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**Subject:** D. Porthault

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Below is a copy of a note that Bernie Carl gave me in New York setting out his conditions for cooperating with whomever acquires the assets of the liquidated company in France

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**Preconditions -**

Any agreement would be conditioned on the Acquirer acquiring all or substantially all of the assets of SNDPF in its liquidating bankruptcy. Seller would not participate in that acquisition.

Seller's support for the Acquirer's bid for SNDPF's assets would be conditioned on the following three agreements:

1. The Acquirer would commit to maintain Porthault's primary industrial facility in France (e.g., at least 40% in value of the "cut & sew" finishing work on Porthault goods would continue to be completed in France) for the life of the agreements;
2. The Acquirer would agree that, for the life of the agreement, Porthault would continue to operate as a high luxury brand offering bespoke services within its retail segment; and
3. The Acquirer would offer multi-year employment contracts to six key employees, including the President of SNDPF, the manager of the Porthault NY store and four key sales personnel.

**Acquisition of the Assets of SNDPF --**

1. The Acquirer would bid for the assets of the French company. The seller, as the French company's largest creditors (via shareholder loans), would support that bid.
2. Since the Seller is also the only party capable of having the company continue as a global brand, hence maintain global production in France, the Seller would also offer that promise to the Court in support of the Acquirer's bid.

**Immediate Operative Effect -**

Once the forgoing acquisition had been accomplished, and in the consideration for the other terms of this agreement, the Seller would, with regard to SNDPF, immediately:

1. Arrange for the American Porthault companies to terminate all their claims of rights with regard to the sale of Porthault goods outside the US and Asia;
2. Cause the Porthault holding company to convey to SNDPF's successor entity, at cost, all furnishing, fixtures, manufacturing equipment and other assets utilized by SNDPF in its business, but owned by its holding company or American affiliates; and
3. Arrange for the US Porthault companies to convey to SNDPF's successor entity the right to sell and produce designs created by the US Porthault companies for sale by or within the Porthault group.

**Sale of the American Assets -**

The Seller would also sell to Acquirer the physical assets of the American operating companies to the Acquirer at book value (amounting to the book value of inventory and the depreciated value of furniture and equipment), and separately sell (or

license) to the Acquirer all of the American company's intellectual property and related rights.

#### **Acquisition Price –**

The price for the intellectual property of the American companies (and other rights to be conveyed under this agreement) would be four fold:

- \* *Board role* -- the Seller would have the right to designate the Vice-Chairman of the Board of the holding company for the Porthault Group, but that person's role would be limited to issues of design and promotion. (Said designee would receive board fees and travel expenses typically available to an outside director of an SME in the retail sector. The designee would also be given the option of attending Comite Colbert events on behalf of the company.)
- \* *Personal use discount* -- the Seller's family would retain its current discount for items bought for personal use;
- *Charitable contributions* -- Seller would retain the right to designate product contributions in a retail value of up to \$50,000 a year (adjusted for inflation) to charitable institutions of their choice; and
  - *Royalties* -- there would be a royalty agreement.

#### **The Royalty Agreement –**

In consideration of the terms of the agreement, the seller would earn quarterly royalty payments for the life of the agreement.

The terms of the royalty agreement would be as follows:

1. A royalty equal to 15% of turnover would be paid to Seller with regard to sales to or within the US and Asia.
2. A royalty equal to 5% of turnover would be paid to Seller on other sales to or for end-users outside the Euro currency zone.
3. These royalties would be paid on all sales of Porthault branded goods and/or goods employing Porthault designs.
4. The Seller not earn royalties nor have any other financial interest in the company's sales intended solely for end-users within the Euro- currency zone.
5. In the event of sales to affiliates, the amount of the foregoing royalty would be based on the final sale from the affiliated group to an outside and unaffiliated party.
6. In the event, revenues come from agreements to license the Porthault name or designs rather the sales of goods, then the royalties due Seller would be the lesser of the above described percentages of the final sales of the licensed products or 50% of the applicable licensing royalties.
7. Seller would have no rights to payments related to licensing if the subject products were intended solely for end-users within the Euro currency zone.
8. Royalties would be calculated and accrue quarterly.

#### **Deferrals of Royalty payments --**

1. No royalties would accrue during the first year of operations of the Acquirer's successor entities.
2. For years 2-5, royalties would accrue at a minimum level of €400,000 per quarter and accrue interest at Libor + 1.5% quarterly until paid. .
3. However, payment of the royalties for the first 5 years of operation would not be mandatorily payable until the end of the fifth year of operations.
4. Beginning in the sixth year, the minimum quarterly royalty payment would increase to €500,000 and increase thereafter by a 5% annual inflation factor.
  - The acquirer would have the option -- in any year in which all the group's earnings were reinvested and no funds were distributed to seller or its affiliates (or on their behalf) – to further defer the payment of royalties for up to two additional years by paying interest at Libor +1.5% on the accrued but unpaid balance of such deferred royalties.

#### **The Royalty Trust --**

In order to provide security for the payment of royalties, the Porthault related intellectual property of the Acquirer (more specifically, the exclusive right to the use of the Porthault brand name and designs in all markets) would be assigned to a bankruptcy remote trust or similar entity governed by US law.

- The royalty trust would be the sole owner of the foregoing intangible assets with no right to sell, transfer, pledge or otherwise alienate these assets during the term of the royalty agreement.
- Any licensing agreements with third parties entered into with regard to the subject assets would include a specific right to terminate said agreement in the event the Trust's assets were called upon to satisfy any obligations to the Seller.

- Acquirer would have a right freely to assign any residual interest in this Trust provided its successor remained bound by the agreement with Seller governing that Trust.

#### **Buying out the Royalty Agreements –**

The Acquirer would have the right, upon 180 days advance notice, to buy out this royalty obligation and thereby terminate the royalty and all other ongoing or future obligations to Seller under the agreement. This right would be available to Acquirer or its successor beginning on the 8<sup>th</sup> anniversary of the acquisition. The purchase price would be the nominal value of the next 10 years of anticipated royalty payments under the agreement.

#### **Forfeiture of the Trust –**

The royalty obligations would be considered the joint and several liabilities of the Acquirer and the royalty trust. Upon a default in the payment of the subject royalties, Seller would have the right, but not the obligation, to take control of the trust until the accrued debts to Seller were fully paid. Moreover, should the Acquirer cease operating or otherwise be unable to continue in business so as to make current payment of the royalty payments due Seller, Seller would have the right to collect payment from the trust of a termination fee equal to the Acquirer's price for the buyout of that royalty agreement. If the assets of the royalty trust were incapable of generating that sum, the Seller would have the right (but not the obligation) to accept conveyance of the trust's assets in lieu of such payment and in satisfaction of its claims.

#### **Corporate Transactions –**

Acquirer would have the right freely to sell, assign or convey the assets and rights described herein to a third-party, *provided* that said third-party agreed in writing to comply with Acquirer's obligations to maintain an industrial facility in France, to continue to operate Porthault as a high luxury brand (offering bespoke services within its retail segment) and to maintain the royalty trust (or exercise Acquirer's right to buy out that obligation) according to its terms.