

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

PROVINCE OF QUÉBEC
DISTRICT OF ST-FRANÇOIS
N°: 450-11-000167-134

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
C. C-36, as amended)

IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:

**MONTREAL, MAINE & ATLANTIC CANADA CO.
(MONTREAL, MAINE & ATLANTIQUE CANADA
CIE);**

Petitioner

and

**RICHTER INC. (FORMERLY RICHTER
ADVISORY GROUP INC. /RICHTER GROUPE
CONSEIL INC.)**

Monitor

**APPLICATION FOR A TWENTY-SIXTH ORDER EXTENDING THE STAY PERIOD, FOR
APPROVAL OF PROFESSIONAL FEES AND FOR AN INCREASE TO THE
ADMINISTRATION CHARGE FOR US PROFESSIONALS
(SECTIONS 9 AND 11 ET SEQ. OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36 ("CCAA"))**

**TO THE HONOURABLE JUSTICE GAÉTAN DUMAS OF THE SUPERIOR COURT, SITTING
IN THE COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF
SAINT-FRANÇOIS, THE PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:**

I. INTRODUCTION

1. On July 6, 2013, a train operated by Montreal Maine & Atlantic Canada Co. ("**MMAC**") derailed in the city of Lac-Mégantic, Québec, Canada, causing numerous fatalities, bodily injuries, psychological and moral damages to thousands of people, and extensive property and environmental damages (the "**Derailment**");
2. Numerous claims were made against MMAC and its parent company, Montreal, Maine & Atlantic Railway Ltd ("**MMA**"), arising out of the Derailment;

3. On August 7, 2013, MMA filed a voluntary petition in the United States Bankruptcy Court, District of Maine (the “**US Court**”) for relief under Chapter 11 of the U.S. Bankruptcy Code (the “**Chapter 11 Case**”);
4. On August 8, 2013, the Honourable Justice Castonguay of the Québec Superior Court (the “**CCAA Court**”) granted an initial order in respect of MMAC (the “**Initial Order**”) pursuant to the CCAA and Richter Inc. (formerly Richter Advisory Group Inc. /Richter Groupe Conseil Inc.) was appointed as monitor of MMAC (the “**Monitor**”);
5. On August 21, 2013, the United States Trustee appointed Robert J. Keach to serve as trustee in the Chapter 11 Case (now referred to as the “**Estate Representative**”);
6. Pursuant to the Initial Order, a stay of proceedings was ordered until and including September 6, 2013 (the “**Stay Period**”). That Stay Period has since been extended by this CCAA Court on twenty-five (25) occasions, with the most recent extension having been granted until June 17, 2022, pursuant to an order of December 17, 2021 (the “**Twenty-Fifth Extension Order**”), the whole as appears from the Court record;
7. MMAC’s *Amended Plan of Compromise and Arrangement* dated as of June 8, 2015 (the “**Amended Plan**”), was unanimously approved by the creditors on June 9, 2015, and was approved by the CCAA Court on July 13, 2015 (as amended on October 9, 2015, the “**Canadian Approval Order**”);
8. The Plan of Liquidation filed in the Chapter 11 Case on March 31, 2015, and amended on July 7, 2015 (the “**US Plan**”), which is intended to mirror the effects of the Amended Plan in the United States, has also been approved by the creditors and the US Court;
9. As appears from the Court record, the Certificate of the Monitor was filed on December 22, 2015 (the “**Plan Implementation Date**”), thereby confirming implementation of the Amended Plan;
10. Capitalized terms not otherwise defined in this Application have the meaning ascribed thereto in the Amended Plan;

II. ORDER SOUGHT

11. The Petitioner hereby seeks the following:
 - a) an extension of the Stay Period until December 16, 2022;
 - b) an order approving the fees and disbursements of MMAC’s counsel, the Monitor and the Monitor’s counsel (the “**Canadian Professionals**”) for the period of December 1, 2021, to May 31, 2022; and
 - c) an increase to the Administration Charge in the amount of \$500,000 as it pertains to the U.S. Professionals. For clarity, no increase is sought to the Administration Charge as it pertains to the Canadian Professionals;
12. The Monitor supports the conclusions sought herein, the whole as appears from a copy of the Monitor’s Thirty-Sixth Report filed in support hereof as **Exhibit R-1**;

