

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 AN EIGHTEENTH 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 "**CCA 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 seventeen (17) occasions, with the most recent extension having been granted until June 29, 2018 pursuant to an order of December 20, 2017 (the "**Seventeenth 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 December 14, 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 December 1, 2017 to April 30, 2018;

III. EXTENSION OF THE STAY PERIOD

13. Since the issuance of the Seventeenth 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. As appears from the Monitor's Twenty-Eighth Report, the claims review process is essentially complete, the whole as more fully appears from a copy of the Monitor's Twenty-Eighth Report filed in support hereof as **Exhibit R-1**;
16. The Monitor's Twenty-Eighth Report provides a detailed update with respect to that process, which may be summarized as follows:
 - a) **Wrongful Death Claims:** As reported by the Monitor in February 2017, all the projected distributions have been paid;
 - b) **Bodily Injury and Moral Damage Claims:** All remaining claims have been resolved and the Monitor will be proceeding to the issuance of a supplemental distribution in the approximate amount of \$2.8 million ("**Supplemental Moral Distribution**");
 - c) **Property and Economic Damages Claims:**
 - i) The Monitor has now completed and finalized its review of the 1,810 claims and has resolved 14 previously contested claims with the corresponding distributions issued to all claimants in this category;
 - ii) Consequently pursuant to Section 4.2 of the Amended Plan, the difference between the \$45.3 million of Proven Claims and the allocated claims value of \$75 million for this category will result in a reallocation of approximately \$16.8 million in distributions to other claimants and categories of claimants (the "**Economic Savings**");
 - d) **Government Claims:**
 - i) As previously reported to the Court by the Monitor and by the Petitioner through its application for the Seventeenth Extension Order, the only unfinalized claim in this category was the claim of the Province of Quebec;
 - ii) On December 1, 2017, the Province submitted its final proof of claim in the approximate amount of \$340.2 million (versus an initial claim of \$409 million) which consisted of actual expenses to March 31, 2017 of approximately \$260.2 million and a provision of future expenses of approximately \$80.0 million;
 - iii) On May 10, 2018, the Province reduced that provision to approximately \$68.9 million;
 - iv) The Monitor is continuing its review both in terms of the reasonableness of that provision as well as the implications to all claimants of the Province's final claim in the context of the Amended Plan;

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

ii) Interest Treatment

17. Approximately \$3.9 million has been earned on the Funds for Distribution since the effective date of the Amended Plan;
18. The Monitor's Twenty-Eighth Report (R-1) outlines certain tax issues that must be clarified before the allocation of this interest income can be calculated;

iii) New Lawsuit

19. On May 31, 2018, counsel to the Petitioner was served with a *Demande Introductive d'Instance* filed with the Superior Court, Civil Division, District of Megantic (the "**Demande Introductive**");
20. The *Demande Introductive* was filed against Canadian Pacific Railway Company, the Petitioner and Thomas Harding seeking approximately \$5.2 million in respect of economic and moral damages on behalf of 48 plaintiffs (versus 49 in paragraph 1 of the *Demande Introductive*);
21. The Petitioner has yet to complete its review of the *Demande Introductive* and is not yet in a position to determine what response if any it will take;
22. The plaintiffs are required to obtain a lifting of the stay of protection prior to commencing any action against the Petitioner and it is not yet clear that they intend to do so;

iv) The Monitor

23. Since the Seventeenth 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;
24. As outlined in the Monitor's Twenty-Eighth Report (R-1), substantial resources have been devoted to the ongoing review and adjudication of claims;
25. More specifically, all contested claims have been resolved, both through negotiations and formal hearings presided over by the Claims Officer;
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. 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;
28. An extension of the Stay Period to December 14, 2018 is necessary to allow for issuance of the Supplemental Moral Distribution, the reallocation of the Economic Savings and the allocation and distribution of interest income;

29. Moreover, as explained at paragraph 15 of the Monitor's Twenty-Eighth Report (R-1), ongoing litigation in the Chapter 11 Case could impact the Amended Plan in terms of both distribution and overall administration. It is unlikely that litigation will be resolved before the expiry of the extension period sought;
30. The Petitioner is of the view that extending the Stay Period to December 14, 2018 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 Twenty-Eighth Report (R-1);

IV. APPROVAL OF PROFESSIONAL FEES

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

Montreal, Maine & Atlantic Canada Co.			
Administration Charge Summary			
As of April 30, 2018			
	Fees /		
	Disbursements	Sales Taxes	Total
Administration Charge ¹	\$ 13,500,000	\$ 1,998,000	\$ 15,498,000
Accrued Professional Fees as of November 30, 2017	<u>(13,172,900)</u>	<u>(1,948,761)</u>	<u>(15,121,661)</u>
Balance of Administration Charge to implement the Plan	327,100	49,239	376,339
Richter	144,431	21,629	166,060
Woods	34,897	5,226	40,122
Gowling WLG	14,425	2,161	16,586
Claims Officer ²	2,451	367	2,818
	<u>196,203</u>	<u>29,382</u>	<u>225,586</u>
Balance of Administration Charge to complete the CCAA ³	<u>\$ 130,896</u>	<u>\$ 19,857</u>	<u>\$ 150,753</u>

¹ As per the Amended Plan of Compromise and Arrangement dated June 8, 2015 and Order dated March 3, 2017.

