CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N°: 500-11-045094-139

SUPERIOR COURT
(Commercial Division)

(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

and

CANADIAN TRANSPORTATION AGENCY, 15 Eddy Street, Gatineau, Quebec, J8X 4B3;

Mis-en-cause

AMENDED MOTION TO AMEND THE INITIAL ORDER AND SEEK A CHARGE AND SECURITY ON THE PROPERTY OF THE PETITIONER TO SECURE FUNDS FOR SELF-INSURED OBLIGATION
(Section 11 *Companies' Creditors Arrangement Act*)

TO THE HONOURABLE JUSTICE MARTIN CASTONGUAY, J.S.C., THE PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:

INTRODUCTION

1. Petitioner Montreal, Maine & Atlantic Canada Co. ("**MM&A**") provides services as a shortline freight railway carrier operating various rail lines in the province of Québec. It is a subsidiary of Montreal Maine & Atlantic Railway Ltd. ("**MM&AR**"), which operates lines *inter alia* in the States of Maine and Vermont;

2. MM&A operates railways in corridors in the province of Québec extending from Saint-Jean to Farnham, from Bedford to Sainte-Rosalie, as well as from Farnham through Lac-Mégantic to the U.S. border, where it joins the lines of MM&AR. The transportation of products via the States of Vermont and Maine is effected via MM&AR;

3. As more fully set out in paragraph 21 of MM&A's Petition for the issuance of a initial order filed into the Court record herein, MM&A and MM&AR are facing significant challenges as a result of the tragic train derailment that occurred on July 6, 2013 in the municipality of Lac-Mégantic, Québec (the "**Derailment**"), which led MM&A to request protection under the *Companies' Creditors Arrangement Act* ("**CCAA**");

4. The vast majority of stakeholders supported this request;

5. On August 8, 2013, this Honourable Court issued an order (the "**Initial Order**") granting the protection of the CCAA to MM&A, the Court stating that otherwise judicial anarchy would ensue to the detriment of all affected parties;

6. Pursuant to the Initial Order, Richter Advisory Group Inc. (Richter Groupe Conseil Inc.) was appointed to act as monitor to MM&A (the "**Monitor**"), and a stay of proceedings (the "**Stay**") with respect to MM&A, its property and certain third parties was granted until and including September 6, 2013, the whole subject to section 11.1 CCAA;

7. On August 13, 2013, the Canadian Transportation Agency (the "**Agency**") issued a press release reporting its decision (issued on that same day) to suspend, effective on August 20, 2013, the certificate of fitness no. 02004-3 issued in favour of MM&A and MM&AR under the *Canada Transportation Act* (the "**Certificate of Fitness**"), which permits both companies to operate railways in Canada. A copy of the August 13, 2013 order issued by the Agency (the "**Agency Order**"), the reasons in support thereof, the August 13, 2013 press release and the Certificate of Fitness, are filed in support hereof *en liasse* as **Exhibit R-1**;

8. Following the Agency Order, MM&A multiplied its efforts to identify solutions to satisfy the Agency and to obtain that the Certificate of Fitness be maintained for an interim period of time so as to permit MM&A to negotiate an agreement with an interim operator and, ultimately, to sell its business as a going concern for the benefit of its stakeholders;

9. On August 16, 2013, MM&A, through the undersigned counsel, filed a motion to seek an order pursuant to section 11.1(3) CCAA extending the Stay to the Agency Order so as to allow MM&A to proceed to an orderly transition of its Quebec operations to an interim operator pending the sale of its business;

10. Shortly thereafter, on the same day, the Agency advised the undersigned counsel of its decision to vary the Agency Order by amending the date of effect of the suspension of the Certificate of Fitness to October 1st, 2013, provided that this Honourable Court orders that the assets of MM&A (the "**Property**") be subject to a charge and security to secure funds for the self-insured retention portion set forth in the liability insurance policy (the "**Self-Insured Obligation**") subscribed by MM&A from XL Insurance Company Ltd. (the "**Policy**"). A copy of the August 16, 2013 decision of the Agency is filed in support hereof as **Exhibit R-2**;

RELIEF SOUGHT

11. By this motion, MM&A urgently seeks an order pursuant to section 11 CCAA granting said charge and security in the aggregate amount of $250,000 over the Property to secure funds for the Self-Insured Obligation in favour of any person having a valid claim

under the Policy in connection with an Accident (as this term is defined under the Policy) occurring since the issuance of the Initial Order (the "**Charge**");

12. As it appears from the Agency's decision of August 16, 2013 (R-2), in the absence of the Charge, the Agency will suspend the Certificate of Fitness as of August 23, 2013 at 5:00pm and MM&A will then be forced to permanently cease all of its operations in Canada such that the value of its business and realization thereof for the benefit of its various stakeholders, including all claimants and potentials claimants having sustained losses as a result of the Derailment (the "**Personal Claimants**"), and the governmental and environmental authorities (the "**Environmental Claimants**"), will be substantially impaired;

13. In addition, it is manifest that a sudden and permanent shutdown of MM&A's operations in Canada will have negative consequences on the economies of several towns and municipalities in the province of Quebec and elsewhere, which in some respect are highly dependent on railway services, and will impose incidental collateral damages to third parties (industries and businesses) who are relying on freight services in the coming weeks;

14. This day, the Agency confirmed in writing to MM&A and MM&AR that if the relief sought pursuant to this Motion is granted by this honourable Court, the Agency would be satisfied that MM&A meets the conditions set out in its decision of August 16, 2013 (R-2). A copy of the Agency's letter to MM&A and MM&AR dated August 22, 2013 is filed in support hereof as **Exhibit R-7;**

EVENTS LEADING TO THIS MOTION

15. Shortly after the Derailment, on or about July 10, 2013, the Agency sought to obtain additional information from MM&A and MM&AR in respect of their third-party liability insurance in order to satisfy the Agency that both railway companies continue to have adequate insurance coverage for the ongoing operations listed under their Certificate of Fitness. A copy of the Agency's letter to MM&A and MM&AR dated July 10, 2013 is filed in support hereof as **Exhibit R-3**;

16. As more fully set forth in paragraphs 12 to 37 of MM&A's *Motion to extend the stay of proceedings to a decision of the Canadian Transportation Agency*, the content of which is hereby referred to as if herein recited at length, since the receipt of the Agency's letter (R-3), MM&A has taken all possible steps in order to identify solutions to satisfy the Agency and prevent the shutdown of its Canadian operations;

17. These efforts resulted in the Agency's decision of August 16, 2013 (R-2) to vary the Agency Order and maintain the Certificate of Fitness until October 1st, 2013, provided that this Honourable Court orders that the Canadian assets of MM&A be subject to a charge and security to secure funds for the Self-Insured Obligation;

18. Indeed, although the Agency is now satisfied that MM&A and MM&AR continue to have adequate insurance coverage, the current financial situation of both companies is such that they are not in a position to secure the funds required to pay any potential Self-Insured Obligation on a going forward basis otherwise than by the creation of the Charge, the whole in accordance with the conclusions herein;

19. On a separate note and in its concern to keep this Court apprised of any notable development with respect to its affairs, MM&A wishes to inform this Court of the following:

    i. Following the Agency Order (August 13, 2013), the Canadian Pacific Railway Company ("**CP**") and the Canadian National Railway Company ("**CN**") both issued embargos on MM&A's traffic (the "**Embargo**") which prevented MM&A, for all practical purposes, to operate;

    ii. Upon receipt of a copy of the Agency's decision dated August 16, 2013, CN immediately lifted its Embargo while CP refused to do so;

    iii. Despite MM&A's efforts and discussions with CP to resolve the matter, CP persisted to maintain an embargo on MM&A's traffic, therefore causing immediate and serious harm to MM&A's operations;

    iv. Late in the day on August 20, 2013, CP modified its position but maintained its right to control MM&A traffic through a "permitting" system, and accordingly MM&A applied to the Agency to request the immediate lifting of the Embargo issued by CP;

    v. CN imposed a related embargo on August 21, 2013;

    vi. On August 21, 2013 at 6:48pm, namely after the service of this Motion, the Agency granted MM&A's request and ordered CP to immediately lift the Embargo and to resume providing to MM&A the same level of service MM&A received prior to August 13, 2013, including access to CP's and CN's rail networks. A copy of the decision of the Agency dated August 21, 2013 is filed in support hereof as **Exhibit R-3A**;

    vii. This morning, the CP confirmed the immediate lifting of its embargo;

    viii. Later today, CN confirmed the lifting of its embargo, such that MMA is not embargoed by CP or CN;

    ix. Without this favourable outcome, this issue would have had to be submitted to this Honourable Court on an urgent basis;

DETRIMENTAL CONSEQUENCES OF THE SUSPENSION OF THE CERTIFICATE OF FITNESS

20. As indicated above, in the event that MM&A and MM&AR are unable to satisfy the Agency with a Court order providing for the creation of the Charge, the Certificate of Fitness issued by the Agency in favour of both MM&A and MM&AR will be suspended effective as of August 23, 2013 at 5:00 pm;

21. As a result, MM&A and MM&AR will have no other alternative but to immediately thereafter and permanently cease all of their operations in Canada which will necessarily cause the immediate termination of the employment of virtually all remaining employees of MM&A as well as the cessation of all services to their numerous direct and indirect customers and to others such as the suppliers and clients of said MM&A's customers which all depend on MM&A's railway operations in Canada. A copy of a list of all

MM&AR from July 1st, 2012 to June 30, 2013 is filed under seal in support hereof as **Exhibit R-4**;

22. The shutdown of MM&A's operations will seriously jeopardize its capacity to maximize the value of its business and submit a viable arrangement or compromise for the benefit of its various stakeholders, including the Personal Claimants, the Environmental Claimants and other creditors;

23. The sudden shutdown of MM&A and MM&AR's operations in Canada will significantly and more generally impact the economies of the towns and municipalities situated in Quebec that have been serviced by MM&A, which in some respect are highly dependent on railway services (for yearly or seasonal requirements);

24. The shutdown of MM&A's operations, if not done in an orderly fashion with an adequate transition period (pending the sale of MM&A's business as a going concern), will result in economic and significant operational hardship to businesses and industries of the region which will be faced with the loss for an undetermined period of time of a vital transportation link;

25. In that respect, the Centre local de développement (CLD) Brome-Missisquoi and the Conseil Économique du Haut-Richelieu (namely, two (2) not-for-profit organizations whose mandate is to stimulate local economic growth) have informed MM&A of the detrimental consequences that would occur in the event of the sudden interruption of the rail service provided by MM&A and MM&AR on the operations of local businesses and industries;

26. As appears from the affidavits sworn by these organizations, the interruption of the rail service provided by MM&A and MM&AR would inevitably compromise the operations of well-established businesses in that (i) it would significantly increase their costs to obtain raw material and/or to ship their finished products, (ii) it would significantly reduce their profit margins, (iii) it would force them to lay off several employees, (iv) it would cause a sudden rupture of stock and prevent them to fulfill orders without delay, (v) it would make them less completive in their respective market, and (vi) it would force certain of these businesses to shutdown in the near future, causing even more job losses. A copy of the affidavit of a representative of the Centre local de développement (CLD) Brome-Missisquoi is filed in support hereof as **Exhibit R-5**. A copy of the affidavit of a representative of the Conseil Économique du Haut-Richelieu is filed in support hereof as **Exhibit R-6**;

