

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUEBEC
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)**

Debtor-PETITIONER

-and-

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

Monitor

**AMENDED MOTION FOR AN ORDER APPROVING THE DISTRIBUTION OF THE
PROCEEDS OF SETTLEMENT WITH TRAVELERS PROPERTY
CASUALTY COMPANY OF AMERICA**

**(Sections 9, 10 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985,
c. C-36 ("CCAA"))**

**TO THE HONOURABLE JUSTICE MARTIN BUREAU OF THE SUPERIOR COURT, SITTING
IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF SAINT-FRANÇOIS, THE
PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:**

PREAMBLE

1. On August 8, 2013, this Honourable Court issued an order extending the protection of the *Companies' Creditors Arrangement Act* ("**CCAA**") to the Montreal Maine & Atlantic Canada Co. (the "**Petitioner**" or "**MM&A**") pursuant to section 11.02 of the CCAA (as amended on August 23, 2013, the "**Initial Order**");

2. Pursuant to the Initial Order, Richter Advisory Group Inc. (Richter Groupe Conseil Inc.) was appointed as monitor of the Petitioner (the "**Monitor**");
3. MM&A's filing under the CCAA was precipitated by the tragic train derailment in Lac-Mégantic on July 6, 2013 (the "**Derailment**"). The Derailment also precipitated the filing of Chapter 11 bankruptcy proceedings by Montreal, Maine & Atlantic Railway Ltd ("**MM&AR**"), (the Petitioner's parent company), in the United States Bankruptcy Court, District of Maine (the "**Chapter 11 Case**");
4. On August 21, 2013, the United States trustee appointed Robert J. Keach to serve as trustee in the Chapter 11 Case (the "**Chapter 11 Trustee**");
5. By the present Motion, Petitioner seeks an order approving the distribution of the proceeds following the settlement reached with Travelers Property Casualty Company of America ("**Travelers**") on the terms set forth hereafter;

BACKGROUND

6. On December 19, 2013, the Court entered an Order approving a compromise and settlement with Travelers (the "**Travelers Settlement**"), the whole as appears from the Court record (the "**Canadian Travelers Judgment**"). A similar order was entered in the Chapter 11 Case on December 24, 2013 (the "**US Travelers Judgment**"). Copies of the Canadian Travelers Judgment and US Travelers Judgment are filed in support hereof as **Exhibits R-1** and **R-2** respectively;
7. The Travelers Settlement resolves a dispute between MM&A and the Chapter 11 Trustee, on the one hand, and Travelers, on the other hand, concerning the coverage under a commercial property insurance policy which Petitioner claims provides, among certain other coverages, business interruption coverage to Petitioner and MM&AR (more fully outlined in Petitioner's *Motion for an Order Approving Compromise and Settlement with Travelers Property Casualty Company of America*);
8. Pursuant to the Travelers Settlement, an amount of US\$3,800,000 ("**Settlement Payment**") has been paid to MM&A and MM&AR as a full and final settlement, allocated as follows:
 - a) US\$2,470,000 or 65% has been paid to the Monitor in respect of amounts due to MM&A ("**Canadian Settlement Amount**");
 - b) US\$1,330,000 or 35% has been paid to the Chapter 11 Trustee in respect of amounts due to MM&AR;
9. As appears from the orders approving the Travelers Settlement, the Canadian Settlement Amount was to remain in trust with the Monitor until further order of this Court;
10. Within the scope of the Chapter 11 Case, Wheeling & Lake Erie Railway Company ("**Wheeling**") filed a contestation in respect of, inter alia, the allocation of the Settlement Payment between MM&A and MM&AR;

11. Once again within the scope of the Chapter 11 Case, the Chapter 11 Trustee and Wheeling agreed that they would first argue whether Wheeling holds a valid security interest over the business interruption policy and its proceeds in light of the fact that, in the negative, the debate on the allocation of those proceeds would become moot;
12. On April 15, 2014, a judgment was rendered in the Chapter 11 Case dismissing Wheeling's contestation (the "**Wheeling Judgment**"). More specifically, said judgment states as follows:

Wheeling did not perfect a security interest in the business interruption policy or its proceeds. Accordingly, [MM&AR] and [MM&A] are entitled to the proceeds of that policy free of any claim of Wheeling. In light of this conclusion, there is no need to address Wheeling's objection to the allocation of the proceedings among [MM&AR] and [MM&A].

