

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

Monitor

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

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**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-six (26) occasions, with the most recent extension having been granted until December 16, 2022, pursuant to an order of June 14, 2022 (the “**Twenty-Sixth 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 16, 2023;
  - 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, 2022, to November 30, 2022; and
  - c) an increase to the Administration Charge in the amount of US\$200,000 (approximately CDN\$260,000) 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-Seventh Report filed in support hereof as **Exhibit R-1**;

### III. EXTENSION OF THE STAY PERIOD

#### i) **Status of distributions**

13. As mentioned in the Monitor's Thirty-Sixth Report dated June 10, 2022, the Monitor held a sum of approximately \$15.3 million, which consist of the balance of the funds not yet distributed (the "**Undistributed Funds**") comprised of interest earned on the funds for distribution, various reserves which were taken in respect of various litigious claims in the Chapter 11 and the Administration Charge for the Professionals;

#### ii) **Interest Treatment**

14. Approximately \$9.5 million has been earned on the Funds for Distribution since the effective date of the Amended Plan. This amount is up from \$9.3 million in June 2022, when the Twenty-Sixth Extension Order was issued;

#### iii) **Ongoing Litigation and Possible Further Distribution**

15. 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;
16. As more fully summarized in the Monitor's Thirty-Seventh 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 ("**Carmack Litigation**") for an amount of approximately US\$180 million remains in the pre-trial phase. The Monitor has been advised by the Estate Representative (formerly the Chapter 11 Trustee) that this matter is scheduled from February 27 to March 2, 2023; and
  - b) The Estate Representative's separate litigation against CP in the amount of approximately US\$35 million remains in the pre-trial phase. Pending before the Court is CP's motion for summary judgment, which has been opposed by the Estate Representative. This case is likely to be heard in the Spring 2023;
17. In addition, the Monitor currently holds \$15.5 million of Undistributed Funds (as referred to in paragraph 13 herein), including the \$9.5 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;
18. Civil proceedings against CP in the Province of Quebec, including class proceedings and those instituted by the Province have been completed and are awaiting judgement;
- #### iv) **The Monitor**
19. Since the Twenty-Sixth Extension Order, the Petitioner, through its counsel, has continued to cooperate and assist the Monitor as required;

20. As outlined in the Monitor's Thirty-Seventh Report, the Monitor continues to keep its attention on matters that could potentially allow for additional distributions to creditors;
21. The Monitor continues to respond to queries from creditors and maintains regular contact with the Estate Representative and major stakeholders;
22. Moreover, the Monitor has continued to provide monthly updates (for May 2022 to October 2022) to CP's attorneys as well as Class Counsel, the whole pursuant to the CP Document Order (as more fully described in the Twenty-Sixth Report dated June 8, 2017);
23. The Monitor has also exchanged communications with CP's counsel and the Estate Representative in relation with the funding requirement with respect to the increase of Administration Charge for US Professionals;

**v) Reasonableness of the Extension Sought**

24. Since the issuance of the Twenty-Sixth Extension Order, the Petitioner has acted and continues to act in good faith and with due diligence;
25. 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;
26. An extension of the Stay Period to June 16, 2023, is necessary to allow additional time for the advancement of the Carmack Litigation and the complete distribution of the Undistributed Funds to claimants;
27. The Petitioner is of the view that extending the Stay Period to June 16, 2023, is thus appropriate in the present circumstances;
28. 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-Seventh Report;

#### IV. APPROVAL OF CANADIAN PROFESSIONALS' FEES

29. The following table, drawn from the Monitor's Thirty-Seventh Report, summarizes the Canadian Professional Fees incurred for the period of June 1, 2022 to November 30, 2022, for which approval is sought:

Montreal, Maine & Atlantic Canada Co. Administration Charge Summary As of Nov 30, 2022			
	Fees / Disbursements	Sales Taxes	Total
Administration Charge <sup>1</sup>	\$ 14,650,000	\$ 2,170,000	\$ 16,820,000
Accrued Professional Fees as of May 31, 2022	(14,409,182)	(2,133,554)	(16,542,736)
Balance of Administration Charge to implement the Plan	240,818	36,446	277,264
Richter	31,923	4,781	36,704
Woods	13,004	1,947	14,951
Gowling WLG	6,563	983	7,545
	51,490	7,711	59,200
Balance of Administration Charge to complete the CCAA <sup>2</sup>	\$ 189,328	\$ 28,735	\$ 218,063
<sup>1</sup> 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.			
<sup>2</sup> In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.			

