

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/Debtor

and

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

Petitioner/Monitor

**APPLICATION FOR APPROVAL OF PROFESSIONAL FEES AND FOR AN INCREASE IN
THE ADMINISTRATION CHARGE
(Sections 9 and 11 *et seq.* of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36 ("CCAA"))**

**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 (the “**Trustee**” or “**Estate Representative**”);
6. 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**”);
7. 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;

II. ORDER SOUGHT

8. The Petitioners hereby seek 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 October 1, 2016 to December 31, 2016;
9. The Petitioners also seek an order increasing the amount of the Administration Charge (as defined in the Amended Plan) by \$1.5 million (plus taxes);

III. REASONS

i) **The Implementation of the Amended Plan**

10. 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;

ii) **Claims review and status of distributions**

11. Since the Plan Implementation Date, the Monitor, with the participation of its counsel and counsel of the Petitioner, has primarily focused on the review of claims and payment of distributions under the Amended Plan and US Plan (together, the “**Plans**”);
12. The Monitor’s Twenty-Fifth Report provides a detailed update with respect to the claims review, which may be summarized as follows (capitalized terms not otherwise defined shall have the meaning ascribed to them in the Amended Plan):

a) **Wrongful Death Claims:**

- i) All projected distributions have been paid;

b) **Bodily Injury and Moral Damage Claims:**

- i) All projected distributions to holders of Proven Claims have been paid (before any possible reallocation under section 4.2 of the Amended Plan);

- ii) To date, \$45.8 million has been distributed to 4,324 claimants following a review of those claims and the issuance by the Monitor of 4,324 Avis de Calcul de Votre Distribution et ou Avis de Rejet Total ou Partiel de Votre Réclamation (the “**Notices**”);
- iii) 457 claims were contested;
- iv) 388 of the 457 contested claims have been resolved;
- v) The Monitor is attempting to resolve the remaining 69 contestations. If they cannot be resolved, the Monitor will refer them to the Claims Officer and possibly seek directions from this Court in order to proceed with certain claims as test cases;

c) Property and Economic Damages Claims:

- i) The Monitor has completed its review of 1,787 of the 1,807 claims filed in the CCAA and the Chapter 11 Case;
- ii) 1,631 claims have been allowed in whole or in part and their holders have received an interim distribution of 50% (approximately \$6.2 million);
- iii) 79 claimants have filed notices of contestation and, unless the Monitor can resolve these disputes, they will be submitted to the Claims Officer or this Court;
- iv) The Monitor expects to issue Notices with respect to the remaining 20 claims within the next few months;
- v) The total amount of Proven Claims will likely be significantly below the \$75 million threshold referred to in Section 4.2 of the Amended Plan, which will likely entail a redistribution under that section;

d) Government Claims

- i) City of Lac-Mégantic - the distribution in respect of their \$20 million claim was paid in 2016;
- ii) Attorney General of Canada – having agreed to reallocate its distributions to certain other categories of creditors, this has been factored into the amounts being paid to those other categories;
- iii) Province of Québec: an interim amount of 50% of the projected distribution in respect of the \$409 million claim was paid in 2016. The Monitor is awaiting further updates from the Province with respect to the final amount of its claim;

e) Subrogated Insurer Claims:

- i) The subrogated insurer claims received their distributions in accordance with the terms of the Amended Plan in 2016;

iii) Approval of Professional Fees

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

Montreal, Maine & Atlantic Canada Co. Canadian Professionals Fee Summary October 1, 2016 to December 31, 2016				
	Fees /			
	Disbursements	Sales Taxes	Total	
Richter	\$ 411,550	\$ 61,630	\$ 473,179	
Woods	90,529	13,557	104,086	
Gowlings	57,271	8,563	65,833	
	<u>\$ 559,349</u>	<u>\$ 83,749</u>	<u>\$ 643,098</u>	

