

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

Monitor

**APPLICATION FOR A TWENTY-FIFTH 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"))**

**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 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-four (24) occasions, with the most recent extension having been granted until December 17, 2021, pursuant to an order of June 16, 2021 (the “**Twenty-Fourth 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 June 17, 2022; and
 - 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 June 1, 2021, to November 30, 2021;
12. The Monitor supports the conclusions sought herein, the whole as appears from a copy of the Monitor’s Thirty-Fifth Report filed in support hereof as **Exhibit R-1**;

III. EXTENSION OF THE STAY PERIOD

i) **Government Claims category:**

13. The Monitor currently holds 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-Fourth Report dated June 8, 2021 (the "**Thirty-Fourth 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 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. With the decision of the Court of Appeal now final, the Monitor will be able to proceed to distribute the Balance of the Province Distribution in accordance with the conclusions of the Motion for Directions Order;

ii) **Interest Treatment**

19. Approximately \$9.2 million has been earned on the Funds for Distribution since the effective date of the Amended Plan. This amount is up from \$8.9 million in June 2021, when the Twenty-Fourth 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-Fifth 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 discovery phase. This matter is scheduled for trial in July 2022;

- b) The Estate Representative's separate litigation against CP in the amount of approximately US\$35 million remains in the discovery phase and is expected to be heard, as well, in the summer 2022;
22. In addition, the Monitor currently holds, among the Undistributed Funds (as referred to in paragraph 13 herein), approximately \$15.5 million of interest earned on the Funds for distribution, various reserve 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-Fourth 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-Fifth 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-Fourth 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 June 17, 2022, is necessary to allow additional time for the advancement of the CP Litigation and the distribution of the Undistributed Funds to claimants;
30. The Petitioner is of the view that extending the Stay Period to June 17, 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-Fifth Report;

IV. APPROVAL OF CANADIAN PROFESSIONALS' FEES

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

Montreal, Maine & Atlantic Canada Co.			
Administration Charge Summary			
As of November 30, 2021			
	Fees /		
	Disbursements	Sales Taxes	Total
Administration Charge ¹	\$ 14,650,000	\$ 2,170,000	\$ 16,820,000
Accrued Professional Fees as of May 31, 2021	<u>(14,145,379)</u>	<u>(2,094,089)</u>	<u>(16,239,467)</u>
Balance of Administration Charge to implement the Plan	504,621	75,911	580,533
Richter	89,418	13,390	102,808
Woods	63,983	9,563	73,546
Gowling WLG	21,801	3,249	25,050
	<u>175,202</u>	<u>26,202</u>	<u>201,404</u>
Balance of Administration Charge to complete the CCAA ²	<u>\$ 329,419</u>	<u>\$ 49,709</u>	<u>\$ 379,128</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 November 30, 2021, amount to \$175,202, plus taxes;

V. CONCLUSION

34. The Petitioner respectfully requests that this Honourable Court issue an order in keeping with the conclusions set out below;
35. 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-Fifth 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;

EXTENSION OF THE STAY PERIOD

ORDER that the Stay Period, as defined in the Initial Order, is extended up to and including June 17, 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, and June 16, 2021, shall remain otherwise unchanged;

APPROVAL OF FEES FOR CANADIAN PROFESSIONALS

APPROVE the fees and disbursements (including taxes) of the following professionals as at November 30, 2021, in the following amounts:

- a) \$102,808 to Richter Advisory Group Inc., Monitor;
- b) \$73,546 to the Monitor's counsel, Woods LLP;
- c) \$25,050 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 \$379,128, plus taxes, be held by the Monitor to secure the payment of all fees and disbursements to be incurred from December 1, 2021, 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, December 10, 2021

Gowling WLG (Canada) LLP

GOWLING WLG (CANADA) LLP
Attorneys for Petitioner

CANADA

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

SUPERIOR COURT
(COMMERCIAL DIVISION)

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C. C-36, as amended)

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COMPROMISE OR ARRANGEMENT OF:

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(MONTREAL, MAINE & ATLANTIQUE CANADA
CIE)

Petitioner

and

RICHTER ADVISORY GROUP INC. (RICHTER
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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

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NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present ***Application for a Twenty-Fifth Order Extending the Stay Period and for Approval of Professional Fees*** will be presented for adjudication before the Honourable Justice 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 **2:00 p.m. on December 15, 2021**, of its intention to contest the Application. In that case, the Application will be heard on **December 17, 2021**, at **9:00 a.m.** by Teams.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, December 10, 2021

Gowling WLG (Canada) LLP

GOWLING WLG (CANADA) LLP
Attorneys for Petitioner

N°: 450-11-000167-134

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Monitor

BL0052

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(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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