27. As a further illustration of the foregoing, we refer this Honourable Court to the affidavit of the representative of Performance Packaging Inc., a company in business since 1953 and located in Cowansville (Quebec). A copy of the affidavit of the representative of Performance Packaging Inc. is filed in support hereof as **Exhibit R-8**;

28. As appears the affidavit (R-7), Performance Packaging Inc. estimates that a disruption of the rail service would cause an increase up to $1,700,000/year in its costs of transportation which would be detrimental on the company and may lead to the termination of employees and the shutting down of machinery;

29. MM&A also refers this Honourable Court to the affidavit of the representative of Akzo Nobel Pulp and Performance Canada Inc. ("**Akzo Nobel**"), a multinational paints and chemical company operating in more than 50 countries, with approximately 50,000 employees. This affidavit speaks of the significant detrimental economic impact that would have a suspension of the rail service on Akzo Nobel's operations at its Magog facility, and on its employees and customers. A copy of the affidavit of the representative of Akzo Nobel Pulp and Performance Canada Inc. is filed in support hereof as **Exhibit R-9**;

30. As a result, it is essential that the Charge be granted in order: (i) to prevent the suspension of the Certificate of Fitness, (ii) to prevent an interruption of rail service and the severe resulting impacts on a multitude of third parties, as well as (iii) to ensure the transition of MM&A's operations to an interim operator, pending the sale of MM&A's business as a going concern, so as to preserve and maximize the realization value of the MM&A business for the benefit of its various stakeholders, through a viable compromise or arrangement;

31. In this respect, it is MM&A's intention, on the date of return of this matter before the Court for an extension of the Initial Order (September 6, 2013), to report on the various options available for the sale of MM&A business as a going concern through a fair and orderly divestiture process/call for tenders to be monitored by the Monitor and eventually approved by this Court ;

32. Consequently, MM&A respectfully submits to this Honourable Court that it is essential and in the best interest of the stakeholders and the public that an order pursuant to 11 CCAA be rendered to grant the Charge sought herein so as to allow MM&A to proceed with an orderly transition of its Quebec operations to an interim operator pending the sale of its business on a going concern basis;

33. Furthermore, the creation of the Charge is appropriate in light of the following :

    i. the limited period of time during which the maintenance of the Certificate of Fitness is required, i.e. until an interim operator is in place or MM&A's business is sold as a going concern;

    ii. the Charge can only be called upon in the unlikely event of an Accident (as defined in the Policy) that would intervene during the limited period;

    iii. the fact that MM&A and MM&AR have significantly reduced their operations in Canada (due to the severed lines in Lac-Mégantic) and have no intention during this limited period to reinstate any operations relating to the transportation of crude oil;

    iv. no claims have been reported as of this date in relation to the operations since the Initial Order;

    v. the amount of the Charge is nominal in light of the existing and foreseeable claims against MM&A; and

vi. none of MM&A's creditors will be materially prejudiced as a result of the Charge. To the contrary, as indicated above, the Charge is necessary to preserve the value of MM&A's assets and business for the benefit of its various stakeholders;

34. Given the urgency of the situation, MM&A respectfully submits that it is essential that the execution of the orders sought herein be granted notwithstanding appeal;

35. This petition is well founded both in fact and in law;

WHEREFORE, MAY IT PLEASE THE COURT TO:

GRANT the present Motion to amend the initial order and seek a charge and security to secure funds for the self-insured obligation;

DECLARE that sufficient notice of the presentation of this Motion has been given by Petitioner to all interested parties;

AMEND the Initial Order as follows:

*" [41.1] **DECLARE** that the Property is hereby subject to a charge and security to secure the self-insured retention portion of the policy RCL0003808301 subscribed from XL Insurance Company Ltd. (the "**Policy**") in the aggregate amount of $250,000 in favour of any person having a valid claim under the Policy in connection with an Accident (as this term is defined under the Policy) occurring since the issuance of the Initial Order (the "**Self-Insured Obligation Charge**"), said charge having the priority established by paragraphs [42] and [43] hereof;*

*[42] **DECLARES** that the priorities of the Administration Charge, the Self-Insured Obligation Charge and any possible charge in favor of the Directors that may be granted in their favor pursuant to a further order of this Court (collectively, the "CCAA Charges"), as between them with respect to any Property to which they apply, shall be as follows:*

a) first, the Administration Charge;

b) second, the Self-Insured Obligation Charge;

c) (...) third, (...) any charge in favour of the Directors that may be granted in their favour pursuant to a further order of this Court;"

ORDER the provisional execution of the order to be rendered herein notwithstanding appeal and without the necessity to furnish any security;

THE WHOLE WITHOUT COSTS, save and except in the event of a contestation.

MONTREAL, August 22, 2013

Gowling Lafleur Henderson

GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
N°: 500-11-045094-139

SUPERIOR COURT
(Commercial Division)

(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

and

CANADIAN TRANSPORTATION AGENCY

Mis-en-cause

NOTICE OF PRESENTATION

TO: **SERVICE LIST**

CANADIAN TRANSPORTATION AGENCY
15 Eddy Street
Gatineau, Quebec J8X 4B3

TAKE NOTICE that the present *Motion to amend the initial order and seek a charge and security on the property of the Petitioner* will be presented for adjudication before one of the honourable Judges of the Superior Court of Quebec, sitting in practice division, on **August 23, 2013**, in room (to be determined) of the Courthouse located at 1 Notre-Dame St. East, Montreal, at 9:30 a.m. or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, August 22, 2013

Gowling Lafleur Henderson

GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

CANADA

PROVINCE OF QUÉBEC

DISTRICT OF MONTRÉAL

N°: 500-11-045094-139

SUPERIOR COURT
(Commercial Division)

(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

and

CANADIAN TRANSPORTATION AGENCY

Mis-en-cause

LIST OF EXHIBITS

Exhibit R-1:	Copies of the Order issued by the Canadian Transportation Agency on August 13, 2012, Press release and Certificate of fitness no. 02004-3;
Exhibit R-2:	Copy of the decision of August 16, 2013 of the the Canadian Transportation Agency;
Exhibit R-3:	Copy of the Canadian Transportation Agency's letter to Petitioner dated July 10, 2013;
Exhibit R-3A:	Copy of the decision of the Canadian Transportation Agency dated August 21, 2013;
Exhibit R-4:	Copy of list of businesses serviced by MM&A and MM&AR (under seal);
Exhibit R-5:	Affidavit of the Centre Local de Développement Brome-Missisquoi dated August 19, 2013;
Exhibit R-6:	Affidavit of the Conseil Économique du Haut-Richelieu dated August 20, 2013;
Exhibit R-7:	Copy of the Agency's letter to MM&A and MM&AR dated August 22, 2013;

Exhibit R-8:	Affidavit of the representative of Performance Packaging Inc. dated August 21, 2013;
Exhibit R-9:	Affidavit of the representative of Akzo Nobel Pulp and Performance Canada Inc. dated August 22, 2013.

MONTREAL, August 22, 2013

Gowling Lafleur Henderson

GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

N° 500-11-045094-139

SUPERIOR COURT
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

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

and

CANADIAN TRANSPORTATION AGENCY

MISE-EN-CAUSE

BL0052

AMENDED MOTION TO AMEND THE INITIAL ORDER AND SEEK A CHARGE AND SECURITY ON THE PROPERTY OF THE PETITIONER TO SECURE FUNDS FOR SELF-INSURED OBLIGATION

(Section 11 Companies' Creditors Arrangement Act)

ORIGINAL

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Canadian Transportation Agency / Office des transports du Canada

Canada

Canadian Transportation Agency
www.cta.gc.ca

Order No. 2013-R-266

August 13, 2013

IN THE MATTER OF Certificate of Fitness No. 02004-3 held by Montreal, Maine & Atlantic Railway, Ltd. and its wholly-owned subsidiary Montreal, Maine & Atlantic Canada Co.

File No.: R 8005/M5
R 8005/M6

Montreal, Maine & Atlantic Railway, Ltd. (MMA) and its wholly-owned subsidiary Montreal, Maine & Atlantic Canada Co. (MMAC) hold Certificate of Fitness No. 02004-3 issued by the Canadian Transportation Agency (Agency) pursuant to section 92 of the *Canada Transportation Act*, S.C., 1996, c. 10, as amended (CTA), which permits them to operate a railway in Canada as set out below.

MMA to operate a railway:

- between the Canada/United States border at mileage 32.63 of the Newport Subdivision and the Canada/United States border at mileage 43.32 of the Newport Subdivision;
- between the Canada/United States border near Saint-Léonard, New Brunswick and Saint-Léonard, New Brunswick;

MMAC to operate a railway:

- between Saint-Jean, Quebec and Lennoxville, Quebec; between Ste-Rosalie, Quebec and Farnham, Quebec; between Farnham, Quebec and Stanbridge, Quebec; between Brookport at mileage 0.0 of the Newport Subdivision and the Canada/United States border at mileage 26.25 of the Newport Subdivision;
- between Lennoxville, Quebec and the Canada/United States border near Boundary, Quebec; and

- by virtue of an interchange agreement with the Canadian Pacific Railway Company, on the Canadian Pacific Railway Company's Adirondack Subdivision between Saint-Jean, Quebec and Saint-Luc Junction, Quebec.

The Agency issued this certificate of fitness as it was satisfied that MMA and its wholly-owned subsidiary MMAC had adequate third party liability insurance coverage (including self-insurance) for the railway operations.

Subsection 94(2) of the CTA states that the Agency may suspend or cancel the certificate of fitness if it determines that the liability insurance coverage is no longer adequate.

Following the tragic derailment at Lac-Mégantic, Quebec on July 6, 2013, the Agency undertook an investigation to determine whether MMA and MMAC, as holders of the said Certificate of Fitness, can satisfy the Agency that they continue to have adequate third party liability insurance coverage for their ongoing operations.

To this end, by letter dated July 10, 2013, the Agency requested insurance and financial information from MMA and MMAC. Upon receipt of a response, the Agency, by letter dated July 26, 2013, directed further questions to MMA and MMAC.

According to MMA's and MMAC's insurance broker, the Lac-Megantic accident has resulted in the impairment of the aggregate limit by one half. Despite being asked to provide evidence of additional insurance to restore their insurance level to what existed prior to the Lac-Mégantic derailment, MMA and MMAC have failed to do so.

As indicated in its letter of July 26, 2013, the Agency is of the opinion that, in these exceptional circumstances, MMA and MMAC must maintain as a minimum the original level of coverage and restore the aggregate limit to its level before the Lac-Mégantic derailment. To do otherwise would be untenable in the event that further occurrences materialize as one further occurrence may result in the full depletion of the coverage and the need for an instant cessation of service.