14. Pursuant to section 7.1 of the Amended Plan, the Canadian Professionals benefit from an Administration Charge in the amount of \$12 million plus taxes;
15. After the payment of the fees outstanding as of December 31, 2016, approximately \$437,000 (plus a pre-filing retainer of \$150,000 for the benefit of the Monitor and the Monitor's counsel) will remain to cover the costs (including taxes) of the remaining work to be performed by the Canadian Professionals (including the Claims Officer) to complete the claims process and the administration of the CCAA case;

iv) Increase in the Administration Charge

16. Since the Plan Implementation Date, the Canadian Professionals have diligently implemented the Amended Plan and over 95% of the claimants have received full or partial distributions on account of their claims, with many of the claimants having received payments in multiple categories;
17. That said, as further outlined in the Monitor's Twenty-Fifth Report, there remains work to be done to enable the complete distribution of the Funds for Distribution in accordance with the terms of the Amended Plan;
18. Since the Plan Implementation Date, the bulk of the work related to the analysis and treatment of the claims by the Monitor and the fees of the Monitor consequently represent approximately 76% of the total fees for the period;
19. As appears from the Monitor's Twenty-Fifth Report, the work of the Monitor consists of approximately 8,000 hours of work and can be broken down into three major categories:
- a) The analysis of 4,324 claims in the Bodily Injury and Moral Damages category and 1,807 claims in the Property and Economic Damages categories as well as the analysis and review of hundreds of informal contestations and 536 formal contestations as well as the ongoing attempts to resolve these contestations. This category of work represented approximately 60% of the Monitor's work or an average of less than an hour per claim;

- b) The issuance of approximately 14,500 individual distributions to creditors in accordance with the terms of the Amended Plan, including the preparation of detailed statements of account and responses to creditors' queries. This represented approximately 30% of the Monitor's work; and
 - c) Other acts of administration including reporting to Court, analysis of various tax matters, interaction with the Estate Representative and the WD Trustee in the Chapter 11 Case, communications with the Public Curator, ongoing posting of documents to the website and other tasks which represent approximately 10% of the Monitor's work.
20. Despite the significant work performed by the Canadian Professionals, the estimated cost of the work remaining to be done to complete the administration of the CCAA and the full distribution of the settlement funds exceeds the remaining amount of the Administration Charge;
21. This is due to the exceptional nature of this case and the complexity of the work involved;
22. Indeed, despite best efforts to foresee the amount of time that would be required to analyze the claims, a number of factors have contributed to the insufficiency of the projected fees and amount of the Administration Charge, including (i) the fact that the claims are individualized damage claims, (ii) the fact that most claimants are not represented by counsel for the purposes of discussing and documenting their individual claims with representatives of the Monitor (notwithstanding the fact that the majority of them are Class Members pursuant to the Representation Order issued by this Court on April 4, 2014), and (iii) the fact that those discussions between individual claimants and representatives of the Monitor have been very extensive;
23. The Monitor's Twenty-Fifth Report provides further details regarding the remaining work, which includes, amongst other things, finalizing the analysis of Property and Economic Damages Claims, implementing the economic savings reallocation, dealing with outstanding issues in the Chapter 11 Case, addressing tax issues with respect to the Funds for Distribution and issuing final dividends to 1,807 claimants in the Property and Economic Damages Claims category;
24. The most significant and time-consuming aspect of the remaining work relates to the resolution of the 69 remaining contested claims in the Moral Damages and Bodily Injury category and 79 remaining contested claims in the Property and Economic Damages Claims category;
25. Moreover, the recent issue of additional Notices to creditors is expected to generate an additional 50 contestations in the category of Property and Economic Damages Claims;
26. While some of these contestations may be resolved consensually, it is expected that a significant number of claims packages will need to be prepared in view of hearings to be held before the Claims Officer and/or before this Court;
27. Based on the Monitor's assessment as set out in its Twenty-Fifth Report, the estimated cost to complete the administration of the CCAA should range from a low of \$1.1 million to a high of \$1.7 million (\$1.26 million to \$1.95 million tax included);

