

CANADA

SUPERIOR COURT  
(COMMERCIAL DIVISION)

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

Monitor

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**APPLICATION FOR A TWENTY-SECOND ORDER EXTENDING THE STAY PERIOD AND  
FOR APPROVAL OF PROFESSIONAL FEES  
(Sections 9 and 11 *et seq.* of the *Companies' Creditors Arrangement Act*,  
R.S.C. 1985, c. C-36 ("CCAA"))**

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**TO THE HONORABLE 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, Quebec, 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 Quebec Superior Court (the “**CCAA Court**”) granted an initial order in respect of MMAC (the “**Initial Order**”) pursuant to the CCAA and 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-one (21) occasions, with the most recent extension having been granted until June 12, 2020 pursuant to an order of November 29, 2019 (the “**Twenty-First 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 an extension of the Stay Period until December 11, 2020 for the reasons set out below;
12. The Petitioner also seeks an order approving the fees and disbursements of MMAC’s counsel, the Monitor and the Monitor’s counsel (the “**Professionals**”) for the period of November 1<sup>st</sup>, 2019 to May 31, 2020;

## **III. EXTENSION OF THE STAY PERIOD**

13. Since the issuance of the Twenty-First Extension Order, the Petitioner has acted and continues to act in good faith and with due diligence as set forth hereafter;

### **i) Claims review and status of distributions**

14. Since the Plan Implementation Date, the Monitor, with the participation of its counsel and the Petitioner’s counsel, has primarily focused on the review of claims and payment of distributions under the Amended Plan and US Plan (together, the “**Plans**”);

15. As appears from the Monitor's Thirty-Second Report, the claims review process is essentially complete, the whole as more fully appears from a copy of the Monitor's Thirty-Second Report filed in support hereof as **Exhibit R-1**;
16. The following table, drawn from the Thirty-Second Report, demonstrates that essentially all distributions have been made, save and except for a portion of the distribution payable under the Government Claims category:

<b>Montreal, Maine &amp; Atlantic Canada Co.</b>			
<b>Summary of Distributions</b>			
<b>As of April 30, 2020</b>			
	Distribution Paid	Distribution Pending	Total
Wrongful Death Claims	\$ 121 561 892	\$ -	\$121 561 892
Bodily Injury and Moral Damage Claims	51 137 401	-	51 137 401
Property and Economic Damages Claims	25 634 715	-	25 634 715
Government Claims	103 460 319	98 060 399	201 520 718
Subrogated Insurer Claims	17 641 913	-	17 641 913
	<u>\$ 319 436 240</u>	<u>\$98 060 399</u>	<u>\$417 496 639</u> <sup>1</sup>

<sup>1</sup> Excluded from this amount is a \$10 million reserve for litigation of claims under Chapter 11, \$8.2 million of accumulated interest earned and a \$1 million reserve for other items.

17. With respect to the Government Claims category:
- a) As previously reported to the Court by the Monitor and by the Petitioner, the only unfinalized claim in this category is the claim of the Province of Quebec;
  - b) On December 1, 2017, the Province submitted its final proof of claim in the approximate amount of \$340.7 million (versus an initial claim of \$409 million) which included a provision for future expenses of approximately \$80.0 million;
  - c) The Amended Plan was based on the Province's initial claim amount and did not foresee the possibility that the actual costs of the Province would be significantly lower;
  - d) The Monitor and the Province continue to discuss next steps in light of the lower claim and it was previously anticipated that the path forward would be reported upon in the Monitor's Thirty-Second Report;
  - e) That said, the ongoing pandemic related to Covid-19 has slowed discussions as the government has been forced to turn its attention to more pressing matters;
  - f) A full review of the Province's claim will only be performed once the claim amount is finalized;

**ii) Interest Treatment**

18. Approximately \$8.2 million has been earned on the Funds for Distribution since the effective date of the Amended Plan. This number is up from \$7 million in November 2019, when the Twenty-First Extension Order was issued;
19. As set out in its Thirty-Second Report, and in previous reports, the Monitor estimates that it will need to issue tax slips to at least 4,400 individuals and corporations, which can only happen after all claims have been finally determined;

**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-Second Report, the following matters remain ongoing in the Chapter 11 Case and, absent a settlement, will not be resolved prior to the expiry of the extension period sought herein:
  - a) The WD Trustee's proceedings against Canadian Pacific Railway ("CP") under the Carmack Amendment for an amount of approximately USD \$180 million;
  - b) The Estate Representative's separate litigation against CP in the amount of approximately USD \$35 million;
22. Also ongoing in the Chapter 11 Case is litigation surrounding potential administrative/secured claims by Irving Railroads and Wheeling, which are contested by the Estate Representative. The Monitor continues to maintain a \$10 million reserve in connection with these claims and, as appears from the Thirty-Second Report, to the extent the matters are not brought to the United States Supreme Court, funds may be freed from the reserve prior to the expiry of the extension period sought herein;
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-First 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-Second Report, with the review and adjudication of claims nearing completion, the Monitor continues to keep its attention on matters that could potentially allow for additional distributions to creditors, beyond what was originally expected;
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. Given the implementation of the Plans and the distributions to creditors, no creditor will suffer any prejudice by the extension of the Stay Period;
28. An extension of the Stay Period to December 11, 2020 is necessary to allow for the resolution of the Province's claim, distribution of interest income and monitoring of ongoing litigation that could impact the Amended Plan;
29. The Petitioner is of the view that extending the Stay Period to December 11, 2020 is thus appropriate in the present circumstances;
30. 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-Second Report;

