CANADA

PROVINCE OF QUÉBEC
DISTRICT OF ST-FRANÇOIS

N°: 450-11-000167-134

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

MOTION FOR AN ORDER EXTENDING THE STAY PERIOD AND TO APPROVE A CROSS-BORDER INSOLVENCY PROTOCOL
(Sections 9, 11 and 44 *et seq.* of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA"))

TO THE HONORABLE JUSTICE GAÉTAN DUMAS, J.S.C. OR TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF SAINT-FRANÇOIS, THE PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

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

2. Pursuant to the Initial Order, Richter Advisory Group Inc. (Richter Groupe Conseil Inc.) was appointed as monitor of the Petitioner (the "**Monitor**") and a stay of proceedings (the "**Stay of Proceedings**") was ordered until and including September 6, 2013 (the "**Stay Period**");

3. In addition to protecting the Petitioner, the Stay of Proceedings issued by this Court also extends to the members of the Petitioner's corporate group (the Petitioner and the other members of its corporate group collectively referred to as the "**Petitioner's Corporate Group**") listed in Schedule "A" thereto and to the persons listed in Schedule "B" thereto (collectively, the "**Non-Petitioner Defendants**"), Schedules A and B being attached to the present Motion. As appears from Schedules "A" and "B", the members of the Petitioner's Corporate Group and the Non-Petitioner Defendants include, *inter alia*, Montreal, Maine & Atlantic Railway Ltd ("**MM&AR**"), (the Petitioner's parent company), as well as their liability insurer, XL Insurance Company Ltd. (the "**Liability Insurer**" or "**XL**");

II. ORDERS SOUGHT

4. The Petitioner hereby seeks an extension of the Stay Period in respect of the Petitioner, the other members of the Petitioner's Corporate Group and the Non-Petitioner Defendants until October 9, 2013 for the reasons explained hereinafter;

5. The Petitioner further seeks the issuance of an Order approving a Cross-Border Insolvency Protocol (the "**Cross-Border Protocol**") to be effective only upon approval by the US Bankruptcy Court (as hereinafter defined);

III. GROUNDS FOR THIS MOTION

6. Since the issuance of the Initial Order, the Petitioner and its directors and officers have acted and continue to act in good faith and with due diligence as set forth hereinafter;

7. The Petitioner has made and continues to make significant efforts to stabilize its business and address the concerns of all of its stakeholders including, *inter alia*, the following:

i) The Petitioner's efforts to maintain the Certificate of Fitness

8. Shortly after the issuance of the Initial Order, the Canadian Transportation Agency (the "**Agency**") on August 13, 2013, issued a decision (the "**August 13 Decision**") to suspend the Certificate of fitness no 02004-3 issued in favour of the Petitioner and MM&AR under the *Canada Transportation Act* (the "**Certificate of Fitness**"), which permits both companies to operate railways in Canada. Said suspension was to be effective August 20, 2013, unless the Petitioner were able to provide proof of adequate third party liability insurance, including the ability of the Petitioner to pay the $250,000 self insured portion of said liability policy as more fully set forth in the *Motion to extend the stay of proceedings in respect to a decision of the Canadian Transportation Agency* ("**Motion with respect to the Agency**") (served and filed in the present proceedings but not presented) and the *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* (the "**Motion for a Charge for the Self-Insured Obligation**") (collectively, the "**Motions**") and as appears from the "First Report of the Monitor on the State of the Petitioner's Financial Affairs", dated August 21, 2013 ("**Monitor's First Report**"), already filed as Exhibit R-10 in support of the *Motion for a charge for the self insured obligation*;

9. Pursuant to the suspension of the Certificate of Fitness, the Petitioner would have had to permanently cease all operations in Canada as of August 19, 2013 such that the value of its business and realization thereof for its various stakeholders, including all claimants and potential claimants (the "**Personal Claimants**") having sustained losses as a result of the tragic train derailment that occurred on July 6, 2013 in the Municipality of Lac-Mégantic, Québec (the" **Derailment**") and the governmental and environmental authorities, would have been substantially impaired;

10. In addition, the permanent shutdown of its operations in Canada would have had negative consequences on the employees who would have been laid off as a result thereof as well as have negative consequences on the economies of several towns and municipalities in the province of Québec and elsewhere, which in some respect are highly dependent on railway services, and on third parties (industries and businesses) who rely on freight services in the weeks that would have followed such shutdown, the whole as more fully explained in the Motions and in the Monitor's First Report;

