

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 SIXTEENTH 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 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 fifteen (15) occasions, with the most recent extension having been granted until June 30, 2017 pursuant to an order dated as of October 20, 2016 (the "**Fifteenth 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 January 31, 2018 for the reasons set out below;
12. The Petitioner also seeks an order approving the fees and disbursements of MMAC's counsel, the Monitor, the Monitor's counsel and the Claims Officer (the "**Professionals**") for the period of January 1, 2017 to May 31, 2017;

III. EXTENSION OF THE STAY PERIOD

13. Since the issuance of the Fifteenth 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. The Monitor's Twenty-Sixth Report provides an update with respect to the claims review and may be summarized as follows:
- a) **Wrongful Death Claims:** all the projected distributions have been paid;
 - b) **Bodily Injury and Moral Damage Claims:**
 - i) 100% of the total distribution payable to claimants who have Proven Claims in this category have been paid (prior to any possible reallocation under section 4.2 of the Amended Plan). In total, as of the date hereof, an amount of approximately \$46.3 million has been distributed to 4,324 claimants;
 - ii) 410 of 457 contested claims have been resolved through negotiations;
 - iii) The remaining 47 contestations are scheduled to be adjudicated before the Claims Officer in Lac-Mégantic between June 13 and 15, 2017;
 - c) **Property and Economic Damages Claims:**
 - i) The Monitor has completed a review of 1,797 of the 1,807 claims filed;
 - ii) 1,712 of those have become Proven Claims and their holders have received an interim distribution of 50% of the estimated total distribution;
 - iii) 12 of 94 contested claims have been resolved through negotiations;
 - iv) The Monitor will continue its efforts to resolve these contestations before referring them to the Claims Officer and, in that regard, has scheduled 30 meetings to take place in Lac-Mégantic from June 13 to 15, 2017;
 - v) The Monitor is awaiting further information from claimants and/or the Province of Québec prior to allowing or disallowing the remaining 10 claims;
 - vi) Because Proven Claims in this category will likely be significantly below the \$75 million threshold described in Section 4.2 of the Amended Plan, the Monitor estimates that a reallocation will occur under the terms of that Section of the Amended Plan and that the amount to be reallocated will be approximately \$22 million;
 - d) **Government Claims:**
 - i) The only outstanding claim in this category is the claim of the Province of Quebec which has not yet provided the Monitor with the final amount of its claim;
 - ii) To date, the Province of Quebec has received an interim distribution in the amount of 50% of the projected distribution based on its \$409 million claim;

e) **Subrogated Insurer Claims:** all the projected distributions were made in 2016;

the whole as more fully appears from a copy of the Monitor's Twenty-Sixth Report filed in support hereof as **Exhibit R-1**;

ii) The Monitor

16. Since the Fifteenth 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;
17. As outlined in the Monitor's Twenty-Sixth Report (R-1), substantial resources have been devoted to the ongoing review and adjudication of claims;
18. Moreover, the Monitor continues to respond to numerous queries from creditors and maintains regular contact with the Estate Representative and major stakeholders;

iii) Reasonableness of the Extension Sought

19. Given the implementation of the Plans and the ongoing distributions to creditors, no creditor will suffer any prejudice by the extension of the Stay Period;
20. An extension of the Stay Period to January 31, 2018 is necessary to allow for the ongoing review and adjudication of claims, as well as distributions to creditors;
21. Moreover, as explained at paragraph 15 of the Monitor's Twenty-Sixth Report (R-1), ongoing litigation in the Chapter 11 Case could impact the Amended Plan in terms of both distribution and overall administration. That litigation is unlikely to be resolved in 2017;
22. The Petitioner is of the view that extending the Stay Period to January 31, 2018 is thus appropriate in the present circumstances;
23. The Monitor has indicated to the Petitioner that it supports the present request for an extension of the Stay Period, as appears from its Twenty-Sixth Report (R-1);

IV. APPROVAL OF PROFESSIONAL FEES

24. The following table, drawn from the Monitor's Twenty-Sixth Report (R-1), summarizes the fees for which approval is sought:

Montreal, Maine & Atlantic Canada Co.			
Administration Charge Summary			
As of May 31, 2017			
	Fees /		
	Disbursements	Sales Taxes	Total
Administration Charge ¹	\$ 13,500,000	\$ 2,022,000	\$ 15,522,000
Accrued Professional Fees as of December 31, 2016	(11,641,767)	(1,719,542)	(13,361,309)
Balance of Administration Charge to implement the Plan	1,858,233	302,458	2,160,691
<u>Fees and Disbursements - January 1, 2017 to May 31, 2017</u>			
Richter	549,023	82,216	631,239
Woods	178,158	26,679	204,837
Gowling	131,368	19,672	151,040
Claims Officer	11,844	1,774	13,618
	<u>870,393</u>	<u>130,341</u>	<u>1,000,734</u>
Balance of Administration Charge to complete the CCAA ²	<u>\$ 987,840</u>	<u>\$ 172,117</u>	<u>\$ 1,159,957</u>
¹ As per the Amended Plan of Compromise and Arrangement dated June 8, 2015 and Order dated March 3, 2017. ² In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.			