III. EXTENSION OF THE STAY PERIOD

i) **Government Claims category:**

13. As mentioned in the 'Monitor's Thirty-Fifth Report dated December 10, 2021, the Monitor held a sum of approximately \$114 million, which consist of the balance of the funds not yet distributed to the Province as well as the Undistributed Funds (as defined in the Monitor's Thirty-Sixth Report);
14. On March 19, 2021, the Monitor filed a Motion for Directions (the "**Motion for Directions**") with respect to the treatment of the claim of the Province and the distribution of the balance of the distribution due to the Province, namely an amount of approximately \$98.5 million (the "**Balance of the Province Distribution**"), in accordance with the terms of the Amended Plan;
15. The Motion for Directions was heard on April 15, 2021, and, on June 4, 2021, the Honourable Justice Gaétan Dumas, J.S.C., issued an order in connection with the Motion for Directions as more fully detailed in the Monitor's Thirty-Fourth Report (the "**Motion for Directions Order**");
16. On June 23, 2021, Me Hans Mercier filed an Application for leave to appeal with respect to the Motion for Directions Order ("**Motion for Leave to Appeal**");
17. The Motion for Leave to Appeal was heard on July 20, 2021, and dismissed by the Court of Appeal on July 22, 2021;
18. On or about December 13, 2021, in accordance with the conclusions of the Motion for Directions Order, the Monitor proceeded to pay the Balance of the Province Distribution as follows:
 - a. An amount of \$58,909,516 to the Province;
 - b. An amount of \$39,609,585 to Richter Inc. (formerly Richter Advisory Group Inc. /Richter Groupe Conseil Inc.) as the distribution agent for the Province, which amount was distributed as follows:

Montreal, Maine & Atlantic Canada Co. Redistribution of Government of Québec Funds to the Creditors	
Wrongful Death Claims	\$ 10,606,005
Bodily Injury and Moral Damages Claims	4,650,061
Property and Economic Damages Claims	2,403,466
Government of Quebec	19,083,345
City of Lac-Mégantic	1,174,879
Government of Canada	-
Subrogated Insurer Claims	1,691,829
	<u>\$ 39,609,585</u>

ii) Interest Treatment

19. Approximately \$9.3 million has been earned on the Funds for Distribution since the effective date of the Amended Plan. This amount is up from \$9.2 million in December 2021, when the Twenty-Fifth Extension Order was issued;

iii) Ongoing Litigation and Possible Further Distribution

20. As outlined in previous Monitor's reports, a number of matters remain ongoing in the Chapter 11 Case that could have an impact on the Amended Plan, both in terms of distribution and in respect of the overall administration;
21. As more fully summarized in the Thirty-Sixth Report, the following matters remain ongoing against Canadian Pacific Railway ("**CP**") in the Chapter 11 Case (together, the "**CP Litigation**"):
- a) The Estate Representative's proceedings against CP under the Carmack Amendment for an amount of approximately US\$180 million remains in the pre-trial phase. The Monitor has been advised by the Estate Representative that this matter is scheduled for trial in November 2022;
 - b) The Estate Representative's separate litigation against CP in the amount of approximately US\$35 million remains in the pre-trial phase and is likely to be heard, as well, in fall 2022;
22. In addition, the Monitor currently holds \$15.3 million of Undistributed Funds (as referred to in paragraph 13 herein), including the \$9.3 million of interest earned on the Funds for distribution, various reserves which were taken in respect of litigious claims in the Chapter 11 and the Administrative Charge of the Professionals. The Undistributed Funds will be distributed at the end of the CCAA proceedings, once all other matters have been finalized, in accordance with the Amended Plan;
23. Civil proceedings also remain ongoing against CP in the Province of Quebec, including class proceedings and those instituted by the Province. While the Petitioner's role in the daily administration of those matters is minimal, these CCAA proceedings and the framework of the Amended Plan could prove useful in the event of settlement discussions;

iv) The Monitor

24. Since the Twenty-Fifth Extension Order, the Petitioner, through its counsel, has continued to cooperate and work diligently with the Monitor in order to provide the latter with all necessary information to prepare reports and fulfill its role and obligations;
25. As outlined in the Monitor's Thirty-Sixth Report, the Monitor continues to keep its attention on matters that could potentially allow for additional distributions to creditors;
26. Moreover, the Monitor continues to respond to queries from creditors and maintains regular contact with the Estate Representative and major stakeholders;

v) Reasonableness of the Extension Sought

27. Since the issuance of the Twenty-Fifth Extension Order, the Petitioner has acted and continues to act in good faith and with due diligence;
28. Given the implementation of the Amended Plan and the distributions to creditors, no creditor will suffer any prejudice by the extension of the Stay Period;
29. An extension of the Stay Period to December 16, 2022, is necessary to allow additional time for the advancement of the CP Litigation and the complete distribution of the Undistributed Funds to claimants;
30. The Petitioner is of the view that extending the Stay Period to December 16, 2022, is thus appropriate in the present circumstances;
31. The Monitor has indicated to the Petitioner that it supports the present request for an extension of the Stay Period, as appears from its Thirty-Sixth Report;