MMA and MMAC have filed a petition under the *Companies' Creditors Arrangement Act* with the Superior Court of Quebec. The petition, which was granted on August 8, 2013, states that "While the Petitioner holds insurance covering certain of the Train Derailment Claims..., as the amount of said Train Derailment Claims is ever increasing, it has become evident that in the event of a determination that the Petitioner ...[is] liable and that the Train Derailment Claims are valid, the amount of insurance coverage will not be sufficient to cover all of the Train Derailment Claims."

At the same time, MMA has filed with the United States of America Bankruptcy Court in the district of Maine for protection under Chapter 11 of the United States of America Bankruptcy Code and this, too, has been granted.

With respect to the self-insured retention amount, which is the amount for which an applicant takes financial responsibility outside of an insurance contract, the Agency performed an analysis of MMA's parent company, Montreal, Maine & Atlantic Corporation (MMA Corp.) consolidated financial statements provided for the years 2009 to 2012.

The Agency needs to be satisfied that MMA and MMAC are able to pay the self-insurance portion for the claims related to the Lac-Mégantic derailment, as well as an additional amount equivalent to two further portions in the event of two further claims under the aggregate. Upon reviewing the financial capacity of MMA Corp., the Agency has concluded

that MMA Corp. is not financially capable to absorb even the first self-insured retention amount.

In summary, having reviewed MMA's and MMAC's information on record with the Agency, as well as all the additional information supplied by MMA and MMAC, the Agency is not satisfied that MMA and MMAC currently have adequate third party liability insurance coverage at the same level as prior to the derailment at Lac-Mégantic or the financial capacity to pay the self-insured portion.

Based on the above findings, the Agency, pursuant to paragraph 28(1)(*a*) and subsection 94(2) of the CTA, suspends Certificate of Fitness No. 02004-3 effective August 20, 2013. This delay in coming into effect should permit MMA and MMAC time to arrange for the orderly cessation of their operations in Canada.

This Order shall be affixed to Certificate of Fitness No. 02004-3 and the suspension of the Certificate of Fitness shall remain in effect until further order of the Agency.

Due to the confidentiality of some of the information filed, a separate letter will be issued to Montreal, Maine & Atlantic Railway, Ltd. and its wholly-owned subsidiary Montreal, Maine & Atlantic Canada Co., in confidence, setting out the more detailed reasons for the determination that they no longer meet the liability insurance coverage requirements.

Important Notices

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Date Modified :
2013-08-13

CONFIDENTIAL

August 13, 2013

File Nos: R 8005/M5
R 8005/M6

Montreal, Maine & Atlantic Canada Co.
Montreal, Maine & Atlantic Railway, Ltd.
15 Iron Road
Hermon, Maine, United States of America
04401

Attention: Edward Burkhardt, President of Montreal, Maine & Atlantic Canada Co.
Robert Grindrod, President and CEO of Montreal, Maine & Atlantic Railway, Ltd.

Montreal, Maine & Atlantic Railway, Ltd. (MMA) and its wholly-owned subsidiary, the Montreal, Maine & Atlantic Canada Co. (hereinafter MMAC) are holders of Certificate of Fitness No. 02004-3 issued on September 9, 2005 by the Canadian Transportation Agency (the Agency) pursuant to section 92 of the *Canada Transportation Act*, S.C., 1996, c. 10 (CTA) as per Decision No. 561-R-2005.

MMA's and MMAC's Certificate of Fitness permits both to operate a railway in Canada, as set out below:

a) MMA to operate a railway:
   - between the Canada/United States border at mileage 32.63 of the Newport Subdivision and the Canada/United States border at mileage 43.32 of the Newport Subdivision;
   - between the Canada/United States border near Saint-Léonard, New Brunswick and Saint-Léonard, New Brunswick;

b) MMAC to operate a railway:
   - between Saint-Jean, Quebec and Lennoxville, Quebec; between Ste-Rosalie, Quebec and Farnham, Quebec; between Farnham, Quebec and Stanbridge, Quebec; between Brookport at mileage 0.0 of the Newport Subdivision and the Canada/United States border at mileage 26.25 of the Newport Subdivision;
   - between Lennoxville, Quebec and the Canada/United States border near Boundary, Quebec; and
   - by virtue of an interchange agreement with the Canadian Pacific Railway Company, on the Canadian Pacific Railway Company's Adirondack Subdivision between Saint-Jean, Quebec and Saint-Luc Junction, Quebec.

With respect to the issuance of the 2005 Certificate of Fitness, the Agency determined that MMA and MMAC had adequate third party liability insurance, with limits of $25,000,000 per occurrence and $50,000,000 aggregate coverage, as well as a self-insured retention amount of $250,000.

Subsection 94(2) of the CTA states that the Agency may suspend or cancel the Certificate of Fitness if it determines that the third party liability insurance coverage is no longer adequate.

Following the tragic derailment at Lac-Mégantic, Quebec on July 6, 2013, the Agency undertook an investigation to determine whether MMA and MMAC, as holders of the said Certificate of Fitness, can satisfy the Agency that they continue to have adequate third party liability insurance coverage for their ongoing operations.

To this end, by letter dated July 10, 2013, the Agency requested insurance and supporting financial information from MMA and MMAC. Upon receipt of a reply, the Agency, by letter dated July 26, 2013, directed further questions to MMA and MMAC.

According to MMA's and MMAC's insurance broker, "the change in situation following the Lac Megantic accident is the impairment of the aggregate limit, which was $50,000,000 and will be impaired up to the maximum of $25,000,000 depending upon whether the entire per occurrence limit is exhausted on the Lac Megantic loss. Although final liability/damages on that loss will not be determined for some time, realistically and in view of the accident, it may now be viewed as $25,000,000." Despite being asked to provide evidence of additional insurance to restore its insurance level to what existed prior to the Lac Megantic derailment, MMA and MMAC have failed to do so. As indicated in its letter of July 26, 2013, the Agency is of the view that, in these exceptional circumstances, MMA and MMAC must maintain as a minimum the original level of coverage and restore the aggregate limit to its level before the Lac Megantic derailment. To do otherwise would be untenable in the event that further occurrences materialize as one further occurrence may result in the full depletion of the coverage and the need for an instant cessation of service.

MMA and MMAC have filed a petition under the Companies' Creditors Arrangement Act with the Superior Court of Quebec. The petition, which was granted on August 8, 2013, states that "While the Petitioner holds insurance covering certain of the Train Derailment Claims..., as the amount of said Train Derailment Claims is ever increasing, it has become evident that in the event of a determination that the Petitioner ... liable and that the Train Derailment Claims are valid, the amount of insurance coverage will not be sufficient to cover all of the Train Derailment Claims."

At the same time, MMA has filed with the U.S. Bankruptcy Court in the district of Maine for protection under Chapter 11 of the United States Bankruptcy Code and this, too, has been granted.

In regards to the self-insured retention amount, which is the amount for which an applicant takes financial responsibility outside of an insurance contract, MMA and MMAC filed the audited financial statements for MMA's parent company, Montreal, Maine & Atlantic Corporation (MMA Corp.). The Agency performed an analysis of this company's consolidated financial statements provided for the years 2009 to 2012. The Agency needs to be satisfied that MMA and MMAC are able to pay the $250,000 self-insurance portion for the claim related to the Lac Megantic derailment, as well as an additional $500,000 in self-insured portion in the event of two further claims under the restored aggregate and ongoing liability coverage. Upon reviewing the financial capacity of MMA Corp., the Agency has concluded that, based on the evidence provided, MMA Corp. does not have the financial capacity to absorb even $250,000 of self-insured retention amount. In any event, MMA and MMAC have not filed a valid indemnification agreement between MMA Corp. and MMA and MMAC. In response to the Agency's letter of July 26, 2013, MMA and MMAC have indicated that no individual financial statements are available for these companies. Accordingly, MMA and MMAC have failed to satisfy the Agency that they have the financial capability to pay the self insured retention.

In summary, having reviewed MMA's and MMAC's information on record with the Agency, as well as all the additional information supplied by MMA and MMAC, the Agency has concluded that it is not satisfied that MMA and MMAC currently have adequate third party liability insurance coverage at the same level as prior to the derailment at Lac-Mégantic or the financial capacity to pay the self-insured portion.

Based on the above findings, the Agency, pursuant to paragraph 28(1)(*a*) and subsection 94(2) of the CTA, will suspend Certificate of Fitness No. 02004-3, effective August 20, 2013. This delay in coming into effect should permit MMA and MMAC time to arrange for the orderly cessation of their operations in Canada.

A public order to this effect will be issued.

Sincerely,

(signed)
Cathy Murphy
Secretary

BY THE AGENCY:

(signed)

Geoffrey C. Hare
Member

Canadian Transportation Agency | Office des transports du Canada

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Canadian Transportation Agency
www.cta.gc.ca

Canadian Transportation Agency Suspends MMA/MMAC's Certificate of Fitness

Ottawa – August 13, 2013 – In an order issued today, the Canadian Transportation Agency suspended the certificate of fitness for Montreal, Maine & Atlantic Railway Ltd (MMA) and its wholly-owned subsidiary Montreal, Maine & Atlantic Canada Co. (MMAC), finding that the railways have not demonstrated that their third party liability insurance is adequate for ongoing operations.

Given the exceptional circumstances of the derailment in Lac-Mégantic, the Agency contacted MMA and MMAC seeking confirmation that they continued to hold adequate third party liability insurance coverage with respect to any continuing operations as stated in their certificate of fitness.

The Agency reviewed the companies' insurance coverage and additional information they provided and it is not satisfied that MMA and MMAC have adequately restored their third party liability insurance coverage to the same level as prior to the derailment at Lac-Mégantic, nor do they have the financial capacity to pay the self-insured portion.

Order No. 2013-R-266 suspends Certificate of Fitness No. 02004-3 effective August 20, 2013, permitting MMA and MMAC time to arrange for the orderly cessation of their operations in Canada.

"MMA and MMAC were given full and fair opportunity to demonstrate that they have secured adequate third party liability insurance coverage for their ongoing operations, which is a legislative requirement to operate a railway in Canada," said Geoff Hare, Chair and CEO of the Canadian Transportation Agency.

"This was not a decision made lightly, as it affects the economies of communities along the railway, employees of MMA and MMAC, as well as the shippers who depend on rail services. It would not be prudent, given the risks associated with rail operations, to permit MMA and MMAC to continue to operate without adequate insurance coverage," noted Mr. Hare.

The tragic derailment in Lac-Mégantic has raised important questions regarding the adequacy of third party liability insurance coverage to deal with catastrophic events, especially for smaller railways. Increasing shipments of crude oil and other hazardous materials by rail highlight the need to determine how best to ensure that railways, small

and large, have appropriate levels of third party liability coverage, including for possible catastrophic events such as Lac-Mégantic.

Accordingly, this fall, the Agency will undertake a consultation and review of adequacy of insurance coverage requirements for the issuance of certificates of fitness required by federally-regulated railways.

About the Agency

The Agency is an independent administrative body of the Government of Canada. It performs two key functions within the federal transportation system:

- As a quasi-judicial tribunal, the Agency, informally and through formal adjudication, resolves a range of commercial and consumer transportation-related disputes, including accessibility issues for persons with disabilities. It operates like a court when adjudicating disputes.
- As an economic regulator, the Agency makes determinations and issues authorities, licences and permits to transportation carriers under federal jurisdiction.

