

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-EIGHTH 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 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-seven (27) occasions, with the most recent extension having been granted until June 16, 2023, pursuant to an order of December 12, 2022 (the “**Twenty-Seventh 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 15, 2023; 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 December 1, 2022 to May 31, 2022;
12. The Monitor supports the conclusions sought herein, the whole as appears from a copy of the Monitor’s Thirty-Eighth 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-Eighth Report dated June 9, 2023, the Monitor holds a sum of approximately \$15.4 million, which consists 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 \$9.8 million has been earned on the Funds for Distribution since the effective date of the Amended Plan. This amount is up from \$9.5 million in December 2022, when the Twenty-Seventh 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-Eighth Report, the Monitor provides the following updates regarding the ongoing proceedings against Canadian Pacific Railway ("**CP**") in the Chapter 11 Case (together, the "**CP Litigation**") which have an impact on the Amended Plan in respect of the timing and distribution of certain funds and the overall administration of the CCAA proceedings:
- a) The Estate Representative's proceedings against CP under the Carmack Amendment in the approximate amount of US\$180 million ("**Carmack Litigation**"): The Monitor has been advised by the Estate Representative (formerly the Chapter 11 Trustee) that, weeks before trial was scheduled to begin in February 2023, the North Dakota District Court issued an order limiting the scope of damages to the value of the crude oil aboard Train 282, namely to an amount of approximately \$4.3 million USD (the "**Decision**"). The parties then proceeded to negotiate and agreed on an amount of damages based on the court's ruling, the whole under reserve of all rights for appeal. Following that agreement, three (3) legal issues remain to be decided by the court: (1) whether CP is entitled to an offset in the amount of approximately \$400 000 for unpaid freight charges; (2) whether plaintiff is entitled to prejudgment interest, and (3) if the Judgment Reduction Provision of the US Plan is applicable. Those issues are fully briefed and now awaiting decision. Once those issues are decided, the WD Trustee will then appeal the Decision, which the Estate Representative believes is contrary to the applicable law. The Estate Representative anticipates that the appeal process before the US circuit court could take approximately a year from its beginning to a ruling; and
 - b) The Estate Representative's separate litigation against CP in the approximate amount of US\$35 million: In the Adversary Proceeding MMA's Chapter 11 Case before the US Court, the parties had fully briefed the record for a summary judgment and were awaiting the US Court's ruling when the Quebec Superior

Court rendered judgment in the class action proceedings against CP : *Ouellette v. Compagnie de chemin de fer Canadien Pacifique*, 2022 QCCS 4643 (the “**QSC Judgment**”). In the Adversary Proceeding, CP asserted that *Ouellette* has preclusive effect. However, the plaintiffs in *Ouellette* have since filed appeals of the QSC Judgment. These appeals could have an impact on the Adversary Proceeding. Accordingly, the parties requested that the US Court stay the Adversary Proceeding pending resolution of the *Ouellette* appeal. Recently, the US Court formally entered a stay, which will remain in effect until the *Ouellette* appeal is resolved, likely at least through the remainder of year 2023;

17. As noted above, the Monitor currently holds \$15.4 million of Undistributed Funds. 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;

iv) The Monitor

18. Since the Twenty-Seventh Extension Order, the Petitioner, through its counsel, has continued to cooperate and assist the Monitor as required;
19. As outlined in the Monitor’s Thirty-Eighth Report, the Monitor continues to keep its attention on matters that could potentially allow for additional distributions to creditors;
20. The Monitor continues to respond to queries from creditors and maintains regular contact with the Estate Representative and major stakeholders;
21. Moreover, the Monitor has continued to provide monthly updates (for December 2022 to February 2023) 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);

v) Reasonableness of the Extension Sought

22. Since the issuance of the Twenty-Seventh Extension Order, the Petitioner has acted and continues to act in good faith and with due diligence;
23. 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;
24. An extension of the Stay Period to December 15, 2023, is necessary to allow the Carmack Litigation to follow its course and the complete distribution of the Undistributed Funds to claimants;
25. The Petitioner is of the view that extending the Stay Period to December 15, 2023, is thus appropriate in the present circumstances;
26. 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-Eighth Report;
27. In addition, the Monitor, either directly or via the Estate Representative, has communicated with the major stakeholders (the Province, the Class Counsel and the US Legal Representatives) who have all indicated their support and consent to the extension request.