IV. APPROVAL OF CANADIAN PROFESSIONALS' FEES

32. The following table, drawn from the Monitor's Thirty-Sixth Report, summarizes the fees for which approval is sought:

Montreal, Maine & Atlantic Canada Co.			
Administration Charge Summary			
As of May 31, 2022			
	Fees /		
	Disbursements	Sales Taxes	Total
Administration Charge ¹	\$ 14,650,000	\$ 2,170,000	\$ 16,820,000
Accrued Professional Fees as of Nov 30, 2021	(14,320,581)	(2,120,291)	(16,440,872)
Balance of Administration Charge to implement the Plan	329,419	49,709	379,128
Richter	76,750	11,493	88,244
Woods	3,838	572	4,410
Gowling WLG	8,013	1,198	9,211
	<u>88,601</u>	<u>13,263</u>	<u>101,865</u>
Balance of Administration Charge to complete the CCAA ²	<u>\$ 240,818</u>	<u>\$ 36,446</u>	<u>\$ 277,264</u>
<p>¹ As per the Amended Plan of Compromise and Arrangement dated June 8, 2015, the Order dated March 3, 2017, the Order dated November 21, 2018 and the Order dated June 16, 2021.</p> <p>² In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.</p>			

33. As appears from the table, total fees for all Professionals for the six month period ending on May 31, 2022, amount to \$88,601, plus the applicable taxes;

V. INCREASE TO THE ADMINISTRATION CHARGE FOR U.S. PROFESSIONALS

34. The Amended Plan and Canadian Approval Order provided for an Administration Charge of \$8,850,000, plus any applicable taxes, in favour of the U.S. Professionals;
35. According to the Estate Representative, those funds have been nearly entirely exhausted and additional funds are required in order to complete the CP Litigation and fund the cost of the litigation recently concluded in respect of the U.S. Administrative Claims;
36. The Estate Representative has requested an increase of US\$400,000, hence the request for an increase of CAD\$500,000;
37. If successful, the CP Litigation could result in significant additional distributions to creditors. As noted above, the total amount claimed in the various CP Litigation is US\$215 million;
38. While the Estate Representative can seek third party litigation funding in order to continue to pursue the CP Litigation, the cost to creditors in the event that the litigation is a success would be significantly higher;
39. It is therefore in the interest of all stakeholders that this litigation continue to be funded from the existing Indemnity Fund;
40. In light of the unanticipated interest earned on the Funds for Distribution (\$9.3 million to date), distributions to creditors will not be reduced as a result of the increase sought;
41. As appears from the Monitor's Thirty-Sixth report, the Monitor supports the requested increase;
42. As further appears from the Monitor's Thirty-Sixth report, the major stakeholders (including the Province, Class Representatives and U.S. plaintiff counsel) have been consulted by either the Estate Representative or the Monitor and the Monitor has not received any objection to the requested increase;
43. For clarity, in keeping with the Amended Plan, any unused portion of the Administration Charge, and thus any unused portion of the additional funds sent to the Estate Representative as requested herein, shall form part of the Indemnity Fund and will be distributed in accordance with the Amended Plan;

VI. CONCLUSION

44. The Petitioner respectfully requests that this Honourable Court issue an order in keeping with the conclusions set out below;
45. The Petitioner respectfully submits that the notices given of the presentation of the present Application are proper and sufficient;

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

GRANT the present *Application for a Twenty-Sixth Order Extending the Stay Period, for Approval of Professional Fees and for an increase to the Administration Charge for US Professionals* (the “**Application**”);

DECLARE that the notices given of the presentation of the Application are adequate and sufficient;

EXTENSION OF THE STAY PERIOD

ORDER that the Stay Period, as defined in the Initial Order, is extended up to and including December 16, 2022, the whole subject to all the other terms of the Initial Order;

ORDER that all capitalized terms not otherwise defined in the order to be rendered hereon shall have the meanings ascribed thereto in the Amended Plan of Compromise and Arrangement dated as of June 8, 2015 (the “**Amended Plan**”);

DECLARE that the Initial Order, as amended on August 23, 2013, September 4, 2013, October 9, 2013, January 23, 2014, February 11, 2014, February 25, 2014, March 12, 2014, April 29, 2014, June 30, 2014, September 24, 2014, November 24, 2014, April 15, 2015, November 30, 2015, May 30, 2016, October 20, 2016, June 16, 2017, December 20, 2017, June 18, 2018, November 21, 2018, June 17, 2019, November 29, 2019, June 11, 2020, December 10, 2020, June 16, 2021 and December 17, 2021, shall remain otherwise unchanged;