11. In view of the foregoing and in order to avoid the consequences set forth above, the Petitioner and its legal counsel, with the assistance of the Monitor, deployed efforts to satisfy the requirements of the Agency that included attempts to obtain additional insurance through negotiations and discussions with XL and other insurers, submissions to the Agency for the maintaining of the Certificate of Fitness and steps taken to seek the necessary Court orders with respect to same, as more fully set forth in the Motions;

12. These efforts resulted in the Agency's decision of August 16, 2013 to vary its decision and maintain the Certificate of Fitness until October 1st, 2013, subject to an order of this Court that the Canadian assets of the Petitioner be subject to a charge and security to secure funds for the self-insured obligation;

13. The Petitioner therefore sought the assistance of this Court and filed the *Motion for a Charge for the Self-Insured Obligation* and, on August 23, 2013, this Court granted the application and declared that the property is subject to a charge and security to secure the self-insured retention portion of the policy in the aggregated amount of $250,000;

14. As a result, on August 23, 2013, the Agency issued decision no. 328-R-2013 confirming that based on the order of the Superior Court of Québec dated August 23, 2013, the Agency was satisfied that the Petitioner and MM&AR meet the conditions set out in its previous decision and that as a result the suspension of the Certificate of Fitness will come into effect on October 1, 2013, as appears from a copy of the August 23, 2013 decision filed herewith as **Exhibit R-1**;

15. Additionally, following the August 13, 2013 Decision of the Agency, the Canadian Pacific Railway Company ("**CP**") and the Canadian National Railway Company ("**CN**") had both issued embargos on Petitioner's traffic which prevented the Petitioner for all practical purposes to operate;

16. While CN and CP subsequently modified their positions, CP had maintained its right to control MM&A traffic through a "permitting" system, and accordingly the Petitioner applied to the Agency to request the immediate lifting of the embargo issued by the CP. CN also imposed a related embargo on August 21, 2013. On the same date, the Agency

granted the Petitioner's request and ordered CP to immediately lift the embargo and to resume providing to MM&A the same level of service that it received prior to August 13, 2013 and subsequently, both CP and CN confirmed the lifting of their embargos;

ii) Continuation of operations / Interim operator / sales process

17. As a result of the steps taken by the Petitioner for the maintaining of the Certificate of Fitness until October 1, 2013, and to obtain the lifting of the embargos issued by CN and CP, and with the exception of the problems incurred during said embargos, the Petitioner since the Initial Order has continued to deploy efforts to maintain railway transportation services where possible to its customers in Québec, (albeit on a reduced basis as a result of the unavailability of the Lac-Mégantic segment of the line) and thereby avoid the negative consequences outlined above on its various stakeholders including on its customers who rely on Petitioner's transportation services;

18. As explained further in the Motion with respect to the Agency, the Certificate of Fitness is being maintained for an interim period of time in order to allow the Petitioner to proceed to an orderly transition of its Québec operations to an interim operator pending the sale of its business on a going concern basis, for the benefit of its stakeholders;

19. In this regard, the Petitioner informally solicited expressions of interest from third party operators for the continued operations of the railway in Canada on an interim basis, pending a sale of its business;

20. In the process, the Petitioner identified and commenced discussions with three (3) potential parties to continue operations of the railway on an interim basis, one of whom withdrew from active discussions. Moreover, as will be explained more fully in Section iii) below ("*US proceedings / Cross Border Insolvency Protocol*"), the Petitioner is currently considering an alternative submitted to it by the Chapter 11 Trustee (as defined in Section iii) below);

21. In addition and as mentioned in the Monitor's First Report, steps have been and continue to be taken in order to preserve and maximize the realisation value of the assets and in this regard, in order to enhance the market value of the assets, it is believed that a purchaser should be sought for the assets of both the Canadian company and its US parent as a going concern and that there should be coordinated efforts between the Petitioner and the Monitor on the one hand and MM&AR on the other, to maximise such value. As set forth below, discussions are currently taking place with the Chapter 11 Trustee (defined below) in this regard;

22. The Petitioner has expanded significant efforts in stabilizing its business operations in preserving the normal course of business, to the extent possible in the present context and has and continues to meet its post filing obligations as and when they become due, except for the payment of the professional fees and costs related to the restructuring in the current CCAA process;

iii) US proceedings / Cross Border Insolvency Protocol

23. Contemporaneously with the filing of the CCAA proceedings by the Petitioner, on August 7, 2013, MM&AR filed with the United States Bankruptcy Court, District of Maine (the "**US Bankruptcy Court**"), a voluntary petition for relief under chapter 11 of Title 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**") and requested and obtained various types of relief in "first day" applications and motions filed with the US Bankruptcy Court. Thereafter, pursuant to an interim order issued by the US Bankruptcy Court, it continued to operate its business pending the appointment of a trustee by the United States trustee, as required by section 1163 of the Bankruptcy Code in connection with railroad reorganisations;

