

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

MOTION FOR AN EIGHTH ORDER EXTENDING THE STAY PERIOD
(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 August 8, 2013, the Superior Court, Commercial Division, in and for the district of Montreal, issued an order (as amended on August 23, 2013, the "**Initial Order**") extending the protection of the *Companies' Creditors Arrangement Act* ("**CCAA**") to Montreal Maine & Atlantic Canada Co. (the "**Petitioner**" or "**MM&A**") pursuant to section 11.02 of the CCAA;
2. Pursuant to the Initial Order, Richter Advisory Group Inc. (Richter Groupe Conseil Inc.) was appointed as monitor of the Petitioner (the "**Monitor**") and a stay of proceedings (the "**Stay of Proceedings**") was ordered until and including September 6, 2013 (the "**Stay Period**");

3. In addition to protecting the Petitioner, the Stay of Proceedings issued by this Court also extends to *inter alia* the members of the Petitioner's corporate group (the Petitioner and the other members of its corporate group collectively referred to as the "**Petitioner's Corporate Group**") listed in Schedule "A" thereto and to the persons listed in Schedule "B" thereto (collectively, the "**Non-Petitioner Defendants**"), Schedules A and B being attached to the present Motion. As appears from Schedules "A" and "B", the members of the Petitioner's Corporate Group and the Non-Petitioner Defendants include, *inter alia*, Montreal, Maine & Atlantic Railway Ltd ("**MM&AR**"), (the Petitioner's parent company), as well as their liability insurer, XL Insurance Company Ltd. (the "**Liability Insurer**" or "**XL**");
4. In addition to MM&A's filing under the CCAA, MM&AR filed Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court, District of Maine (the "**Chapter 11 Case**");
5. 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**");
6. The Stay Period has been extended by this Court on seven previous occasions with the most recent extension having been granted on April 29, 2014 (the "**Seventh Extension Order**"), the whole as appears from the Court Record;

II. ORDER SOUGHT

7. The Petitioner hereby seeks an extension of the Stay Period in respect of *inter alia* the Petitioner, the other members of the Petitioner's Corporate Group and the Non-Petitioner Defendants until September 30, 2014 for the reasons explained above and hereinafter;

III. GROUNDS FOR THIS MOTION

8. Since the issuance of the Seventh Extension Order, the Petitioner has acted and continues to act in good faith and with due diligence as set forth hereinafter;
9. The Petitioner has made and continues to make significant efforts to maintain the stability of its business pending the sale of its assets to Central Maine & Quebec Railway Canada Inc. (to which Railroad Acquisitions Holdings LLC ("**RAH**") assigned all of its rights and obligations under the Asset Purchase Agreement, pursuant to its Third Amendment approved by this Court on May 9, 2014) (the "**Sale of the Canadian Assets**") and address the concerns of all of its stakeholders including, *inter alia*, the following:
 - i) **Sale process;**
10. On May 15, 2014, the sale of the assets of MM&AR was concluded and the parties have continued to work towards a closing of the sale of the Canadian assets;

11. Central Maine & Quebec Railway Canada Inc. has now obtained a certificate of fitness from the Canadian Transportation Agency such that the Sale of the Canadian Assets is now expected to close on June 30, 2014;

ii) Cash flow and interim financing

12. Following the sale of the MM&AR assets, the Debtor In Possession financing which had been provided by Camden National Bank was repaid in full;

13. In order to fund the operations of MM&A from May 16, 2014 onwards, MM&A entered into an agreement with RAH whereby RAH is purchasing the daily revenue generated by MM&A from May 16, 2014 onwards;

14. This provides sufficient funding to maintain the railway operations of MM&A until the closing of the Sale of the Canadian Assets, the whole as more fully appears from the Monitor's Eleventh Report;

iii) Developments with respect to the Business Interruption Insurance Policy

15. On December 19, 2013, the Court entered an Order approving a compromise and settlement with Travelers Property and Casualty Company of America ("**Travelers**"), the whole as appears from the Court record. A similar order was entered in the Chapter 11 Case on December 24, 2013 (the "**Travelers Settlement**");

16. Pursuant to the Travelers Settlement, an amount of US\$3,800,000 ("**Settlement Payment**") was paid to MM&A and MM&AR as a full and final settlement, allocated as follows:

- a) US\$2,470,000 or 65% was paid to the Monitor in respect of amounts due to MM&A (the "**Canadian Settlement Amount**");
- b) US\$1,330,000 or 35% was paid to the Chapter 11 Trustee in respect of amounts due to MM&AR;

17. Pursuant to the order of this Court approving the Travelers Settlement, the Canadian Settlement Amount was to remain in trust with the Monitor until further order of this Court;