IV. APPROVAL OF CANADIAN PROFESSIONALS' FEES

28. The following table, drawn from the Monitor's Thirty-Eighth Report, summarizes the Canadian Professional Fees incurred for the period of December 1, 2022 to May 31, 2023, for which approval is sought:

| Montreal, Maine & Atlantic Canada Co. Administration Charge Summary As of May 31, 2023 | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------------------|-------------------|
| | Fees / | | Total |
| | Disbursements | Sales Taxes | |
| Administration Charge ¹ | \$ 14,650,000 | \$ 2,170,000 | \$ 16,820,000 |
| Accrued Professional Fees as of Nov 30, 2022 | (14,460,672) | (2,141,265) | (16,601,937) |
| Balance of Administration Charge to implement the Plan | 189,328 | 28,735 | 218,063 |
| Richter | 34,070 | 5,102 | 39,172 |
| Woods | 19,524 | 2,921 | 22,445 |
| Gowling WLG | 5,128 | 768 | 5,895 |
| | <u>58,722</u> | <u>8,790</u> | <u>67,513</u> |
| Balance of Administration Charge to complete the CCAA ² | <u>\$ 130,606</u> | <u>\$ 19,945</u> | <u>\$ 150,551</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> | | | |

29. As appears from the table, total fees for all Professionals for the six-month period ending on May 31, 2023, amount to \$58,722, plus the applicable taxes;

V. CONCLUSION

30. The Petitioner respectfully requests that this Honourable Court issue an order in keeping with the conclusions set out below;
31. 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-Eighth 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 December 15, 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, June 14, 2022 and December 12, 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) \$39,172, to Richter Inc. (formerly Richter Advisory Group Inc. /Richter Groupe Conseil Inc.), Monitor;
- b) \$22,445 to the Monitor’s counsel, Woods LLP;
- c) \$5,895 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 \$130,606, plus taxes, be held by the Monitor to secure the payment of all fees and disbursements to be incurred from June 1, 2023, 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.

MONTRÉAL, June 9, 2023

Gowling WLG (Canada)

GOWLING WLG (CANADA) LLP
Attorneys for Petitioner

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

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

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

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

Petitioner

and

**RICHTER INC. (FORMERLY 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-Eighth Order Extending the Stay Period and for Approval of Professional Fees* are true.

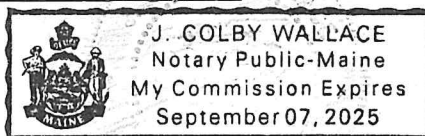
AND I HAVE SIGNED:



ROBERT J. KEACH

SWORN TO before me in Portland, Maine,
this 9TH day of June 2023

Notary Public



CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

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

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

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**MONTREAL, MAINE & ATLANTIC CANADA
CO. (MONTREAL, MAINE & ATLANTIQUE
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Monitor

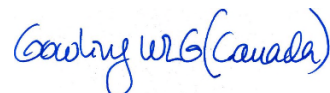
NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present ***Application for a Twenty-Eighth 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 **1:00 p.m. on June 13, 2023**, of its intention to contest the Application. In that case, the Application will be heard on **June 14, 2023**, at **9:30 a.m.** by Teams.


DO GOVERN YOURSELVES ACCORDINGLY.

MONTRÉAL, June 9, 2023



GOWLING WLG (CANADA) LLP

Attorneys for Petitioner

| | | | | | |
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| <p>N°: 450-11-000167-134</p> | <p>SUPERIOR COURT (COMMERCIAL DIVISION) DISTRICT OF ST-FRANÇOIS</p> | <p>(Sitting as a court designated pursuant to the <i>Companies' Creditors Arrangement Act</i>, R.S.C. c. C-36, as amended)</p> <p>IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:</p> <p>MONTREAL, MAINE & ATLANTIC CANADA CO. (MONTREAL, MAINE & ATLANTIQUE CANADA CIE)</p> <p>and</p> <p>RICHTER INC. (FORMERLY RICHTER ADVISORY GROUP INC. /RICHTER GROUPE CONSEIL INC.)</p> <p>BL0052</p> | <p>Petitioner</p> <p>Monitor</p> | <p>APPLICATION FOR A TWENTY-EIGHTH 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"))</p> | <p>ORIGINAL</p> <p>Me Geneviève Cloutier (AN3718) genevieve.cloutier@gowlingwlg.com</p> <p> GOWLING WLG Gowling WLG (Canada) LLP 3700 - 1, Place Ville Marie Montréal (Québec) Canada H3B 3P4 Tel.: 514-392-9448 Fax: 514-876-9048</p> <p>N° file : L134420004</p> <p>INIT. : GC/II a/s 4743</p> |
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