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For more information on the Agency's determination, please refer to Order 2013-R-266.

For more information on the Agency's certificate of fitness process, please refer to the Backgrounder: Certificate of Fitness for Federally-regulated Railways.

For more information on third party liability insurance please refer to: Railway Third Party Liability Insurance Coverage Regulations

News Media Enquiries: media@otc-cta.gc.ca or 819-934-3448

General Public Enquiries: info@otc-cta.gc.ca or 1-888-222-2592

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Date Modified :
2013-08-13

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Important Notices

Canadian Transportation Agency / Office des transports du Canada

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Decision No. 561-R-2005

September 9, 2005

APPLICATION by Montreal, Maine & Atlantic Canada Co., pursuant to paragraph 93(1)(*c*) of the *Canada Transportation Act*, S.C., 1996, c. 10, to vary Certificate of fitness No. 02004-2 to reflect a change in railway operations to permit passenger operations over its railway lines.
File Nos. R 8005/M5
R 8005/M6

Montreal, Maine & Atlantic Canada Co. (hereinafter MMAC) has applied to the Canadian Transportation Agency (hereinafter the Agency) for the variance set out in the title. The application was received on April 28, 2005.

Certificate of fitness No. 02004-2 dated August 7, 2003, permits Montreal, Maine & Atlantic Railway, Ltd. (hereinafter MMA) and its wholly-owned subsidiary MMAC to operate a railway in Canada, restricted to freight operations, as set out below:

a. MMA to operate a railway:
- between the Canada/United States border at mileage 32.63 of the Newport Subdivision and the Canada/United States border at mileage 43.32 of the Newport Subdivision;
- between the Canada/United States border near Saint-Léonard, New Brunswick and Saint-Léonard, New Brunswick;

b. MMAC to operate a railway:
- between Saint-Jean, Quebec and Lennoxville, Quebec; between Ste-Rosalie, Quebec and Farnham, Quebec; between Farnham, Quebec and Stanbridge, Quebec; between Brookport at mileage 0.0 of the Newport Subdivision and the Canada/United States border at mileage 26.25 of the Newport Subdivision;
- between Lennoxville, Quebec and the Canada/United States border near Boundary, Quebec; and

- by virtue of an interchange agreement with the Canadian Pacific Railway Company, on the Canadian Pacific Railway Company's Adirondack Subdivision between Saint-Jean, Quebec and Saint-Luc Junction, Quebec.

Pursuant to paragraph 93(1)(*c*) of the *Canada Transportation Act* (hereinafter the CTA), the Agency may, on application, vary a certificate of fitness to reflect a change in railway operations or circumstances relating to those operations.

The Agency has considered the application and the material filed in support thereof and is satisfied that there is adequate third party liability insurance coverage, including self-insurance, to permit passenger operations over the lines of railway of MMAC.

The Agency's review of MMA and MMAC's financial capability to self-insure for the amount of self-insured retention was based on the consolidated financial statements of Montreal, Maine & Atlantic Corporation, the parent company, the financial statements of MMA and the indemnity agreement between MMA and MMAC.

Accordingly, pursuant to paragraph 93(1)(*c*) of the CTA, the Agency hereby varies Certificate of fitness No. 02004-2 dated August 7, 2003, to also include passenger operations.

Certificate of fitness No. 02004-3 supersedes Certificate of fitness No. 02004-2 issued to MMA and MMAC on August 7, 2003.

As the holders of a certificate of fitness, MMA and MMAC must notify the Agency in writing without delay if

a. the liability insurance coverage is cancelled or altered so that it may no longer be adequate; or

b. the construction or operation has changed so that the liability insurance coverage may no longer be adequate.

Further, in light of the indemnity agreement, MMA shall provide to the Agency a copy of the audited financial statements on an annual basis. Furthermore, MMA and MMAC shall continue to provide the Agency with their annual loss history.

Important Notices

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Date Modified :
2005-09-09

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Interlocutory Decision No. LET-R-98-2013

August 16, 2013

Canadian Transportation Agency Order No. 2013-R-266 dated August 13, 2013

File No.: R 8005/M5
R 8005/M6

Reference is made to your letter dated August 16, 2013 requesting the Canadian Transportation Agency (Agency) to vary Order No. 2013-R-266, which suspended Montreal, Maine & Atlantic Canada Co. (MMAC) and Montreal, Maine & Atlantic Railway, Ltd. (MMA) Certificate of Fitness, effective August 20, 2013. Your request is to allow MMAC/MMA to maintain its Certificate of Fitness No. 02-004-3 until October 1, 2013.

The Agency suspended the said Certificate of Fitness because it was not satisfied that MMAC and MMA have adequate third party liability insurance coverage and the financial capacity to cover the self-insured portion for the continued operation.

The Agency has considered your submission and finds that you have demonstrated that there are new facts and circumstances warranting a review of the order. Your submission provides evidence that MMAC and MMA have insurance coverage, including per occurrence. Further, your submission indicates that "MMA undertakes to ask the CCAA judge on or before September 6, 2013, to order pursuant to the CCAA, that the Canadian assets of MMA be made subject to a charge and security for the payment of the self-insurance portion of the policy." The Agency is satisfied that this provides adequate insurance coverage for operation over a short period from August 20 to October 1, 2013.

Therefore, the Agency, pursuant to section 32 and paragraph 28(1)(*b*) of the *Canada Transportation Act*, S.C., 1996, as amended varies Order No. 2013-R-266 by amending the date of effect of the suspension of MMAC and MMA's Certificate of Fitness to October 1, 2013. This variance is conditional on MMAC/MMA filing with the Agency by 5:00 p.m. Eastern Time August 23, 2013 confirmation that it has secured funds for the self-insured retention portion of the policy. If MMAC and MMA do not fulfill this commitment, the suspension shall take effect as of 5:00 p.m. August 23, 2013.

Member(s)

Geoffrey C. Hare

Date Modified :
2013-08-19

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Important Notices

July 10, 2013

VIA E-mail: eaburkhardt@railworld-inc.com
rcgrindrod@mmarail.com

File Nos.: R 8005/M5
R 8005/M6

Montreal, Maine & Atlantic Canada Co.
Montreal, Maine & Atlantic Railway, Ltd.
15 Iron Road
Hermon, Maine,
United States of America
04401

Attention: Mr. Edward Burkhardt, President of Montreal, Maine & Atlantic Canada Co.
Mr. Robert Grindrod, President and CEO of Montreal, Maine & Atlantic Railway, Ltd.

Re: The Third Party Liability Insurance Requirements of the Canadian Transportation Agency (Agency)

Dear Mr. Grindrod,

The following letter seeks to obtain information from Montreal, Maine & Atlantic Railway, Ltd. (MMA) and its wholly-owned subsidiary Montreal, Maine & Atlantic Canada Co. (MMAC), holders of Certificate of Fitness No. 02004-3 dated September 9, 2005 (Certificate of Fitness) in respect of third party liability insurance.

A. Agency's Role with respect to Certificates of Fitness

Under the *Canada Transportation Act* (CTA) the Agency issues a certificate of fitness if the Agency is satisfied that a company proposing to construct or operate a railway is within the legislative authority of Parliament and that there **will be adequate liability insurance coverage for the proposed construction or operation of a railway**, as determined in accordance with the regulations.

The Agency has the authority to, on application, **vary a certificate of fitness when there are changes to the railway's operation, such as an alteration in a route of a line or the addition of new lines** provided, again, that it is satisfied that there will be adequate liability insurance coverage for the new operation.

The CTA further provides that the holder of a certificate of fitness **shall notify the Agency in writing without delay if (*a*) the liability insurance coverage is cancelled or altered so that it may no longer be adequate; or (*b*) the construction or operation has changed so that the liability insurance coverage may no longer be adequate. Further, the Agency may suspend or cancel the certificate if it determines that the liability insurance coverage is no longer adequate.**

B. **Third Party Liability Insurance Requirement**

The Agency has published its *Railway Third Party Liability Insurance Coverage Regulations* (Regulations) to provide guidance to federal railway companies in satisfying the third party liability insurance requirement. These regulations are found at http://www.otc-cta.gc.ca/eng/emrailway-third-party-liability-insurance-coverage-regulations.

This insurance coverage must include:

- third party bodily injury or death, including injury or death to passengers,
- third party property damage, excluding damage to cargo, and
- named perils pollution.

The onus is on the applicant to satisfy the Agency that the insurance is such that it covers or will cover all of its specific risks. It is also up to the applicant to disclose the risks to the insurance company. As well, the Regulations require that the railway company disclose these risks to the Agency.

Certificate of Fitness

MMA's and MMAC's Certificate of Fitness permits both to operate a railway in Canada, as set out below:

a. MMA to operate a railway:

- between the Canada/United States border at mileage 32.63 of the Newport Subdivision and the Canada/United States border at mileage 43.32 of the Newport Subdivision;

- between the Canada/United States border near Saint-Léonard, New Brunswick and Saint-Léonard, New Brunswick;

b. MMAC to operate a railway:

- between Saint-Jean, Quebec and Lennoxville, Quebec; between Ste-Rosalie, Quebec and Farnham, Quebec; between Farnham, Quebec and Stanbridge, Quebec; between Brookport at mileage 0.0 of the Newport Subdivision and the Canada/United States border at mileage 26.25 of the Newport Subdivision;

- between Lennoxville, Quebec and the Canada/United States border near Boundary, Quebec; and

- by virtue of an interchange agreement with the Canadian Pacific Railway Company, on the Canadian Pacific Railway Company's Adirondack Subdivision between Saint-Jean, Quebec and Saint-Luc Junction, Quebec.

A. Recent Developments

Due to the nature and extent of the derailment that occurred at Lac-Mégantic, Quebec on July 6, 2013, MMA and MMAC, as holders of an Agency certificate of fitness, are requested to provide evidence to satisfy the Agency that both railway companies continue to have adequate third party liability insurance coverage for those operations **which are still continuing** and are listed under their Certificate of Fitness.

In addition, MMA had provided notice to the Agency in 2012 that it would be applying for a variance to its Certificate of Fitness once it had sold the Madawaska-Saint-Léonard railway line to Eastern Maine Railway Company (EMR). As the sale transaction for the Madawaska-Saint-Léonard railway line was effected on June 12, 2013, the Agency varied EMR's certificate of fitness on that same day. This was the result of EMR having advised the Agency, as a follow-up to Agency Decision No. 245-R-2013 dated June 22, 2012, of the effective closing date of the sale and providing the other required confirmations, including an executed and signed copy of the purchase agreement between MMA and EMR.

1. As the sale transaction for the Madawaska-Saint-Léonard railway line was effected, confirm whether a variance to the Certificate of Fitness is required at this time to delete the operations between the Canada/United States border near Saint-Léonard, New Brunswick and Van Buren, Maine. If not necessary, please explain why not.

2. In addition to the response above, review and confirm that the Certificate of Fitness continues to accurately reflect ALL of the actual and proposed railway services (e.g., location/termini and route/mileage/subdivision).