A copy of the Wheeling Judgment is filed in support hereof as **Exhibit R-3**;

13. On April 29, 2014, Wheeling filed a *Notice of Appeal from the Decision and Order Regarding the Proceeds of the Traveler's Insurance Policy Dated April 15, 2014* (the "**Notice of Appeal**") in relation to the Wheeling Judgment;
14. While a Notice of appeal has been filed, (...) no order staying the execution of the Wheeling Judgment or otherwise affecting the enforceability of same has been entered in the Chapter 11 Case;
15. The Wheeling Judgment is therefore entirely enforceable and nothing prevents the Court from dealing with the Canadian Settlement Amount;
16. Moreover, Wheeling did not contest Petitioner's *Motion for an Order Approving Compromise and Settlement with Travelers*, nor has it sought to contest the Canadian Travelers Judgment;
- 16.1 In fact, despite having been duly served with all relevant motions and orders pertaining to the Travelers Settlement, Wheeling has neither made representations nor filed proceedings before this Court;
- 16.2 On June 3, 2014, after MM&A advised the Service List that the present Motion would be heard on June 11, 2014, Wheeling filed a motion in the Chapter 11 Case entitled "*Wheeling & Lake Erie Railway Company's Motion (1) to Enforce Order Granting Chapter 11 Trustee's Motion for Order Approving Compromise and Settlement with Travelers Property Casualty Company of America or (2), Alternatively, for a Stay Pending Appeal of the Decision and Order Regarding the Proceeds of Traveler's Insurance Policy Dated April 15, 2014*" (the "**Wheeling Motion**"), the whole as appears from a copy of the Wheeling Motion filed in support hereof as **Exhibit R-4**;
- 16.3 The Wheeling Motion is scheduled to be heard in the Chapter 11 Case on June 23, 2014 at 1:00pm;
- 16.4 The Petitioner respectfully submits that the Wheeling Motion is completely unrelated to these proceedings and should not be allowed to delay the Court's adjudication on the

present Motion;

- 16.5 This Court is solely competent to hear the present Motion and, aside from having recently hired lawyers in Toronto (Cassels Brock, as appears from the letter filed in support hereof as **Exhibit R-5**), Wheeling has shown no interest to date in the Canadian proceedings;

DISTRIBUTION OF THE CANADIAN SETTLEMENT AMOUNT

17. Pursuant to the Order of March 14, 2014 approving an increase to the amount of the Administration Charge, the amount of the Administration Charge (as defined in said Order) was increased to \$4,000,000;
18. The Administration Charge secures the professional fees and disbursements incurred by the Petitioner's counsel, the Monitor and the Monitor's counsel (the "**Professionals**");
19. As of February 28, 2014, the fees and disbursements of the Professionals totaled approximately \$3,819,126, including taxes;
20. To date, the Professionals have yet to receive any payment for services duly rendered following the Initial Order;
21. As such, Petitioner submits that the Monitor should be authorized to distribute the Canadian Settlement Amount in the amount of US\$2,470,000.00 as follows:
- a) US\$790,600 (representing \$853,850 CDN) to the Monitor as partial payment for services rendered;
 - b) US\$507,690 (representing \$548,310 CDN) to the Monitor's counsel, Woods LLP as partial payment for services rendered;
 - c) US\$1,171,710 (representing \$1,265,440 CDN) to Petitioner's counsel, Gowling Lafleur Henderson LLP as partial payment for services rendered;
22. It is in the interest of Petitioner and all stakeholders that the Monitor be permitted to distribute the Canadian Settlement Amount and proceed with a partial payment of the amounts owing to the Professionals;

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

1. **ORDER** that the Motion is properly presentable on May 9, 2014;
2. **GRANT** the Motion;
3. **ORDER** the Monitor to distribute the amount of US\$2,470,000.00, currently being held in trust following the Order of this Court dated December 19, 2014, as follows :
 - a) US\$790,600 to the Monitor as partial payment for services rendered;

- b) US\$507,690 to the Monitor's counsel, Woods LLP as partial payment for services rendered;
 - c) US\$1,171,710 to Petitioner's counsel, Gowling Lafleur Henderson LLP as partial payment for services rendered;
4. **GRANT** such further relief as this Honourable Court may deem appropriate;
 5. **ORDER** the provisional execution of the Order notwithstanding any appeal, without the necessity of furnishing any security;
 6. **THE WHOLE** without costs, except if contested.