18. 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;

19. The Chapter 11 Trustee and Wheeling agreed to first determine 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;

20. On April 15, 2014, a judgment was rendered in the Chapter 11 Case declaring that Wheeling did not properly perfect a security interest in the Travelers Settlement and that there is thus no need to address Wheeling's contestation of the allocation of the Settlement Payment (the "**April 15 Judgment**");
21. On May 8, 2014, the Petitioner filed a motion seeking to order the Monitor to distribute the Canadian Settlement Amount held in trust by the Monitor on account of accrued fees and expenses of the Monitor, the Monitor's counsel and the Petitioners' counsel (the "**Professionals**"). On June 6, 2014, the Petitioner amended that motion (the "**Amended Distribution Motion**");
22. On June 4, 2014, Wheeling filed a motion in the Chapter 11 Case whereby it sought an order seeking to enforce Wheeling's interpretation of the December 24, 2013 order in the Chapter 11 Case in respect of the distribution of the Settlement Payment (the "**Motion to Enforce**") or a stay of the April 15 Judgment (the "**Motion for Stay**");
23. Following a hearing on June 11, 2014 on the Amended Distribution Motion, on June 16, 2014, this Court issued a judgment which orders the Monitor to pay the Canadian Settlement Amount to the Professionals;
24. On June 24, 2014, Wheeling's Motion to Enforce and its Motion for Stay were denied in the Chapter 11 Case;
25. The Canadian Settlement Amount will thus be applied against accrued professional fees which are in excess of \$4 million (taxes included) as of May 31, 2014;

iv) Discussions with XL and other third parties

26. Discussions have continued with XL, the insured parties and parties in interest with respect to a settlement allowing the payment of the indemnity owed under the XL insurance policy and additional contributions in exchange for releases to be provided in the CCAA and Chapter 11;
27. The terms and conditions under which (i) XL will remit the proceeds of the \$25 million insurance policy and (ii) additional contributions will be paid, have been agreed to in principle, however, a definitive agreement has not yet been finalized and a due diligence review of financial information in connection with a settlement with XL and the insured parties is still in process;
28. In addition, serious discussions are underway between counsel for MM&A, the Monitor, the Chapter 11 Trustee and various potentially liable third parties in hopes of reaching a global settlement that may eventually be presented to creditors in the form of a plan of arrangement. In exchange for contributions to fund a plan of arrangement, these third parties would receive, subject to the approval of this Court and the U.S. Bankruptcy Court releases in the CCAA and the Chapter 11 Case which would bar any litigation arising from the derailment;

29. These discussions will continue over the course of the extension period sought and shall remain highly confidential for the time being;

v) Claims process

30. On March 31, 2014, the Court rendered a judgment granting the Petitioner's *Motion for an order approving a process to solicit claims and for the establishment of a claims bar date*;
31. A Claims Procedure Order was subsequently issued on April 4, 2014 and the Claims Bar Date (as defined therein) was set for June 13, 2014;
32. As more fully outlined in the Monitor's Eleventh Report, the Court issued an Amended Claims Procedure Order on June 13, 2014 amending the Claims Bar Date, solely for the Wrongful Death Victims (i.e. the estate of the persons deceased as a result of the derailment, their successor, spouse or common law partner, child, grandchild, parent, grandparent and sibling), to July 14, 2014 (the "**Amended Claims Bar Date**").
33. The Monitor received approximately 4,800 claims, many immediately prior to the Claims Bar Date, with a value in excess of \$1.85 billion;
34. In addition to the claims mentioned above, the Monitor received an indemnity claim from the Chapter 11 Trustee in the approximate amount of US\$1.55 billion in respect of claims against MM&AR arising out of the derailment, including wrongful death claims;
35. Additional claims may be filed directly by Wrongful Death Victims by the Amended Claims Bar Date;
36. Also, MM&A and the Monitor jointly filed a claim in the Chapter 11 Case given MM&AR's liability for any shortfall after the winding up of MM&A (MM&A being an unlimited liability company). The amount of this claim (\$748 million) is based upon an interim listing of the proofs of claim received by the Monitor at the time the joint claim was prepared and filed in the Chapter 11 Case and will be amended once the final amount of all the claims against MM&A is determined;
37. Additional details are contained in the Monitor's Eleventh Report and a more detailed summary of claims filed in both the CCAA proceedings and Chapter 11 Case will be provided by the Monitor at a later date;

vi) The Monitor

38. Since the Seventh Extension Order, the Petitioner 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 and has kept the Monitor apprised of all developments.