3. Provide a copy of a current certificate of insurance, duly signed by MMA/MMAC and their insurer's authorized representative, in the format found at the following link:

   https://www.otc-cta.gc.ca/eng/publication/certificate-insurance-appendix-i).

- Complete all required fields of information on that form, including:

    - that the insurance coverage names both Montreal, Maine & Atlantic Railway, Ltd. and Montreal, Maine and Atlantic Canada Co. provides for third party bodily injury or death, including injury or death to passengers, third party property damage, excluding damage to cargo, and named perils pollution;

    - the amount of the self-insured retention; and

    - disclose the specific risks assessed. This includes the details of the operation for both railway companies and any associated third party liability risks that may arise from their operation.

4. Provide rationale as to why MMA's and MMAC's third party liability insurance coverage is considered adequate, in light of the "per occurrence" amount and the annual aggregate limits, to account for the risks disclosed in response to item 3 above. MMA and MMAC may provide a summary of any third party risk assessment prepared by the insurance company or other experts in the field of liability insurance. In addition, please provide, from MMA's and MMAC's insurance broker or insurance company itself, their opinion as to whether the limit of liability purchased by MMA and MMAC is comparable to the industry standard for peer railway organizations that are relatively similar in size and scope of operations.

5. **Tourist Train Operation**

    (a) File a separate certificate of insurance if there is still a tourist train operation, i.e., 6468401 Canada inc. operating on the rail line between Sherbrooke and Bromont, Quebec. This will serve as evidence that MMA and MMAC are additional insured under 6468401 Canada inc.'s liability insurance policy. Ensure that the certificate of insurance indicates coverage for third party bodily injury or death, third party property damage, excluding damage to cargo, and named perils pollution.

    (b) If the certificate of insurance indicates a name other than 6468401 Canada inc., provide the Articles of Amendment to reflect the change in name from the numbered company name.

    (c) File a copy of the Assignment of all the rights, responsibilities and obligations as stipulated in the Agreement between MMA and MMAC and L'Express des Cantons de l'Est inc., as signed by all parties, including L'Express des Cantons de l'Est inc.

6. **Financial Capacity to Pay Any Self-Insured Retention Amount**

    (a) Confirm whether MMA and MMAC have self-insurance (i.e. deductible or self-insured retention). If so, the amount of self-insurance must be indicated on the certificate of insurance. As well, the Agency must assess the financial capability of MMA and MMAC to sustain the level of self-insurance.

(b) In the event that one or both are not liable to pay the amount of self-insurance noted in item 6(a), indicate the legal name of the company which would be responsible to pay such an amount and provide an executed and signed copy of a hold harmless and indemnification agreement between the companies.
(c) File the audited financial statements (for 2010-2012) for the company that would be responsible for the self-insured retention amount.

Other Information

7. File any other information and documentation that MMA and MMAC believe would assist the Agency in respect of determining whether MMA and MMAC continue to have adequate third party liability insurance requirement.

A response to this letter is required within 7 days from the date of the letter. If you have further questions, please contact Melanie Nera at 819-997-8354 (melanie.nera@otc-cta.gc.ca) or Leslie Siegman, Director of Rail, Air and Marine Disputes Directorate at 819-953-0327 (leslie.siegman@otc-cta.gc.ca).

Sincerely,

N. Frid

Nina Frid
Director General
Dispute Resolution Branch
Canadian Transportation Agency

August 21, 2013

File Nos: R 8005/M5
R 8005/M6

Montreal, Maine & Atlantic Canada Co.
Montreal, Maine & Atlantic Railway, Ltd.
c/o Henry S. Brown, Q.C.
Gowling Lafleur Henderson LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario
K1P 1C3

Canadian Pacific Railway Company
c/o Alain Riendeau
Fasken, Martineau
Stock Exchange Tower
Suite 3700, P.O. Box 242
800 Place Victoria
Montréal, Quebec
H4Z 1E9

Dear Sirs:

Re: Application by Montreal, Maine & Atlantic Canada Co. and Montreal, Maine & Atlantic Railway, Ltd. (MMA) the Canadian Transportation Agency (Agency) to order the immediate lifting of the embargo issued by the Canadian Pacific Railway Company (CP) against MMA traffic and resume the CP level of service prior to the imposition by CP of the embargo and to order that this request be expedited given the urgent circumstances.

On August 20, 2013, MMA filed the above application with the Agency and requested expedited interim relief.

POSITIONS OF THE PARTIES

According to MMA, CP issued Embargo Number CPRS002913 (Embargo) against any traffic moving to MMA over the Saint-Jean-sur-Richelieu Interchange. The specific reason listed in the Embargo was the Agency's ruling in Order No. 2013-R-266, issued August 13, 2013, requiring MMA/MMAC to cease operations by 23:59 hours on August 19, 2013, unless it could establish the adequacy of its insurance. MMA points out that the Agency subsequently modified the Order and extended the cessation date, with conditions, until October 1, 2013, by Decision No. LET-R-98-1013 dated August 16, 2013. MMA advises that it sent CP a copy of Decision No. LET-R-98-2013 by e-mail at 9:01 p.m. on Friday, August 16, 2013 and it requested CP to lift its Embargo. CP responded by e-mail sent 9:04 a.m. on Sunday, August 18, 2013 that it refused to lift the Embargo against MMA traffic.

MMA explains that despite efforts to resolve the matter between counsel from Sunday to Tuesday, August 20, CP persists in its Embargo of MMA traffic. MMA also provided a copy of a letter it received from CP on August 20, 2013 and points out that CP now refers to a permitting system. MMA maintains that this has never been communicated to MMA until now. MMA also points out that the letter's last paragraph confirms that the CP Embargo in fact continues in place, and will remain until MMA secures its self-insured retention amount on or before August 23, 2013.

MMA submits that CP now asserts that it is embargoing the transport of all hazardous commodities on its network. MMA argues that this is completely unjustified and also is in breach of CP's level of service obligations. MMA maintains that CP cannot dictate what traffic it delivers or receives from MMA.

MMA points out that no one on the service list for the motion to the *Companies' Creditors Arrangement Act* (CCAA) served last Friday, August 16, 2013, has opposed MMA's request to secure the self-retention amount by a charge on MMA's property. According to MMA, it also has confirmation that the Province of Quebec and the Municipality of Lac-Mégantic will not oppose securing the self-retention amount by a court ordered charge on MMA property under the CCAA. MMA submits that the charge is relatively small in terms of the overall values.

MMA asserts that it is of very great importance to note that while the Canadian National Railway Company (CN) embargoed MMA cars on August 14, 2013, CN immediately lifted its Embargo upon receipt of a copy of the Agency's Decision No. LET-R-98-2013, on August 17, 2013.

MMA submits that the matter has since become even more serious. According to MMA, CP has escalated its Embargo and specifically refuses to allow MMA to access the CN tracks at Saint-Jean-sur-Richelieu, Quebec.

MMA is of the view that, for practical purposes, these actions by CP completely frustrate the fact that CN lifted its Embargo, and more fundamentally, frustrates the Agency's Decision No. LET-R-98-2013 of August 16, 2013. Without access to CN via Saint-Jean-sur-Richelieu, MMA is not able to access most, if not all customers using CN. MMA indicates that a small interchange exists at Lennoxville which is not material in terms of customer access.

MMA asserts that the Embargo issued by CP effectively undoes the Agency's Decision No. LET-R-98-2013 of August 16, 2013, and is causing immediate, serious and irreparable harm to MMA, leading MMA to seek an immediate and interim Order requiring CP to grant MMA access to CN's lines and facilities, and to immediately lift the CP Embargo against MMA traffic. MMA submits that CPR is in breach of its level of service obligations under the CTA, in particular by sections 113 and 114.

MMA states that it has met the three tests for interim relief as set out below.

1. A deliberate denial of level of service is a serious breach of a clear and positive statutory duty placed directly upon CP. CP does not dispute it is deliberately denying service. Therefore, MMA is clearly suffering actions by CP that are on their face contrary to the CTA. This is a serious dispute.

2. MMA is undeniably suffering irreparable harm in that CP is preventing MMA from accessing virtually its entire customer base: either by the Embargo against traffic imposed by CP or by CP's refusal to allow MMA to access CN's lines at Saint-Jean-sur-Richelieu.

3. The balance of convenience favours MMA which is operating under the protection of the federal CCAA for the benefit of its customers, the economies of affected communities in Quebec and of Quebec itself. As just determined, MMA has adequate

insurance and has a current Certificate of Fitness extended by the Agency's August 16, 2013 decision.

Monitor appointed by the Court in the matter of the CCAA proceedings

The Monitor filed a submission in support of MMA on August 21, 2013.

The Monitor states that the inability to maintain an appropriate going-concern level of operations will cause serious prejudice to the reorganization efforts of both MMAC and MMA and may result in them ceasing operations. The Monitor points out that the impact of this was more fully detailed in its letter of August 15 as follows.

- Termination of some or all of the remaining employees of MMAC and potential inability to pay the employees amounts due;
- Sale of assets will yield lower values than on a going-concern basis;
- Potential bankruptcy filing under the Bankruptcy and Insolvency Act, therefore terminating the stay of proceedings that extended to the insurers and officers of MMAC. The lack of a stay may impact the proceeds available to all stakeholders and create significant delays before anyone benefits from these proceeds;
- Limit the flexibility that would have otherwise been afforded to MMAC in dealing efficiently with the numerous and varied stakeholders claims;
- Negatively affect, economically and operationally, the numerous direct and indirect customers that depend on MMAC for the transportation of their products to market and the transportation of products from their suppliers and, more generally, the economies of several towns and municipalities in the province of Quebec. This has been reported in the press and has been confirmed to MMAC by way of affidavits to be filed in support of the charge that MMAC is seeking to put in place by August 23, 2013.

CP

CP filed an answer to MMA's application on August 21, 2013.

CP submits that the Embargo it issued with respect to MMA on August 13, 2013 and CP's subsequent position to lift the Embargo save and except with respect to hazardous substances are reasonable, diligent and justified in the present exceptional circumstances.

CP asserts that the decision was made to ensure the safety and welfare of the public and CP's employees as well as to avoid undue potential risk and exposure. CP submits that the Embargo on Hazardous Substances should be maintained up and until the Agency, the Transportation Safety Board of Canada (TSB) and Transport Canada determine: 1) that MMA is fit to operate its business and transport hazardous substances, and 2) that MMA has adequate insurance coverage in this regard.

CP acknowledges meetings with MMA between August 17 and 20 in an effort to resolve the issues arising from the Embargo. CP states that on August 20, 2013, in an effort to find a solution to MMA's request for the lifting of the Embargo, CP informed MMA that the Embargo would be maintained with a "permitting system", allowing for the interchange of goods other than Hazardous Substances, provided MMA obtained the required charge by August 23, 2013.

