

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 A TENTH 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 nine previous occasions with the most recent extension having been granted on September 24, 2014 (the "**Ninth Extension Order**") following the presentation of the Petitioner's *Motion for a Ninth Extension of the Stay Period* (the "**Ninth Extension Motion**"), 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 January 12, 2015 for the reasons explained above and hereinafter;

III. GROUNDS FOR THIS MOTION

8. Since the issuance of the Ninth Extension Order, the Petitioner has acted and continues to act in good faith and with due diligence as set forth hereinafter;
9. Effective July 1, 2014, the Petitioner is no longer continuing any railroad operations and is not incurring expenses related thereto, save and except for the amounts payable to its counsel, the Monitor and the Monitor's counsel. The Petitioner is continuing to settle various post-filing obligations as summarized in the Fourteenth Report of the Monitor;
10. Prior to the Ninth Extension Order, the Petitioner, the Monitor and Chapter 11 Trustee's focus shifted almost entirely toward continuing the serious and sustained discussions previously underway in view of concluding settlements with XL and various potentially liable third parties ("**Third Parties**") for the creation of a fund for the benefit of the creditors to which said parties would contribute in exchange for releases and injunctions barring any litigation against them arising from the derailment;

11. As stated in the Ninth Extension Motion, the results of these discussions will be presented to creditors in the form of a plan of compromise and arrangement (a "**Plan**");
12. For the reasons more fully set out herein, the Petitioner now anticipates being in a position to file its Plan on or about December 19, 2014;
 - i) **Plan Term Sheet**
13. In support of the Ninth Extension Motion (R-1 thereto), the Petitioner filed a document entitled, *Term Sheet In Respect of the Plan of Compromise and Arrangement of Montreal, Maine and Atlantic Canada Co.* (the "**Plan Term Sheet**");
14. The purpose of the Plan Term Sheet was to set out the structure of the Plan that the Petitioner anticipates being in a position to file;
15. The key terms of the Plan Term Sheet are as follows:
 - a) The net proceeds of the sale of MM&A's assets (after payment of the Administration Charge pursuant to the *Motion for an Order Approving the Partial Distribution of the Proceeds of Sale of the Assets of MM&A*) will be distributed to the Province of Quebec and/or the U.S. Federal Railroad Administration ("**FRA**") subject to the results of the motions filed by the Province and the FRA for the determination of the allocation of those sale proceeds, as well as subject to an agreement between the Province and the FRA, or a final court order, establishing the scope and/or validity of the Province's priority charge pursuant to Section 11.8(8) CCAA;
 - b) In accordance with the agreement in principle reached with XL and others (the "**XL Agreement**"), XL would remit the proceeds of the \$25 million insurance policy, as well as an additional \$5 million, the whole in exchange for full and final releases in the CCAA and the Chapter 11 Case which would bar any litigation against XL arising from the derailment, as well as a discharge from any further obligations under the policy;
 - c) These funds will be deposited into a trust account to be held by the Monitor (the "**Indemnification Fund**");
 - d) Pursuant to the XL Agreement, certain of the insured parties (and related entities and insurers) under the XL policy would remit an additional amount that could reach \$11,500,000 to the Indemnification Fund in exchange for similar releases barring any litigation against them arising from the derailment;
 - e) The Plan will include settlements that may be entered into before the filing of the Plan with any remaining parties insured under the XL policy, as well as their related entities and insurers; once again subject to releases barring any litigation against them arising from the derailment;

- f) The Plan will also include settlements that may be entered into before the filing of the Plan with any potentially liable Third Party; once again subject to releases barring any litigation against them arising from the derailment;
 - g) The implementation of the Plan will be subject to a Plan Sanction Order in the CCAA proceedings, recognition of the Plan Sanction Order in the U.S. pursuant to Chapter 15 of the U.S. Bankruptcy Code, and the filing of a plan in the Chapter 11 Case;
16. As mentioned at the hearing on the Ninth Extension Motion, all agreements referred to in the Plan Term Sheet remained subject to discussions with those parties that would eventually hold the majority of the votes in respect of the Plan, namely the Province of Quebec and the Class Representatives (referred to as the "Class Action Plaintiffs" in the Representation Order entered on April 4, 2014);
- ii) Discussions underway with other insured parties and Third Parties**
17. Since the Ninth Extension Order and the filing of the Plan Term Sheet, the Petitioner, the Monitor and the Chapter 11 Trustee have continued to negotiate with various Third Parties and have been able, in respect of certain of these discussions, to partially lift the confidentiality of same so that the key terms of offers may be discussed with the Province of Quebec and the Class Representatives;
18. The Petitioner is now in a position to confirm that agreements in principle have been reached with a number of Third Parties but not all;
19. At the present time, those proposed settlement agreements would allow for the payment of an amount of approximately \$126,300,000 into the Indemnification Fund (one of those proposed agreements remains subject to required in-house approval by that Third Party, which approval is expected within approximately 10 days hereof);
20. In addition, the projected contribution to the Indemnification Fund could, prior to the filing of the Plan, increase from approximately \$126,300,000 to approximately \$162,800,000. The proposed settlement agreements making up this additional \$36,500,000 remain subject to further review, due diligence and discussion, including with the Province of Quebec and the Class Representatives;
21. A portion of the amounts available in the Indemnification Fund will serve to pay outstanding and ongoing professional fees in connection with this matter. For the sake of clarity, the \$25 million in proceeds from the XL insurance policy, should it be made available for distribution under the Plan, will be entirely allocated to creditors without deduction of any kind for professional fees;
22. Moreover, counsel for MM&A, the Monitor and the Chapter 11 Trustee, with the Province of Quebec and the Class Representatives, are pursuing negotiations with certain of those Third Parties with which agreements in principle have not yet been reached, the whole in hopes that the amount available for distribution to creditors may be further increased prior to the filing of the Plan. Any Third Parties that fail to submit satisfactory

settlement offers before the filing of the Plan will be excluded from the Plan and will not benefit from the releases and injunctions provided for therein;