25. Pursuant to section 7.1 of the Amended Plan, the payment of the fees of the Professionals secured by the Administration Charge;
26. The balance of the Administration Charge, following the payment of fees up to December 31, 2016, is \$1,858,233 plus taxes;
27. The present request for approval of fees covers the period of January 1, 2017 to May 31, 2017, with fees and disbursements totalling \$870,393 plus taxes;
28. After the payment of the fees and disbursements described above, the balance of the Administration Charge will be \$987,840 plus taxes and will be used to cover the cost of the work required to complete the claims process and the administration of the CCAA proceedings;
29. As alluded to above in the description of the status of the claims review and as more fully set out in the Monitor's Twenty-Sixth Report (R-1), a substantial amount of work remains to be completed with respect to the review and adjudication of claims;
30. However, the Monitor continues to discuss contested claims with major stakeholders, creditor groups and individual creditors in an effort to consensually resolve these disputed claims and limit the number of disputes to be referred to the Claims Officer pursuant to the Claims Resolution Order of April 15, 2015;

V. CONCLUSION

31. The Petitioner respectfully requests that this Honourable Court extend the Stay Period to January 31, 2018 and approve the Professionals' fees pursuant to the conclusions set out below;
32. 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 :

GRANT the present *Application for a Sixteenth 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 January 31, 2018, 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 and October 20, 2016 shall remain otherwise unchanged;

APPROVE the fees and disbursements (including taxes) of the following professionals (the "**Professionals**") as at May 31, 2017 in the following amounts:

- a) \$631,239.07 to Richter Advisory Group Inc., Monitor;
- b) \$204,837.22 to the Monitor's counsel, Woods LLP;
- c) \$13,617.73 to the Claims Officer Me André Rochon (Prévost Fortin D'aoust Avocats);
- d) \$151,039.88 to Petitioner's counsel, Gowling WLG (Canada) LLP;

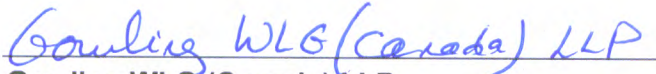
ORDER the Monitor to pay those fees and disbursements, which include applicable sales taxes, from the Indemnity Fund;

ORDER that the balance of the Administration Charge in the amount of \$987,840 plus taxes be held by the Monitor to secure the payment of all fees and disbursements to be incurred from June 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, June 8, 2017


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
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

AFFIDAVIT 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:

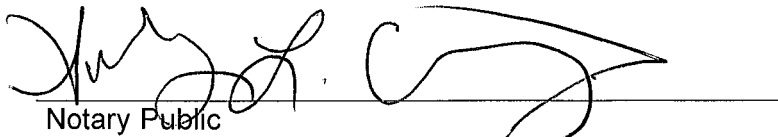
1. I am the Estate Representative to the estate of Montreal, Maine & Atlantic Railway Ltd., the sole shareholder of the Petitioner;
2. All the facts alleged in the present *Application for a Sixteenth Order Extending the Stay Period and for Approval of Professional Fees* are true.

AND I HAVE SIGNED:



ROBERT J. KEACH

SWORN TO before me in Portland, Maine,
this 8th day of June, 2017



Notary Public

AUBREY L. CUMMINGS
Notary Public, Maine
My Commission Expires October 21, 2017

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

PROVINCE OF QUÉBEC
DISTRICT OF SAINT-FRANÇOIS

N°: 450-11-000167-134

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**MONTREAL, MAINE & ATLANTIC CANADA CO.
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Petitioner

and

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Monitor

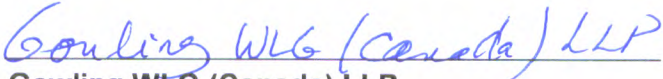
NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present *Application for a Sixteenth 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 **3:00 p.m. on June 14, 2017**, of its intention to make representations in respect of the Application. In that case, the Application will be heard at the Sherbrooke Courthouse located at 375 King Street West **on June 16, 2017, at 10:00 a.m. in a room 1**, or so soon thereafter as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, June 8, 2017


Gowling WLG (Canada) LLP
Attorneys for Petitioner

No. 450-11-000167-134

SUPERIOR COURT
(COMMERCIAL DIVISION)
DISTRICT OF ST-FRANÇOIS

(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

BL0052

**APPLICATION FOR A SIXTEENTH 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"))

ORIGINAL

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