding such transfer or assignment, and the Monitor and the Applicants shall in each such case not be bound to recognize or acknowledge any such transfer or assignment and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last holding such Claim in whole as the Creditor in respect of such Claim, provided such Creditor may by notice in writing to the Monitor direct that subsequent dealings in respect of such Claim, but only as a whole, shall be with a specified Person and in such event, such Creditor, such transferee or assignee of the Claim and the whole of such Claim shall be bound by any notices given or steps taken in respect of such Claim with such Person in accordance with this Order;

MEETING OF CREDITORS

- [23] **ALLOW** the Monitor, in conjunction with the Applicants, to convene a meeting of Creditors at a date to be determined by the Monitor and at a place that the Monitor will judge appropriate;
- [24] **ORDER** that a meeting of Creditors be convened for the purpose of voting on the Plan to be filed by the Applicants, unless the Creditors decide by ordinary resolution (in accordance with the definition of said expression under the BIA) to postpone said meeting;
- [25] **ORDER** that, further to the filing of the Plan, a notice of convocation of the meeting of creditors be sent, accompanied by a copy of the proposed Plan and related information and a voting form, to all Creditors;
- [26] **ORDER** that the Monitor shall preside over any meeting of Creditors and decide any question or dispute arising at any meeting, from which such decision any Creditors may appeal to the Court, within five (5) days of the rendering of same;
- [27] **ORDER** that the only Persons that will be entitled to attend a Creditors meeting will be the Persons, including a proxy holder, having a right to vote at the meeting, their lawyers, as well as the officers, directors, auditors, representatives, lawyers and professional advisors of the Applicants and the Monitor and further **ORDER** that any other Person can be admitted upon the invitation of the person presiding the Meeting or upon the unanimous consent of the attending Creditors;
- [28] **ORDER** that any Creditor which does not attend and is not represented by proxy will be entitled to vote on the Plan by filing with the Monitor a voting

letter properly filled and expressing his vote before the beginning of the meeting, failing which such Creditor will be prevented to vote;

- [29] **ORDER** that each creditor with a voting right will be entitled to a number of votes equal to the value in dollars of its Claim as determined by the Monitor or otherwise by the Court;
- [30] **ORDER** that, where any Creditor appeals a Notice of Revision or Disallowance to the Court, but the Proven Claim has not been finally determined prior to the date of any meeting called for the purpose of voting on the Plan, the Monitor, in conjunction with the Applicants, determine in accordance with the Initial Order (as amended and extended) and this Order the amount of the proof of claim for the purpose of voting. The amount determined by the Monitor, in conjunction with the Applicants, shall be the amount of the Proof of Claim admitted for voting purposes;

NOTICES AND COMMUNICATIONS:

- [31] **ORDER** that unless the present Order specifically states otherwise, any notice or other communication (including Notices of Revision or Disallowance) to be given under this Order by the Monitor or the Applicants to a Creditor, other than the Notice to Creditors, shall be in writing in substantially the form, if any, provided for in this Order. Such notice or other communication will be sufficiently given to a Creditor, if given by prepaid ordinary mail, by courier, by delivery, by facsimile transmission or by electronic mail to the Creditor to such address, facsimile number or electronic mail address for such Creditor as may be recorded in the books of the Applicants or to such other address, facsimile number or electronic mail address as such Creditor may request by notice to the Monitor and the Applicants given in accordance with this Order. Any such notice or other communication, (i) if given by prepaid ordinary mail, shall be deemed received on the third Business Day after mailing, (ii) if given by courier or delivery shall be deemed received on the next Business Day following dispatch, (iii) if given by facsimile transmission before 5:00 p.m. Eastern Standard Time on a Business Day shall be deemed received on such Business Day; (iv) if given by facsimile transmission after 5:00 p.m. Eastern Standard Time on a Business Day shall be deemed received on the next following Business Day, (v) if given by electronic mail before 5:00 p.m. Eastern Standard Time on a Business Day shall be deemed received on such Business Day; and (vi) if given by electronic mail after 5:00 p.m. Eastern Standard Time on a Business Day shall be deemed received on the next following Business Day;
- [32] **ORDER** that any notice or other communication (including, without limitation, Proofs of Claim to be given under this Order by a Creditor to the Monitor or to the Applicants) shall be in writing in substantially the form, if

any, provided for in this Order and will be sufficiently given only if given by courier, by delivery or facsimile transmission addressed to:

RMS RICHTER INC.
2 Place Alexis-Nihon
3500 de Maisonneuve West
22nd Floor
Montreal, Quebec
H3Z 3C2

Attention: Mr. Yves Vincent
Tel: (514) 934-3454
Fax: (514) 934-3504

with a copy to:

Eaux Vives Harricana Inc. /EVH U.S.A. Inc.
c/o Davies Ward Phillips & Vineberg LLP
1501, McGill College, 26th Floor
Montreal (Quebec) H3A 3N9

Attention: Me Denis Ferland
Tel: (514) 841-6423
Fax: (514) 841-6499

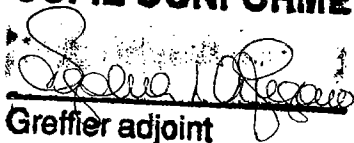
Any such notice or other communication by a Creditor shall be deemed received only upon actual receipt thereof during normal business hours on a Business Day, the Creditor having the burden to prove the receipt by the Monitor and/or the Applicants of any notice or other communication;

MISCELLANEOUS

- [33] **ORDER** that the Monitor and the Applicants may apply to this Honourable Court for further direction and/or to amend the Bar Date, the Claim Process, the Creditors Meeting procedures, the Monitor's powers and obligations or any other conclusion contained in this Order as so required;
- [34] **DECLARE** that any Order or judgment previously rendered shall be amended by this Order, which shall supercede any such previous Order or judgment;
- [35] **ORDER AND REQUEST** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada (including the assistance of any court in Canada pursuant to section 17 of the CCAA) and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted

pursuant to the Parliament of Canada or the legislature of any province and any court or any judicial, regulatory or administrative body of the United States and the states or other subdivisions of the United States and of any other country or state, to act in aid of and to be complementary to this Court in carrying out the terms of this Order;

- [36] **ORDER** the provisional execution of this Order notwithstanding appeal;
- [37] **THE WHOLE** without costs.

COPIE CONFORME

Greffier adjoint

(S) FRANÇOIS ROLLAND S.C.J.
FRANÇOIS ROLLAND S.C.J.