APPROVAL OF FEES FOR CANADIAN PROFESSIONALS

APPROVE the fees and disbursements (including taxes) of the following professionals as at May 31, 2022, in the following amounts:

- a) \$88,244 to Richter Inc. (formerly Richter Advisory Group Inc. /Richter Groupe Conseil Inc.), Monitor;
- b) \$4,410 to the Monitor’s counsel, Woods LLP;
- c) \$9,211 to Petitioner’s counsel, Gowling WLG (Canada) LLP;

ORDER the Monitor to pay those fees and disbursements, which include applicable sales taxes, from the Indemnity Fund;

ORDER that the balance of the Administration Charge, as it pertains to the Canadian Professionals, in the amount of \$240,818, plus taxes, be held by the Monitor to secure the payment of all fees and disbursements to be incurred from June 1, 2022, to the closing of the CCAA Proceeding;

INCREASE TO ADMINISTRATION CHARGE FOR U.S. PROFESSIONALS

ORDER that the amount of the Administration Charge Reserve and of the Administration Charge, as it pertains to the U.S. Professionals, as contemplated by the Amended Plan and the Canadian Approval Order, is hereby increased from \$8,850,000 plus any applicable taxes to \$9,350,000 plus any applicable taxes;

ORDER the Monitor to pay the amount of \$500,000 to the Estate Representative from the Indemnity Fund;

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

THE WHOLE without costs, save and except in the event of contestation.

MONTREAL, June 8, 2022

Gowling WLG (Canada)

GOWLING WLG (CANADA) LLP
Attorneys for Petitioner

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF SAINT-FRANÇOIS
N°: 450-11-000167-134

SUPERIOR COURT
(COMMERCIAL DIVISION)

(Sitting as a court designated pursuant to the
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C. C-36, as amended)

IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:

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(MONTREAL, MAINE & ATLANTIQUE CANADA
CIE)

Petitioner

and

RICHTER ADVISORY GROUP INC. (RICHTER
GROUPE CONSEIL INC.)

Monitor

SWORN DECLARATION OF ROBERT J. KEACH

I, the undersigned, Robert J. Keach, Shareholder of Bernstein Shur, doing business at 100 Middle Street, West Tower, Portland, Maine, USA, 04101, solemnly declare as follows:

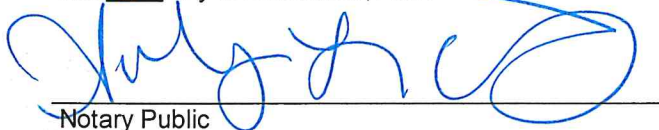
1. I am the Estate Representative to the estate of Montreal, Maine & Atlantic Railway Ltd., the sole shareholder of the Petitioner;
2. All the facts alleged in the present *Application for a Twenty-Fifth Order Extending the Stay Period and for Approval of Professional Fees* are true.

AND I HAVE SIGNED:



ROBERT J. KEACH

SWORN TO before me in Portland, Maine,
this 10th day of December, 2021



Notary Public

AUBREY L. CUMMINGS
NOTARY PUBLIC
State of Maine
My Commission Expires
October 21, 2024

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

PROVINCE OF QUÉBEC
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N°: 450-11-000167-134

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CO. (MONTREAL, MAINE & ATLANTIQUE
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and

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ADVISORY GROUP INC. /RICHTER GROUPE
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Monitor

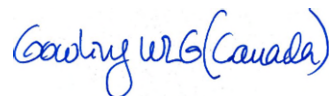
NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present ***Application for a Twenty-Sixth Order Extending the Stay Period, for Approval of Professional Fees and for an increase to the Administration Charge for US Professionals*** will be presented for adjudication before the Honourable Justice Gaéтан Dumas, J.S.C., of the District of Saint François, in chambers and without a hearing, save and except in the event that any interested party advises the Service List, by no later than **4:00 p.m. on June 13, 2022**, of its intention to contest the Application. In that case, the Application will be heard on **June 14, 2022**, at **2:00 p.m.** by Teams.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, June 8, 2022



GOWLING WLG (CANADA) LLP
Attorneys for Petitioner

N°: 450-11-000167-134

SUPERIOR COURT
(COMMERCIAL DIVISION)
DISTRICT OF ST-FRANÇOIS

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Monitor

BL0052

**APPLICATION FOR A TWENTY-SIXTH ORDER
EXTENDING THE STAY PERIOD, FOR APPROVAL
OF PROFESSIONAL FEES AND FOR AN
INCREASE TO THE ADMINISTRATION CHARGE
FOR US PROFESSIONALS
(SECTIONS 9 AND 11 *ET SEQ.* OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36 ("CCAA"))**

ORIGINAL

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