MONTREAL, June 6, 2014

(s) Gowling Lafleur Henderson LLP

GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUEBEC
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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COMPROMISE OR ARRANGEMENT OF:

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

Debtor-PETITIONER

and

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

Monitor

NOTICE OF PRESENTATION

TO: **Service list**

TAKE NOTICE that the present *Amended Motion for an Order Approving the Distribution of the Proceeds of Settlement with Travelers Property Casualty Company of America* will be presented for adjudication before the Honourable Justice Martin Bureau of the Superior Court of Quebec on **June 11, 2014** in room 2 of the Courthouse located at 375 King St. West in Sherbrooke, at 10:00 am or so soon as counsel may be heard

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, June 6, 2014

(s) Gowling Lafleur Henderson LLP

GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUEBEC
DISTRICT OF SAINT-FRANÇOIS
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Debtor-PETITIONER

and

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

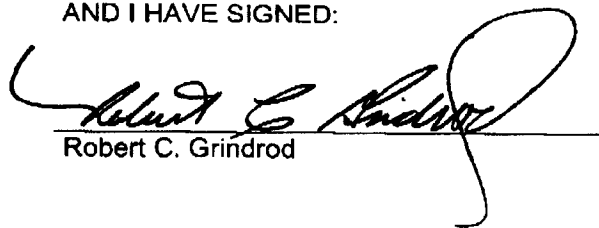
Monitor

AFFIDAVIT OF ROBERT C. GRINDROD

I, the undersigned, Robert C. Grindrod, businessman, doing business at 15 Iron Road, Herman, Maine, USA, 04401, solemnly declare as follows:

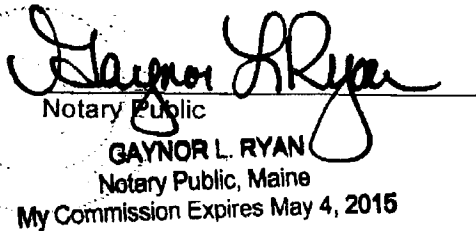
1. I am the President and Chief Executive Officer of Petitioner;
2. All the facts alleged in the present *Amended Motion for an Order Approving the Distribution of the Proceeds of Settlement with Travelers Property Casualty Company of America* are true.

AND I HAVE SIGNED:



Robert C. Grindrod

SWORN TO before me in Bangor, Maine
this 9th day of June, 2014



Notary Public
GAYNOR L. RYAN
Notary Public, Maine
My Commission Expires May 4, 2015

CANADA

COUR SUPÉRIEURE

(Chambre commerciale)

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

*(Loi sur les arrangements avec les créanciers des
compagnies, L.R.C. C-36, telle qu'amendée)*

DANS L'AFFAIRE DU PLAN D'ARRANGEMENT
ET DE COMPROMIS DE:

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

Débitrice-Requérante

-et-

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

Contrôleur

ATTESTATION D'AUTHENTICITÉ
Selon l'art. 82.1 du C.p.c.

J'atteste que la copie de l'affidavit est conforme au facsimilé de cet acte reçu par
télécopieur:

Nature du document : Affidavit de Robert C. Grindrod
Numéro de Cour : 450-11-000167-134
Nom de l'expéditeur : Gaynor Ryan
Numéro du télécopieur émetteur : 930-102-0466
Lieu de la transmission : Portland, Maine
Date de la transmission : Le 9 juin 2014
Heure de transmission : 9h58

Montréal, ce 9 juin 2014


Alexander Bayus
GOWLING LAFLEUR HENDERSON S.E.N.C.R.L., S.R.L.