CP contends that the Embargo must be maintained until the Agency has: "(a) reviewed the adequacy of third party liability coverage requirements for the issuance of certificate of fitness ... (b) reviewed the risk profile of MMA following the Derailment and its aftermath; (c) Verified that the current insurance coverage of MMA is adequate in the circumstances;"

CP objects to MMA's contention that it is suffering irreparable harm by CP's conduct and that the balance of inconvenience favours its position. CP submits the following:

- That if irreparable harm has been caused in this matter, it has been by MMA only, and the safety issues outlined above indicate that this could still be a risk;

-That should the consequence of CP's position represent the termination of MMA's restructuring process under the CCAA, and provided that this is a consideration that the Agency took into consideration in its change of position on August 16, 2013, (i) such consideration is the jurisdiction of the Superior Court of Québec, (ii) that notwithstanding the jurisdiction issue, the real value of the assets of MMA resides in the revenues that said assets could generate, and not with the current going concern operation, which serves only to finance the CCAA process.

- That MMA is not suffering irreparable harm in that CP is not preventing MMA from accessing "virtually its entire customer base".

CP maintains that MMA continues to exist solely for the purpose of finding a potential buyer and MMA will soon cease to exist. By requesting a review of the Agency's suspension of its Certificate of Fitness, MMA is simply seeking to operate on an interim basis prior to its sale. Any revenues generated on an interim basis will simply be to the benefit of the secured creditors, notably the Quebec Government and/or the U.S. government and will have a negligible, if any, impact on the overall value of MMA's assets.

CP contends that MMA's value and its capacity to generate revenues lies rather in the fact that it is a railway and its customer base is situated in close proximity to the physical tracks owned and controlled exclusively by MMA. CP states that "No one can seriously contend that clients are doing business with MMA for the quality of its service and that if MMA stops carrying Hazardous Substances, all the clients will be lost."

MMA reply

MMA filed a reply to CP's answer on August 21, 2013.

MMA refers to CP's statement that Transport Canada should determine whether MMA is fit to carry hazardous materials. MMA points out that Transport Canada has been fully engaged with MMA on multiple fronts since July 6, 2013, and has placed no restriction on MMA. With respect to CP's suggestion that this is a matter for the TSB, MMA states that the TSB has no jurisdiction to make any such order; its primary duty is to investigate and make recommendations. MMA also submits that the Agency is not mandated to determine fitness to carry hazardous goods; the Agency's jurisdiction involves adequacy of insurance which MMA maintains the Agency has quite thoroughly and most recently assessed.

MMA asserts that although CP is clearly unhappy with the Agency decision, it is not relevant. MMA refers to CP's collateral and irrelevant attacks on the Agency's decision and concludes that it is not for CP to rely on unlawful self-help activities which it is engaging in now.

MMA states that none of the news stories and other statements relied upon by CP contest the facts. MMA is operating with a Certificate of Fitness issued by the Agency, and otherwise is under the supervision of a Monitor appointed under the CCAA, a Federal statute, and is under no restriction by Transport Canada.

MMA submits that CP admits the Embargo and the denial of access and it advised late on August 20 that it has assumed the power to dictate and itself regulate all traffic MMA may receive from and deliver to customers served both by CP and CN. MMA asserts that neither the CTA nor practice supports such high-handed and unilateral actions.

ANALYSIS AND FINDINGS

Level of service obligations

CP's level of service obligations in this matter are clearly defined in section 114 of the CTA which states, in part:

> 114(1) A railway company shall, according to its powers, afford to all persons and other companies all adequate and suitable accommodation for receiving, carrying and delivering traffic on and from its railway, for the transfer of traffic between its railway and other railways and for the return of rolling stock.
>
> (2) For the purposes of subsection (1), adequate and suitable accommodation includes reasonable facilities for the receiving, carriage and delivery by the company
>
> (a) at the request of any other company, of through traffic and, in the case of goods shipped by carload, of the car with the goods shipped in it, to and from the railway of the other company, at a through rate; and
>
> (b) at the request of any person interested in through traffic, of such traffic at through rates.
>
> (3) Every railway company that has or operates a railway forming part of a continuous line of railway with or that intersects any other railway, or that has any terminus, station or wharf near to any terminus, station or wharf of another railway, shall afford all reasonable facilities for delivering to that other railway, or for receiving from or carrying by its railway, all the traffic arriving by that other railway without any unreasonable delay, so that
>
> (a) no obstruction is offered to the public desirous of using those railways as a continuous line of communication; and
>
> (b) all reasonable accommodation, by means of the railways of those companies, is at all times afforded to the public for that purpose.

Pursuant to section 116 of the CTA, the Agency shall investigate a complaint made by any person that a railway company is not fulfilling any of its service obligations and may, pursuant to paragraph 116(4)(*c*) of the CTA, order the company to fulfil that obligation in any manner and within any time or during any period that the Agency deems expedient, having regard to all proper interests, and specify the particulars of the obligation to be fulfilled.

The Agency has considered the submissions and for the following reasons finds that CP is in breach of its level of service obligations.

CP asserts that the "issue before the Agency is not one that is rooted in contractual or commercial law, but is instead one that is hearted in the protection of the safety and well-being of all Canadians." CP also contends that the Agency has two choices, only one of which will protect the safety and well being of all Canadians. However, as CP is well aware the Agency's mandate is limited to determining the adequacy of insurance when issuing certificates of fitness under section 92 of the CTA and ensuring that railway companies meet their statutory level of service obligations when considering complaints under section 116 of the CTA.

While CP asserts that "it should be confirmed that issues regarding public safety have been thoroughly considered," these issues fall outside of the Agency's mandate. The Agency is unaware, however, of any action taken by those federal bodies responsible for safety that would for safety reasons restrict MMA's operations.

CP makes reference to a number of ongoing investigations and enquiries conducted by a number of bodies as a result of the accident. CP identifies these as "serious and alarming risks associated with MMA's ongoing operations". However, as set out above, this is outside the Agency's mandate. In any event, the conduct of investigations is not evidence of fault and has no bearing on this matter.

CP appears to have assumed the power to dictate and self-regulate all traffic MMA may receive from and deliver to customers served both by CP and CN. As correctly pointed out by MMA neither the CTA nor practice supports such unilaterally imposed restrictions.

The Agency found in Decision No. LET-R-98-2013 that MMA has adequate third party liability insurance coverage for the period to October 1, 2013, subject to MMA filing with the Agency confirmation that it has secured funds for the self-insured retention portion of the policy. Therefore, MMA continues to hold a valid certificate of fitness. Therefore, CP must furnish adequate and suitable accommodation to MMA, as provided for in the CTA.

The Agency also notes that upon receipt of the Agency's Decision No. LET-R-98-2013, CN lifted its embargo without any conditions or restrictions.

The Agency notes that CP questions on what basis the Agency made its decision on August 16, 2013 to vary the suspension order by amending the date to October 1, 2013, subject to the condition that MMA secure funds for the self-insured retention portion of the policy. CP, as a participant in the motion before the Court, has received the material filed by MMA in its Petition of August 16, 2013 to the Superior Court of Québec. It is clearly identified in the filing the information that the Agency based its decision on. Further, at the time the Agency made the

decision this material was being maintained confidential, which is a common practice for some commercially-sensitive information filed by railway companies.

Interim relief

The authority of the Agency to issue interim relief is provided for in subsection 28(2) of the CTA:

> The Agency may, instead of making an order final in the first instance, make an interim order and reserve further directions either for an adjourned hearing of the matter or for further application.

In Decision No. LET-AT-R-356-2001, the Agency confirmed that the three-part test applicable to applications for interlocutory injunctions as well as for stays applies to an application for an interim order under subsection 28(2) of the CTA.

This three-part test has been adopted and applied in Canada by the Supreme Court in *Manitoba (Attorney General) v. Metropolitain Stores (MTS) Ltd., [1987] 1 R.C.S. 110 and RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 312.

The Agency, in Decision No. LET-AT-R-356-2001 summarized the three-part test as follows:

The onus to show that an interim order should be granted rests on the applicant. Briefly stated, at the first stage, the applicant must demonstrate that there is a serious question to be tried. At the second stage, the applicant is required to demonstrate that irreparable harm will result if the relief is not granted. The third part of the test requires an assessment of the balance of inconvenience to the parties; in other words, which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction.

Serious issue to be tried

As stated by the Agency in Decision No. LET-AT-R-356-2001, there are no specific requirements which must be met in order to satisfy this test. A preliminary assessment of the merits of the case is sufficient. The threshold is a low one.

In light of the foregoing, the Agency finds that the service failure of CP and the resultant substantial commercial harm alleged by MMA meets the threshold of a serious question to be tried.

The irreparable harm and the balance of inconvenience

As the two latter parts of the three-part test are closely related, the Agency is of the opinion that they should be examined together.

In Decision No. LET-AT-R-356-2001, the Agency briefly summarized what these two tests entail:

> At the stage of the irreparable harm test, the issue to be decided is whether a refusal to grant relief could so adversely affect the applicant's own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result of the

> interlocutory application (RJR MacDonald, supra, at p. 341) The word "irreparable" refers to the nature of the harm suffered rather than its magnitude.
>
> [...]As stated in RJR MacDonald, supra, at page 341, irreparable harm is "harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other". As examples of the former, the Supreme Court refers to instances where one party will be put out of business by the court's decision, where one party will suffer permanent market loss or irrevocable damage to its business reputation.
>
> As for the balance of inconvenience, this entails a determination of which of the two parties will suffer the greater harm from the granting or refusal of the interim order pending a decision on the merits.

While CP states that the real value of the assets of MMA resides in the revenues that said assets could generate, and not with the current going concern operation, the Agency notes that the Monitor provided a submission in support of MMA's application. In that submission, the Monitor stressed the importance of the ongoing operations to the economies of several towns and municipalities in the province of Quebec as well as to direct and indirect customers that depend on MMA for the transportation of their products to market. The Monitor expressed the view that the granting of this application is important to "enable MMAC and MMA to implement their restructuring plans for the benefit of all stakeholders, including the families of the victims".

In light of the foregoing, the Agency finds that, on balance, MMA will suffer irreparable harm as a result of CP's Embargo. The Agency also finds that the balance of inconvenience clearly favours MMA as the refusal to grant the interim order would result in the virtual cessation of MMA's operations.

ORDER

In light of the above, the Agency, pursuant to subsection 28(2) and 116(4) of the CTA, orders CP to immediately lift the Embargo and to resume providing to MMA the same level of service MMA received from CP prior to August 13, 2013, including access to CP's and CN's rail networks.