23. Negotiations with Third Parties will thus continue over the course of the following weeks;
24. Naturally, any settlements or agreements in principle reached with Third Parties remain subject to approval by the creditors and the Court;

iii) Implementation of the Plan and related issues

25. Prior to the expiry of the extension sought herein and following the filing of the Plan, the Petitioner shall seek a further extension in view of addressing matters related to the Plan, its approval and its implementation, including with respect to the meeting of creditors and sanctioning of the Plan in both the CCAA proceedings and the Chapter 11 Case, as set in the Plan Term Sheet;

iv) The Monitor

26. Since the Ninth 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;

IV. CONCLUSION

27. Given the status of the negotiations with various Third Parties, the agreements in principle reached to date, the fact that the Petitioner's operations have ceased and that a Plan is to be filed by December 31, 2014, the Petitioner is of the view that no creditor will suffer any undue prejudice by the extension of the Stay Period;
28. The Petitioner is of the view that extending the Stay Period to January 12, 2015 is appropriate in the present circumstances;
29. As appears from the above, the Petitioner has acted and continues to act in good faith and with the utmost diligence;
30. The Monitor has indicated to the Petitioner that it supports the present request for an extension of the Stay Period;
31. The Petitioner respectfully requests that this Honourable Court extend the Stay Period to January 12, 2015;
32. The Petitioner respectfully submits that the notices given of the presentation of the present Motion are proper and sufficient;
33. 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 a Tenth 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 January 12, 2015, 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, April 29, 2014, June 30, 2014 and September 24, 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.

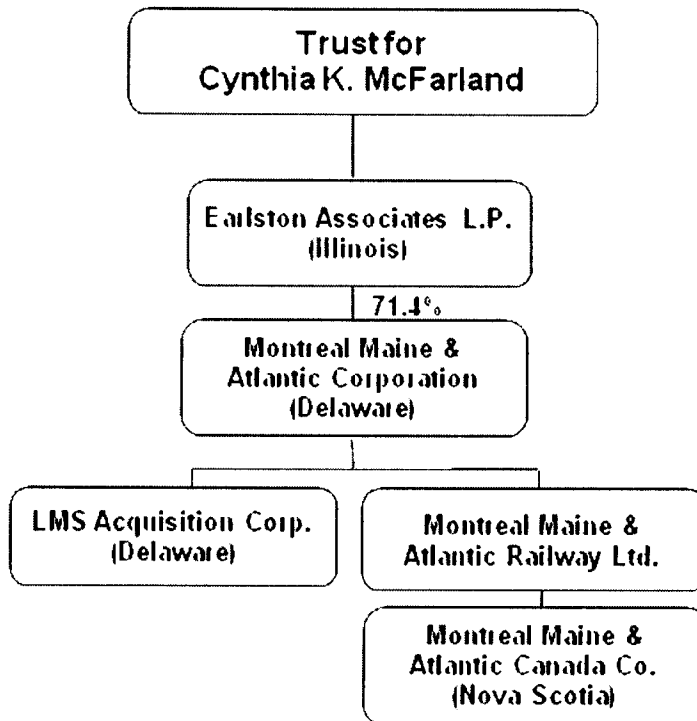
THE WHOLE without costs, save and except in the event of contestation.

MONTREAL, November 20, 2014


GOWLING-LAFLEUR 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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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 Tenth 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 **November 24, 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, November 20, 2014



GOWLING LAFLEUR HENDERSON LLP

Attorneys for Petitioner

No. 450-11-000167-134

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Petitioner

and

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

Monitor

BL0052

**MOTION FOR A TENTH ORDER
EXTENDING THE STAY PERIOD
(Sections 9, 10 and 11 of the Companies'
Creditors Arrangement Act, R.S.C. 1985,
c. C-36 ("CCAA"))**

ORIGINAL

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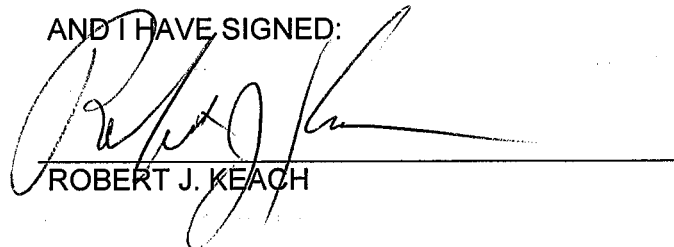
MONITOR

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:

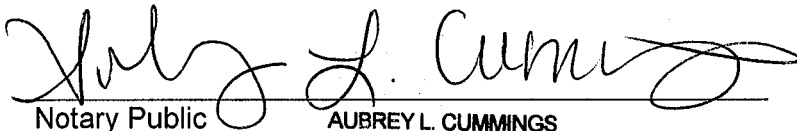
1. I am the Chapter 11 Trustee to Montreal, Maine & Atlantic Railway Ltd., the sole shareholder of the Petitioner;
2. All the facts alleged in the present *Motion for a Tenth Order Extending the Stay Period* are true.

AND I HAVE SIGNED:



ROBERT J. KEACH

SWORN TO before me in Portland, Maine,
this 21st day of November, 2014



Notary Public

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