² The work of the Claims Officer is now complete as all contested claims have been resolved.

³ In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.

33. Pursuant to section 7.1 of the Amended Plan, the payment of the fees of the Professionals is secured by the Administration Charge;
34. The balance of the Administration Charge, following the payment of fees up to November 30, 2017, is \$327,100 plus taxes;
35. The present request for approval of fees covers the period of December 1, 2017 to April 30, 2018, with fees and disbursements totalling \$196,203.44 plus taxes;

36. After the payment of the fees and disbursements described above, the balance of the Administration Charge will be \$130,896.32 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;
37. As alluded to above and as more fully set out in the Monitor's Twenty-Eighth Report (R-1), a substantial amount of work remains to be completed with respect to, amongst other things, the Supplemental Moral Distribution, the reallocation of the Economic Savings, the allocation and distribution of interest income, the Province's claim and proceedings ongoing in the Chapter 11 Case;
38. It has become clear that the Administration Charge will not suffice to cover the fees and disbursements of the Professionals to complete the administration of the CCAA proceedings;
39. That said, neither the Petitioner nor the Professionals seek an increase to the Administration Charge at this time;
40. Rather, the Petitioner shall submit future professional fees to the Court for review and approval on a regular basis;

V. CONCLUSION

41. The Petitioner respectfully requests that this Honourable Court extend the Stay Period to December 14, 2018 and approve the Professionals' fees pursuant to the conclusions set out below;
42. 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 Eighteenth 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 December 14, 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, October 20, 2016, June 16, 2017 and December 20, 2017 shall remain otherwise unchanged;

APPROVE the fees and disbursements (including taxes) of the following professionals (the "**Professionals**") as at April 30, 2018, in the following amounts:

- a) \$166,059.63 to Richter Advisory Group Inc., Monitor;
- b) \$40,122.32 to the Monitor's counsel, Woods LLP;
- c) \$2,818.04 to the Claims Officer Me André Rochon (Prévost Fortin D'aoust Avocats);
- d) \$16,585.67 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 \$130,896.32 plus taxes be held by the Monitor to secure the payment of all fees and disbursements to be incurred from May 1, 2018 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 5, 2018

A handwritten signature in cursive script that reads "Gowling WLG (Canada)". The signature is written in black ink and is positioned above a horizontal line.

Gowling WLG (Canada) LLP
Attorneys for Petitioner

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

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

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C. C-36, as amended)

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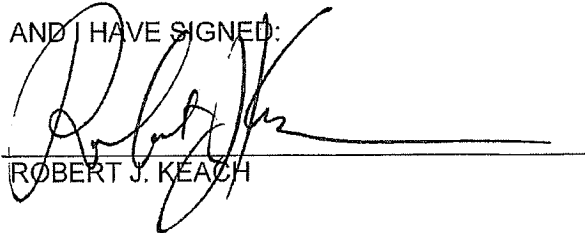
Monitor

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:

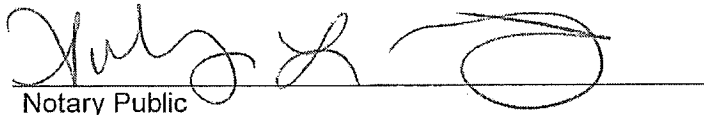
1. I am the Estate Representative to the estate of Montreal, Maine & Atlantic Railway Ltd., the sole shareholder of the Petitioner;
2. All the facts alleged in the present *Application for an Eighteenth Order Extending the Stay Period and for Approval of Professional Fees* are true.

AND I HAVE SIGNED:



ROBERT J. KEACH

SWORN TO before me in Portland, Maine,
this 5th day of June, 2018



Notary Public

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

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

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

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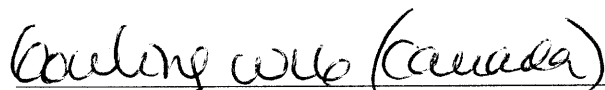
NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the present ***Application for an Eighteenth 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 **4:00 p.m. on June 14, 2018**, 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 **June 19, 2018 at a time to be determined**.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, June 5, 2018



Gowling WLG (Canada) LLP
Attorneys for Petitioner

No. 450-11-000167-134

SUPERIOR COURT
(COMMERCIAL DIVISION)
DISTRICT OF ST-FRANÇOIS

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

Monitor

BL0052

**APPLICATION FOR AN EIGHTEENTH
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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