Sincerely,

(signed)
Cathy Murphy
Secretary

BY THE AGENCY:

(signed)

_____
Geoffrey C. Hare
Member

Exhibit 4

Under seal

Exhibit 5

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL
N°: 500-11-045094-139

COUR SUPÉRIEURE

(Chambre commerciale)

(*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)

Requérante

et

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

Contrôleur

et

OFFICE DES TRANSPORTS DU CANADA

Mis-en-cause

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 Mario Thibeault
Numéro de Cour :	500-11-045094-139
Nom de l'expéditeur :	Mme Suzanne Lefebvre
Numéro du télécopieur émetteur :	450-266-5402
Lieu de la transmission :	Cowansville
Date de la transmission :	Le 19 août 2013
Heure de transmission :	14h10

Montréal, ce 19 août 2013

Geneviève Cloutier
GOWLING LAFLEUR HENDERSON SENCRL, SRL

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL
N°: 500-11-045094-139

COUR SUPÉRIEURE

(Chambre commerciale)

(*Loi sur les arrangements avec les créanciers des companies, 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)

Requérante

et

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

Contrôleur

et

OFFICE DES TRANSPORTS DU CANADA

Intimée

-et-

PROCUREUR GÉNÉRAL DU CANADA

Mise-en-cause

AFFIDAVIT

Je, soussignée, MARIO THIBEAULT, Directeur général - Directeur service aux entreprises et organismes, auprès du Centre local de développent (CLD) de Brome-Missisquoi, exerçant ma profession au 749, rue Principale, Cowansville, Province de Québec, J2K 1J8, affirme solennellement ce qui suit :

1. Je suis un représentant dûment autorisée du Centre local de développent (CLD) de Brome-Missisquoi (le « **Centre** ») pour signer le présent affidavit;

2. Le Centre est un organisme à but non lucratif dont le mandat est de stimuler la croissance économique de Brome-Missisquoi, d'élaborer des stratégies en matière de développement de l'entrepreneuriat et de concerter les intervenants dans les secteurs de la ruralité, de la culture, du tourisme, et de l'industrie

3. Le Centre apporte son soutien aux entreprises et organismes œuvrant dans des secteurs variés de l'économie dont, notamment, les secteurs suivants : manufacturier et transformation, transformation agroalimentaire, touristique et culturelle, environnement et développement durable, économie sociale;

4. Le Centre a récemment été informé de l'émission d'une décision par l'Office des transports du Canada (« **OTC** »), le 13 août 2013, ayant pour effet de suspendre le certificat d'aptitude no 02004-3 de la Montréal, Maine & Atlantique Canada Cie (« **MMAC** ») et la Montréal Maine & Atlantic Railway Ltd. (« **MMAR** »), leur permettant d'exploiter une ligne de chemin de fer au Canada à compter du 20 août 2013;

5. Le Centre a été informé que l'OTC a accepté de maintenir le certificat d'aptitude de MMAC et MMAR jusqu'au 1er octobre 2013, à la condition qu'une charge prioritaire au montant de 250 000$ soit créée sur les actifs de MMAC afin de garantir le paiement de la portion auto-assurance de la police d'assurance de MMAC et MMAR, advenant un nouveau sinistre;

6. Le Centre a consulté treize (13) entrepreneurs de la région de Brome-Missisquoi, soit afin d'évaluer les impacts que pourraient avoir la suspension du certificat d'aptitude de MMAC et MMAR sur les affaires de leur entreprise respective;

7. Ces treize (13) entreprises sont localisées dans les régions du Canton de Bedford, la Ville de Bedford, la Ville de Cowansville, la Ville de Farnham et la Ville de Saint-Armand;

8. Le Centre a recueilli les informations suivantes auprès de ces treize (13) entreprises :

   a) Ensemble, ces entreprises emploient actuellement plus de 566 employés et/ou sous-traitants;

   b) Quatre (4) de ces entreprises travaillent présentement au développement et à l'implantation de nouveaux projets dans la région de Brome-Missisquoi qui, s'ils se concrétisent, pourraient créer environ 585 emplois additionnels dans la région;

   c) Les activités de ces entreprises nécessitent le transport de marchandises par la ligne de chemin de fer exploitée par MMAC et MMAR;

   d) En moyenne, chaque année, environ 2 500 wagons de marchandises destinés aux opérations commerciales de ces entreprises sont transportés par MMAC et MMAR;

   e) Plusieurs entreprises ont des aménagements à l'usine dédiés spécifiquement à la réception et l'expédition par services ferroviaires et peuvent difficilement, à court terme, faire la transition vers un autre mode de transport.

   f) Depuis l'annonce de la décision de l'OTC plusieurs entreprises les ont également informé d'une non-disponibilité de service par camions ou, à tout le moins en nombres suffisants, pour répondre à leurs besoins.

9. Le Centre a recueilli auprès de ces treize (13) entreprises les commentaires suivants quant aux impacts de l'arrêt du service de MMAC et MMAR dans la région de Brome-Missisquoi sur les activités de leur entreprise :

   a) En l'absence d'approvisionnement par train, ces entreprises estiment qu'elles subiront des pertes de revenus significatives au point que les activités de certaines d'entre elles pourraient être compromises;

b) Le transport par camion de la marchandise vers les gares de triage de Saint-Jean-sur-le Richelieu ou Côte-St-Luc entrainera des coûts supplémentaires significatifs pour l'approvisionnement et le transport des marchandises, évalués globalement à plusieurs millions de dollars;

c) Pertes potentielles de contrats d'approvisionnement;

d) Approvisionnement compromis et rupture de stocks dès l'arrêt des opérations de MMAC et MMAR (qui, dans certains cas, se produit pendant la haute saison de l'entreprise);

e) L'arrêt à long terme du train nuira à l'expansion des entreprises. Ceci empêchera certaines entreprises de développer les marchés de la côte Est américaine; et

f) Les projets d'implantation des entreprises en expansion seront compromis, nuisant ainsi à leur croissance;

10. Tous les faits allégués au présent affidavit sont vrais au meilleure de ma connaissance;

ET J'AI SIGNÉ :

MARIO THIBEAULT

Affirmé solennellement devant moi,
à Cowansville, le 19 août 2013

Commissaire à l'assermentation pour le Québec

COMMISSAIRE À L'ASSERMENTATION
CYNTHIA TURMEL
157 698
POUR LE QUÉBEC

Exhibit 6

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL
N°: 500-11-045094-139

COUR SUPÉRIEURE

(Chambre commerciale)

(*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)

Requérante

et

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

Contrôleur

et

OFFICE DES TRANSPORTS DU CANADA

Mis-en-cause

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 Sylvie Lacroix
Numéro de Cour :	500-11-045094-139
Nom de l'expéditeur :	Mme Louise Roy
Numéro du télécopieur émetteur :	450-359-0994
Lieu de la transmission :	Saint-Jean-sur-Richelieu
Date de la transmission :	Le 20 août 2013
Heure de transmission :	14h12

Montréal, ce 20 août 2013

Geneviève Cloutier
GOWLING LAFLEUR HENDERSON SENCRL, SRL

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL
N°: 500-11-045094-139

COUR SUPÉRIEURE
(Chambre commerciale)

(*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)

Requérante

et

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

Contrôleur

et

OFFICE DES TRANSPORTS DU CANADA

Intimée

-et-

PROCUREUR GÉNÉRAL DU CANADA

Mise-en-cause

AFFIDAVIT

Je, soussignée, Sylvie Lacroix, Directrice générale du Conseil Économique du Haut-Richelieu(CLD), exerçant ma profession au 315, rue MacDonald, bureau 301 Saint-Jean-sur-Richelieu, Province de Québec, J3B 8J3, affirme solennellement ce qui suit :

1. Je suis une représentante dûment autorisée du Conseil Économique du Haut-Richelieu (CLD) (le « **Conseil** ») pour signer le présent affidavit;

2. Le Conseil est un organisme à but non lucratif dont le mandat est de stimuler et soutenir le développement économique de Saint-Jean-sur-Richelieu, ville et région;

3. Le Conseil accompagne une multitude d'entreprises de secteurs variés dans leurs démarches de croissance, d'innovation, de relève et d'exportation en identifiant leurs

besoins, en ciblant les sources d'aides financières gouvernementales qu'elles soient fédérales, provinciales ou municipales et en y facilitant l'accès;

4. Le Conseil a été informé de l'émission d'une décision par l'Office des transports du Canada (« **OTC** »), le 13 août 2013, ayant pour effet de suspendre le certificat d'aptitude no 02004-3 de la Montréal, Maine & Atlantique Canada Cie (« **MMAC** ») et la Montréal Maine & Atlantic Railway Ltd. (« **MMAR** »), leur permettant d'exploiter une ligne de chemin de fer au Canada à compter du 20 août 2013;

5. Le Conseil a été informé vendredi dernier (16 août 2013) que l'OTC a accepté de maintenir le certificat d'aptitude de MMAC et MMAR jusqu'au 1er octobre 2013, à la condition qu'une charge prioritaire au montant de 250 000$ soit créée sur les actifs de MMAC afin de garantir le paiement de la portion auto-assurance de la police d'assurance de MMAC et MMAR advenant un nouveau sinistre;

6. Dans les circonstances, dès le 13 août, le Conseil a consulté les entreprises industrielles de son territoire afin d'évaluer les impacts que pourraient avoir l'arrêt du service de MMAC et MMAR dans la région du Haut-Richelieu sur les activités de leur entreprise;

7. Le Conseil a recueilli les informations préliminaires suivantes auprès de onze (11) entreprises clientes de MMAC et MMAR, mentionnant être ou pouvant potentiellement être affectées par un arrêt des opérations ferroviaires:

   a) Ensemble, ces entreprises emploient actuellement plus de 700 employés;

   b) Les activités de ces entreprises, de leurs clients ou de leurs fournisseurs nécessitent le transport de marchandises (intrants et extrants) par la ligne de chemin de fer exploitée par MMAC et MMAR;

   c) Certaines de ces entreprises ont des aménagements à l'usine dédiés spécifiquement à la réception et l'expédition par services ferroviaires et peuvent difficilement, à court terme, faire la transition vers un autre mode de transport;

   d) Lorsque possible, le transport par camions de la marchandise vers les gares de triage ou vers un autre site de transbordement entraînera des coûts supplémentaires significatifs pour l'approvisionnement et le transport des marchandises;

   e) Dans certains cas, l'augmentation de coûts d'approvisionnement et de transport (et la baisse de revenus en résultant) auront pour effet de diminuer la rentabilité de l'entreprise et de forcer le licenciement de plusieurs employés. Il est difficile pour ces entreprises de chiffrer, à ce stade-ci, le nombre d'emplois qui seraient ainsi perdus;

   f) En l'absence d'approvisionnement par train, ces entreprises seraient confrontées à des ruptures de stocks et estiment qu'elles pourraient subir à moyen terme d'importantes pertes de revenus, pouvant aller jusqu'à des millions de dollars; et

   g) Une de ces entreprises a informé le Conseil que l'interruption du service du train pourrait même conduire à la fermeture de l'entreprise et forcer le congédiement de ses 50 employés.

8. Tous les faits allégués au présent affidavit sont vrais au meilleur de ma connaissance.

ET J'AI SIGNÉ :

SYLVIE LACROIX

Affirmé solennellement devant moi,
à Saint-Jean-sur-Richelieu, le ~~19~~ 20 août 2013

Commissaire à l'assermentation pour le Québec

COMMISSAIRE À L'ASSERMENTATION
VALÉRIE MARCHESSEAULT
194 663
POUR LE QUÉBEC

Exhibit 7

LET-R-100-2013

August 22, 2013

File Nos: R 8005/M5
R 8005/M6

Montreal, Maine & Atlantic Canada Co.
Montreal, Maine & Atlantic Railway, Ltd.
c/o Henry S. Brown, Q.C.
Gowling Lafleur Henderson LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario
K1P 1C3

Dear Sir:

Re: Requirement to secure funds for self-insured obligation

Reference is made to your *Motion to amend the initial order and seek a charge and security on the property of the Petitioner to secure funds for self-insured obligation* which was filed with the Superior Court of Québec on August 21, 2013.