28. Thus, the estimated cost under either scenario exceeds the total amount of the remaining charge and retainer being \$358,233 (plus taxes) and \$150,000 respectively; hence the increase of \$1.5 million (plus taxes) to the Administration Charge sought by the present Application;
29. As alluded to above and as set out in the Monitor's Twenty-Fifth Report, a number of significant factors could not be foreseen at the time the initial Administration Charge of \$12 million plus taxes was granted:
- a) The analysis of claims in the category of Property and Economic Damages has required extraordinary levels of direct communication by the Monitor with creditors (particularly with members of the Class) to obtain details supporting the calculation of their damages, to assess the information provided and to explain the Monitor's value of each claim to respective creditors;
 - b) The Monitor has received thousands of communications from creditors regarding the statements of distribution and the Notices in order to explain the assessment of their claim. Subsequently, the Monitor has been dealing with the many contestations that have been filed;
 - c) In order to issue distributions to creditors as quickly as possible, the Monitor issued interim distributions as opposed to waiting for all claims to be reviewed and all contestations to be resolved. This has resulted in increased costs which were not foreseen;
 - d) The treatment of distributions to over 600 minors has required additional resources to obtain the necessary information regarding identification of guardians and reporting to the Public Curator;
 - e) The Monitor, aided by its legal counsel and counsel to MMAC, has had to devote unplanned resources to the tax treatment of interest earned on the Funds for Distribution;

IV. CONCLUSION

30. The Petitioner respectfully requests that this Honourable Court approve the Canadian Professionals' fees pursuant to the conclusions set out below and grant the increase to the Administration Charge in the amount of \$1.5 million (plus taxes);
31. The Petitioner respectfully submits that the notices given of the presentation of the present Motion are proper and sufficient;

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

GRANT the present *Application for Approval of Professional Fees and for an Increase in the Administration Charge* (the "**Motion**");

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

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**")

APPROVE the fees and disbursements (including taxes) of the following professionals (the "**Canadian Professionals**") as at December 31, 2016 in the following amounts:

- a) \$473,179 to Richter Advisory Group Inc., Monitor;
- b) \$104,086 to the Monitor's counsel, Woods LLP;
- c) \$65,833 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 amount of the Administration Charge, as it pertains to the Canadian Professionals (which include, without limitation, the Claims Officer), as contemplated by the Amended Plan and the Canadian Approval Order, is hereby increased from \$12,000,000 plus any applicable taxes to \$13,500,000 plus any applicable taxes;

ORDER that the balance of the Administration Charge in the amount of \$1,858,233 (plus any applicable taxes) be held by the Monitor to secure the payment of all fees and disbursements to be incurred from January 1, 2017 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, February 22, 2017

(s) Gowling WLG (Canada) LLP

Gowling WLG (Canada) LLP

Lawyers for the Debtor

(s) Woods LLP

Woods LLP

Lawyers for the Monitor

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

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AFFIDAVIT OF ANDREW ADESSKY

I, the undersigned, Andrew Adessky, Partner at Richter Advisory Group Inc., doing business at 1981 McGill College Avenue, Montreal, Québec, H3A 0G6, solemnly declare as follows:

1. I am a duly authorized representative of the Monitor;
2. All the facts alleged in the present *Application for Approval of Professional Fees and for an Increase in the Administration Charge* are true.

AND I HAVE SIGNED:



ANDREW ADESSKY

SWORN TO before me in Montreal
this 22nd day of February, 2017



Commissioner of oaths



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NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present *Application for Approval of Professional Fees and for an Increase in the Administration Charge* 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 February 28, 2017**, of its intention to contest the Application. In that case, the Application will be heard at the Sherbrooke Courthouse located at 375 King Street West on **March 14, 2017 at 10:00 a.m.** in room 2.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, February 22, 2017

(s) Gowling WLG (Canada) LLP

Gowling WLG (Canada) LLP
Lawyers for the Debtor

(s) Woods LLP

Woods LLP
Lawyers for the Monitor

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BL0052

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(Sections 9 and 11 et seq. of the Companies'
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COPY

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