30. As appears from the table, total fees for all Professionals for the six month period ending on November 30, 2022, amount to \$51,490, plus the applicable taxes;

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

31. 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;
32. According to the Estate Representative, those funds have been substantially exhausted and additional funds are required in order to complete the Carmack Litigation and fund the cost of the litigation recently concluded in respect of the U.S. Administrative Claims;
33. In the Motion for a Twenty-Sixth Extension, the Petitioner requested an increase in the Administration Charge for US Professionals of US\$400,000 (or CAD\$500,000) due to the complexity of the Carmack Litigation as well as the delays caused by the pandemic and the information from the Estate Representative that this additional funding was required to complete the Carmack Litigation;

34. However, the Motion for a Twenty-Sixth Extension did not proceed on the subject of the increase in the US Administration Charge because CP requested additional information in connection with the increase;
35. Recently, the Estate Representative re-evaluated the funding required and thereby reduced the requested increase to US\$200,000 (or approximately CDN\$260,000);
36. If successful, the Carmack Litigation could result in significant additional distributions to creditors;
37. While the Estate Representative can seek third party litigation funding in order to continue to pursue the Carmack Litigation, the cost to creditors in the event that the litigation is a success would be significantly higher;
38. It is therefore in the interest of all stakeholders that this litigation continue to be funded from the existing Indemnity Fund;
39. In light of the unanticipated interest earned on the Funds for Distribution (\$9.5 million to date), distributions to creditors will not be reduced as a result of the increase sought;
40. As appears from the Monitor's Thirty-Seventh report, the Monitor also supports the requested increase;
41. As further appears from the Monitor's Thirty-Seventh report, the Province, Class Representatives and US Plaintiff counsel (which collectively represent 93% in value of all claims and 99% of all claimants in the CCAA) have informed the Monitor that they are in favour of the requested increase;
42. 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**

43. The Petitioner respectfully requests that this Honourable Court issue an order in keeping with the conclusions set out below;
44. 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-Seventh 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 June 16, 2023, 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, December 17, 2021, and June 14, 2022, 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, 2022, in the following amounts:

- a) \$36,704 to Richter Inc. (formerly Richter Advisory Group Inc. /Richter Groupe Conseil Inc.), Monitor;
- b) \$14,951 to the Monitor’s counsel, Woods LLP;
- c) \$7,545 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 \$189,328, plus taxes, be held by the Monitor to secure the payment of all fees and disbursements to be incurred from December 1, 2022, to the closing of the CCAA Proceeding;

### **INCREASE TO ADMINISTRATION CHARGE FOR U.S. PROFESSIONALS**

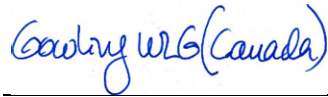
**ORDER** that the amount of the Administration Charge Reserve and of the Administration Charge, as it pertains to the U.S. Professionals, as contemplated by the Amended Plan and the Canadian Approval Order, is hereby increased from \$8,850,000 plus any applicable taxes to \$9,110,000 plus any applicable taxes;

**ORDER** the Monitor to pay the amount of \$260,000 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, December 7, 2022



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**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:

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

Petitioner

and

**RICHTER INC. (FOMERLY 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:

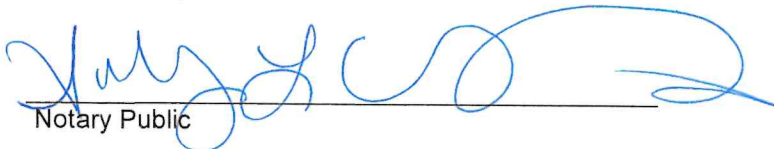
1. I am the Estate Representative to the estate of Montreal, Maine & Atlantic Railway Ltd., the sole shareholder of the Petitioner;
2. All the facts alleged in the present *Application for a Twenty-Seventh Order Extending the Stay Period, for Approval of Professional Fees and for an increase to the Administration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

AND I HAVE SIGNED:



\_\_\_\_\_  
ROBERT J. KEACH

SWORN TO before me in Portland, Maine,  
this 7<sup>th</sup> day of December 2022

  
\_\_\_\_\_  
Notary Public

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

ACTIVE\_CA\54475854\3

CANADA

SUPERIOR COURT  
(COMMERCIAL DIVISION)

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

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CO. (MONTREAL, MAINE & ATLANTIQUE  
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Monitor

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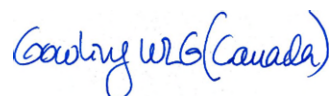
**NOTICE OF PRESENTATION**

TO: **SERVICE LIST**

**TAKE NOTICE** that the present ***Application for a Twenty-Seventh 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 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 December 9, 2022**, of its intention to contest the Application. In that case, the Application will be heard on **December 12, 2022**, at **9:30 a.m.** by Teams.

**DO GOVERN YOURSELVES ACCORDINGLY.**

MONTREAL, December 7, 2022



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**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-SEVENTH ORDER  
EXTENDING THE STAY PERIOD, FOR APPROVAL  
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(SECTIONS 9 AND 11 *ET SEQ.* OF THE  
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**ORIGINAL**

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