**IV. APPROVAL OF PROFESSIONAL FEES**

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

<b>Montreal, Maine &amp; Atlantic Canada Co.</b>			
<b>Administration Charge Summary</b>			
<b>As of May 31, 2020</b>			
	<b>Fees /</b>		
	<b>Disbursements</b>	<b>Sales Taxes</b>	<b>Total</b>
Administration Charge <sup>1</sup>	\$ 14,150,000	\$ 2,096,000	\$ 16,246,000
Accrued Professional Fees as of October 31, 2019	<u>(13,698,038)</u>	<u>(2,027,099)</u>	<u>(15,725,137)</u>
Balance of Administration			
Charge to implement the Plan	451,962	68,901	520,863
Richter	42,800	6,409	49,210
Woods	6,470	969	7,439
Gowling WLG	6,429	963	7,391
	<u>55,699</u>	<u>8,341</u>	<u>64,040</u>
Balance of Administration			
Charge to complete the CCAA <sup>2</sup>	<u>\$ 396,264</u>	<u>\$ 60,560</u>	<u>\$ 456,823</u>

<sup>1</sup> As per the Amended Plan of Compromise and Arrangement dated June 8, 2015, the Order dated March 3, 2017 and the Order dated November 21, 2018.

<sup>2</sup> In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.

32. As appears from the table, total fees for all Professionals for the seven month period in question amount to \$64,040 and, following the payment of those fees, the balance of the Administration Charge will be \$456,823;

**V. CONCLUSION**

33. The Petitioner respectfully requests that this Honourable Court (i) extend the Stay Period to December 11, 2020 and (ii) approve the Professionals' fees pursuant to the conclusions set out below;
34. 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 Second Order Extending the Stay Period and for Approval of Professional Fees* (the "**Application**");

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

**ORDER** that the Stay Period, as defined in the Initial Order, be extended by this Court up to and including December 11, 2020, 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 and November 29, 2019 shall remain otherwise unchanged;

**APPROVE** the fees and disbursements (including taxes) of the following professionals as at May 31, 2020, in the following amounts:

- a) \$49,210 to Richter Advisory Group Inc., Monitor;
- b) \$7,439 to the Monitor's counsel, Woods LLP;
- c) \$7,391 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 in the amount of \$396,264 plus taxes be held by the Monitor to secure the payment of all fees and disbursements to be incurred from June 1, 2020 to the closing of the CCAA Proceeding;

**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 4, 2020

*Gowling WLG (Canada) LLP*

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**Gowling WLG (Canada) LLP**  
Attorneys for Petitioner

CANADA

SUPERIOR COURT  
(COMMERCIAL DIVISION)

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

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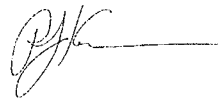
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**SWORN DECLARATION OF ROBERT J. KEACH**

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-Second Order Extending the Stay Period and for Approval of Professional Fees* are true.

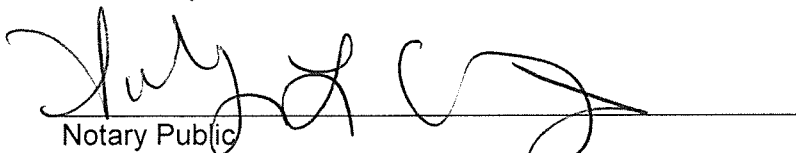
AND I HAVE SIGNED:



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ROBERT J. KEACH

SWORN TO before me in Portland, Maine,  
this 4<sup>th</sup> day of June, 2020



Notary Public

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



CANADA

SUPERIOR COURT  
(COMMERCIAL DIVISION)

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PROVINCE OF QUÉBEC  
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CIE)**

Petitioner

and

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

Monitor

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**NOTICE OF PRESENTATION**

TO: **SERVICE LIST**

**TAKE NOTICE** that the present ***Application for a Twenty-Second Order Extending the Stay Period and for Approval of Professional Fees*** will be presented for adjudication before the honourable Gaétan 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 10, 2020**, of its intention to contest the Application. In that case, the Application would be heard at a time and date to be determined by the Court and by means deemed appropriate by the Court.

**DO GOVERN YOURSELVES ACCORDINGLY.**

MONTREAL, June 4, 2020

*Gowling WLG (Canada) LLP*

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**Gowling WLG (Canada) LLP**  
Attorneys for Petitioner

No. 450-11-000167-134

SUPERIOR COURT  
(COMMERCIAL DIVISION)  
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Monitor

*BL0052*

**APPLICATION FOR A TWENTY-SECOND  
ORDER EXTENDING THE STAY  
PERIOD AND FOR APPROVAL OF  
PROFESSIONAL FEES**  
(Sections 9 and 11 et seq. of the *Companies'*  
*Creditors Arrangement Act*,  
R.S.C. 1985, c. C 36 ("CCA"))

ORIGINAL

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