IV. CONCLUSION

39. As indicated above, the Petitioner, the Monitor and the Chapter 11 Trustee continue to work diligently to complete the Sale and believe that this will be done by June 30, 2014;
40. In light of the foreseen closing date, the Petitioner is of the view that no creditor will suffer any undue prejudice by the extension of the Stay Period;
41. The Petitioner is of the view that extending the Stay Period to September 30, 2014 is appropriate in the present circumstances;
42. As appears from the above, the Petitioner has acted and continues to act in good faith and with the utmost diligence;
43. The Monitor has indicated to the Petitioner that it supports the present request for an extension of the Stay Period;
44. The Petitioner respectfully requests that this Honourable Court extend the Stay Period to September 30, 2014;
45. The Petitioner respectfully submits that the notices given of the presentation of the present Motion are proper and sufficient;
46. The present Motion is well founded in fact and in law;

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

GRANT the present *Motion for an Eighth Order Extending the Stay Period* (the "**Motion**");

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


ORDER that the Stay Period, as defined in the Initial Order, be extended by this Court up to and including September 30, 2014 the whole subject to all the other terms of the Initial Order;

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 and April 29, 2014 (amendment of the Stay Period) shall remain otherwise unchanged;

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.

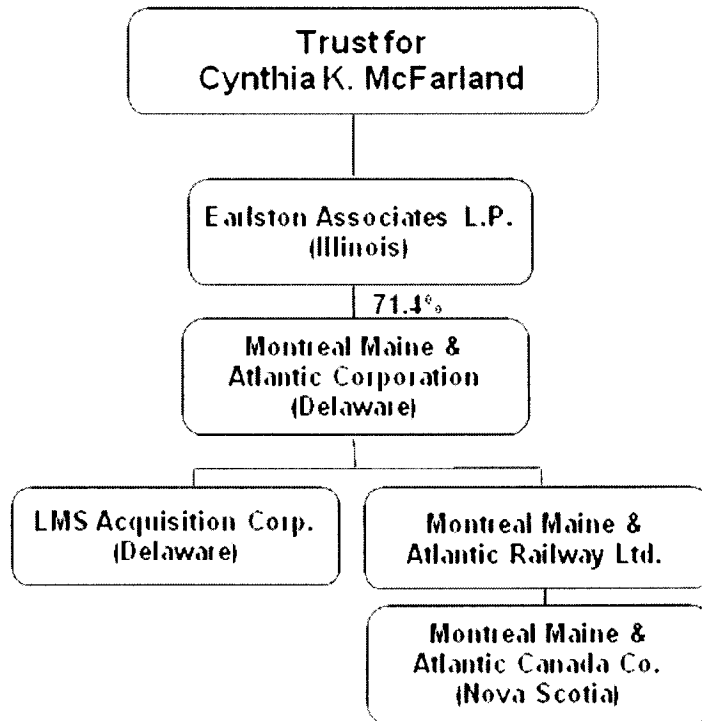
MONTREAL, June 26, 2014

A handwritten signature in cursive script, reading "Gowling Lafleur Henderson", written over a horizontal line.

GOWLING LAFLÉUR HENDERSON LLP
Attorneys for Petitioner

SCHEDULE « A »

MONTREAL, MAINE & ATLANTIC CORPORATE GROUP



SCHEDULE « B »

NON PETITIONNERS DEFENDANTS :

MONTREAL, MAINE & ATLANTIC CORPORATION
MONTREAL, MAINE & ATLANTIC RAILWAY LTD
EARLSTON ASSOCIATES L.P.
EDWARD BURKHARDT
ROBERT GRINDROD
GAYNOR RYAN
DONALD GARNER JR.
JOE McGONIGLE
THOMAS HARDING
XL INSURANCE COMPANY LIMITED
XL GROUP PLC

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SUPERIOR COURT
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CIE)

PETITIONER

and

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

MONITOR


NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present *Motion for a Eighth order extending the stay period* will be presented for adjudication before the honourable Gaétan Dumas, j.s.c., of the district of Saint-François, on **June 30, 2014**, in **room 1** of the Sherbrooke Courthouse, located at 375, rue King Ouest, Sherbrooke, at 10:00 a.m. or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, June 26, 2014


GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

N° 450-11-000167-134

SUPERIOR COURT
PROVINCE OF QUEBEC
DISTRICT OF SAINT-FRANÇOIS

Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act,
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IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:

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

Debtor-PÉTITIONNER

-and-
RICHTER ADVISORY GROUP INC.

MONITOR

BL0052

**MOTION FOR AN EIGHTH ORDER
EXTENDING THE STAY PERIOD**

(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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