That motion sets out the manner in which funds will be secured for the self-insured retention portion of the insurance policy of Montreal, Maine & Atlantic Canada Co. and Montreal, Maine & Atlantic Railway, Ltd. (MMA). The Canadian Transportation Agency (Agency) has reviewed the submission and finds that if the order is obtained from the Court, the Agency would be satisfied that MMA meets the condition set out in Decision No. LET-R-98-2013 dated August 16, 2013 that MMA has secured funds for the self-insured retention portion of the policy. The Agency has also confirmed with counsel for MMA that this charge would remain in effect for so long as MMA operates or until October 1, 2013.

Sincerely,

(signed)

Cathy Murphy
Secretary

BY THE AGENCY:

(signed)

_____

Geoffrey C. Hare
Member

Exhibit 8

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL
N°: 500-11-045094-139

COUR SUPÉRIEURE

(Chambre commerciale)

(*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)

Requérante

et

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

Contrôleur

et

OFFICE DES TRANSPORTS DU CANADA

Mis-en-cause

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 Vibhakar Jariwala
Numéro de Cour :	500-11-045094-139
Nom de l'expéditeur :	Vibhakar Jariwala
Numéro du télécopieur émetteur :	450-263-8738
Lieu de la transmission :	Cowansville
Date de la transmission :	Le 22 août 2013
Heure de transmission :	

Montréal, ce 22 août 2013

Geneviève Cloutier
GOWLING LAFLEUR HENDERSON SENCRL, SRL

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL
N°: 500-11-045094-139

COUR SUPÉRIEURE

(Chambre commerciale)

(*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)

Requérante

et

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

Contrôleur

et

OFFICE DES TRANSPORTS DU CANADA

Intimée

-et-

PROCUREUR GÉNÉRAL DU CANADA

Mise-en-cause

AFFIDAVIT

Nous, soussignés, monsieur Vibhakar Jariwala, directeur des technologies et monsieur Louis Carpentier, directeur d'usine, tous deux administrateurs d'Emballage Performant Inc., exerçant notre profession au 301 Grand Boulevard Nord, Cowansville, Province de Québec, J2K 1A8, affirmons solennellement ce qui suit :

1. Nous sommes des représentants dûment autorisés de Emballage Performant Inc. (« **Emballage Performant** ») pour signer le présent affidavit;

2. Emballage Performant est une entreprise en affaires depuis 1953 œuvrant dans l'industrie des pellicules et feuilles en matière plastique. Plus particulièrement, Emballage Performant manufacture des pellicules de polyéthylène;

3. Emballage Performant opère principalement de sa place d'affaires située à Cowansville, Province de Québec;

4. Emballage Performant emploie actuellement soixante-cinq (65) employés;

5. Emballage Performant a été informée de l'émission d'une décision par l'Office des transports du Canada (« **OTC** »), en date du 13 août 2013, ayant pour effet de suspendre le certificat d'aptitude no 02004-3 de la Montréal, Maine & Atlantique Canada Cie (« **MMAC** ») et la Montréal Maine & Atlantic Railway Ltd. (« **MMAR** »), leur permettant d'exploiter une ligne de chemin de fer au Canada à compter du 20 août 2013;

6. Emballage Performant a été informée vendredi dernier (16 août 2013) que l'OTC a accepté de maintenir le certificat d'aptitude de MMAC et MMAR jusqu'au 1er octobre 2013, à la condition qu'une charge prioritaire au montant de 250 000$ soit créée sur les actifs de MMAC afin de garantir le paiement de la portion auto-assurance de la police d'assurance de MMAC et MMAR advenant un nouveau sinistre;

7. Le 16 août 2013, monsieur Vibhakar Jariwala a contacté Me Pierre Legault de Gowlings Lafleur Henderson s.e.n.c.r.l., procureurs de MMAC, afin de lui faire part des préoccupations d'Emballage Performant concernant les impacts négatifs que pourrait avoir l'arrêt des opérations ferroviaires de MMAC sur ses activités. Une copie du courriel de M. Jariwala à Me Legault daté du 16 août 2013 est jointe au présent affidavit sous la côte **VJ-1**;

8. Tel qu'il appert du courriel de M. Jariwala, Emballage Performant estime que l'interruption du service ferroviaire aura des conséquences néfastes significatives et de longue durée sur son entreprise pour les motifs suivants :

   a) Les activités de Emballage Performant, de ses fournisseurs et clients nécessitent le transport de marchandises (intrants et extrants) par la ligne de chemin de fer exploitée par MMAC et MMAR;

   b) Toute option alternative pour le transport de matières premières vers notre usine, dont notamment par camions, à partir de gares de triage ou d'un autre site de transbordement entraînera des coûts supplémentaires significatifs pour notre entreprise (pouvant aller jusqu'à 1 700 000 $ par année) que nous ne pouvons pas nous permettre si nous souhaitons demeurer compétitifs dans notre marché;

   c) Dans un marché aussi compétitif, Emballage Performant ne peut se permettre d'augmenter le prix coutant de ses produits finis afin de compenser pour cette augmentation de coûts;

   d) De plus, Emballage Performant a présentement un carnet de commandes garni pour les 3 à 5 prochaines semaines de sorte qu'elle ne peut se permettre de modifier le prix coutant des produits finis visés par ces commandes;

   e) En conséquence, toute augmentation de ses coûts d'approvisionnement et de transport aura pour effet direct de faire encourir des pertes immédiates à Emballage Performant;

   f) En l'absence d'approvisionnement par train, Emballage Performant sera confronté à des ruptures de stocks ce qui pourraient à moyen terme lui faire subir des pertes de revenus importantes; et

g) L'augmentation des coûts d'approvisionnement et de transport aura pour effet de diminuer la rentabilité d'Emballage Performant, ce qui pourrait forcer le licenciement de plusieurs de nos employés et l'arrêt de notre machinerie. Il est difficile, à ce stade-ci, de chiffrer le nombre d'emplois qui seraient ainsi perdus;

9. Tous les faits allégués au présent affidavit sont vrais au meilleur de notre connaissance.

ET NOUS AVONS SIGNÉ :

V. G. Jariwala

VICTOR JARIWALA

Affirmé solennellement devant moi,
à Cowansville, le 21 août 2013

Commissaire à l'assermentation pour le Québec

Commissaire à l'assermentation
MARIE-PIER BLONDIN
189290
Tous les districts judiciaires du Québec

L. Carpentier

LOUIS CARPENTIER

Affirmé solennellement devant moi,
à Cowansville, le 21 août 2013

Commissaire à l'assermentation pour le Québec

Commissaire à l'assermentation
MARIE-PIER BLONDIN
189290
Tous les districts judiciaires du Québec

JJ-1

De : Vibhakar Jariwala [mailto:vjariwala@ppiinc.ca]
Envoyé : 16 août 2013 10:50
À : Legault, Pierre
Cc : Louis Carpentier; Nadine Samuel
Objet : Disruption in rail service

Dear Mr. Legault,

We Emballage Performant Inc. are one of your customers in the Québec region. Any disruption in the rail service will have detrimental and lasting effect on our business.

Any alternate options to bring in the raw material we use for our process would be at a cost. Our profit margins do not permit us to absorb the cost so we will have to pass it on.

In a very competitive market of our business we risk to lose business if we increase our pricing. Any loss in business would mean laying off employees and shutting down equipment.

At present we already have business committed three to five weeks in advance that we cannot change the pricing. Hence we will have to absorb the costs as the raw material suppliers do not see this as any of their fault. Hence they are not willing to adjust the increase in cost of alternate transport material

Please do all you can so that we can have a continued undisrupted rail service to provide us our raw material supply.

Thanks!

Victor Jariwala

Director of Technology

Performance Packaging Inc.

301 Grand blvd North

Cowansville, Québec

Canada J2K1A8

Tel: (450) 263 6363 x 237

Exhibit 9

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° 500-11-045094-139

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

and

CANADIAN TRANSPORTATION AGENCY

Mis en cause

AFFIDAVIT OF CYNTHIA MARTIN

I, Cynthia Martin, residing for the purpose of this affidavit at 640, des Érables blvd., Salaberry-de-Valleyfield, Quebec, do hereby solemnly declare as follow :

1. I am the president of Akzo Nobel Pulp and Performance Canada Inc. ("**Akzo Nobel**");

2. I have read the Petitioner's *Motion to amend the initial order and seek a charge and security on the property of the Petitioner to secure funds for self-insured obligation* (the "**Motion**");

3. The objective of this affidavit is not to take position with respect the conclusions of the Motion but to present to the Court the consequences on Akzo Nobel of a suspension of the certificate of fitness No. 02004-3 of the Montreal, Maine & Atlantic Canada Co. ("**MMAC**") and the Montreal, Maine & Atlantic Railway Ltd. ("**MMAR**");

4. Akzo Nobel is a multinational paints and chemical company operating in more than 50

countries, with approximately 50,000 employees globally;

5. Akzo Nobel's chemical business focuses on the pulp and paper industry and Akzo Nobel has operated two bleaching chemical facilities within Québec, in Magog and Valleyfield, for more than 25 years;

6. The facility located in Magog, Québec is Akzo Nobel's largest facility in Canada and approximately 60 individuals are employed at this facility, many of whom have spent their entire career at this site;

7. The Magog facility routinely serves the bleaching chemical needs of more than 10 pulp mill producers across North America including three pulp mill producers in Quebec, Ontario and Nova Scotia;

8. The employees at the Magog facility manage approximately 2,000 rail shipments each year, comprising approximately 1,300 outbound and approximately 700 inbound, all of which are carried out by MMAC or MMAR;

9. Akzo Nobel was recently informed of the issuance of a decision by the Canadian Transportation Agency (the "**CTA**") on August 13, 2013, having the effect of suspending the certificate of fitness No. 02004-3 of the MMAC and MMAR, thereby preventing the latter two companies from operating a railroad line in Canada as of August 20, 2013;

10. Akzo Nobel was subsequently informed that the CTA agreed to temporarily maintain the certificate of fitness for MMAC and MMAR until October 1 2013, provided that a prior charge be placed on the assets of MMAC to guarantee payment of the self-insurance portion of MMAC and MMAR's insurance policy in the event of a new claim;

11. A suspension of rail service would have a significant detrimental economic impact on Akzo Nobel's operations at the Magog facility, and on its employees and customers as:

    (a) the viability of the Magog facility would be greatly jeopardized without safe and reliable rail service, since more than 97% of the total production is shipped via rail;

    (b) Akzo Nobel's customers have limited or no alternative for supply;

    (c) between the employees of the Magog facility and the customers, I can reasonably estimate that more than 1,000 jobs within Canada would be impacted by Akzo Nobel's inability to utilize the railways;

    (d) the Magog facility would lose tens of millions of dollars in sales, due to the inability to ship product; and

12. I have taken cognizance of this affidavit and confirm that the facts alleged herein are true to the best of my knowledge.

AND I HAVE SIGNED

CYNTHIA MARTIN

Solemnly declared before me
in Montreal, on August 22, 2013

Commissioner of oaths for the province of
Québec