24. On August 21, 2013, the United States trustee appointed Robert J. Keach to serve as a trustee in the Chapter 11 case of MM&AR (the "**Chapter 11 Trustee**"), as appears from a copy of the Certificate of Appointment filed herewith as **Exhibit R-2 (**without the Affidavit of Disinterestedness and Disclosure Statement attached as Exhibit A thereto);

25. As appears from the "*Preliminary Response of the Chapter 11 Trustee to the Various First Day Motions filed by Montreal Maine & Atlantic Railway, Ltd.*", a copy of which is filed herewith as **Exhibit R-3,** the Chapter 11 Trustee requested *inter alia* that the US Bankruptcy Court set a continued hearing on the "first day" motions for September 10, 2013, or at such other date and time as may be appropriate and grant the relief requested in the first day motions on an interim basis until the continued hearing of same are held, as well as grant such relief to the extent necessary to permit MM&AR to continue operating;

26. Subsequently thereto, on August 23, 2013, the US Bankruptcy Court issued two second interim orders and as well ordered that a further hearing on various motions be held on September 4, 2013 at the US Bankruptcy Court, the whole as appears from a copy of the two second interim orders issued by the US Bankruptcy Court filed *en liasse* herewith as **Exhibit R-4**;

27. The Petitioner's legal counsel, as well as the Monitor and its legal counsel are having ongoing discussions and met on August 29, 2013 with the Chapter 11 Trustee and its US and Canadian counsel (discussions that had previously begun but on a limited preliminary basis with MM&AR's US Counsel pending the appointment of the Chapter 11 Trustee) with a view to coordinate efforts with respect to various issues involved in both insolvency processes, including, *inter alia*, with respect to the operations and the funding of the companies, the sale process, the insurance proceeds and a claims process;

28. During the meeting referred to above, the Chapter 11 Trustee advised the Petitioner's counsel and the Monitor and its counsel that as Trustee, he would be continuing the business and operations of MM&AR and, given that the Petitioner is the wholly-owned subsidiary of MM&AR, the Trustee would be taking steps to ensure the continuation of the operations of the Petitioner. As a result, the Chapter 11 Trustee submitted that he could in effect be considered as being an interim operator of both companies pending the sale of the business of said companies as a going concern for the benefit of all of their respective stakeholders;

29. The Chapter 11 Trustee further advised the Petitioner's counsel and the Monitor and its counsel that, subject to ongoing negotiations with existing lenders in the US Chapter 11 Case, he intended to supply the required funds for the cash flow of the Petitioner for a period of approximately four (4) months, being the period believed to be required for the completion of the sale of the business;

30. Given these developments, the Petitioner will consider and examine further the submissions of the Chapter 11 Trustee and also enter into discussions with the appropriate authorities, including the Agency, the Monitor and other stakeholders with respect to the foregoing in order to determine the future direction of the operations of the Petitioner pending the sale of the business;

31. In addition, during the above-mentioned meeting of August 29, 2013, the Petitioner's legal counsel, the Monitor and its legal counsel on the one hand and the Chapter 11 Trustee and its legal counsel on the other hand, agreed upon the terms of a Cross-Border Protocol, a copy of which is filed herewith as **Exhibit R-5**;

32. The purpose and goals of the Cross-Border Protocol R-5 are set out as follows therein (at paragraph 5[1])

a) harmonize and coordinate activities in the Insolvency Proceedings of the Debtors before the Courts;

b) promote the orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith and avoid duplication of effort;

c) honor the independence and integrity of the Courts and other courts and tribunals of the United States and Canada, respectively;

d) promote international cooperation and respect for comity among the Courts, the Debtors, the Estate Representatives (which include the Chapter 11 Representatives and the Canadian Representatives as such terms are defined in the Cross-Border Protocol, at paragraphs 14 and 16) and other creditors and interested parties in the Insolvency Proceedings;

e) facilitate the fair, open and efficient administration of the Insolvency Proceedings for the benefit of all of the Debtors' creditors and other interested parties, wherever located; and

f) implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Insolvency Proceedings.

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[1] The capitalized terms are defined in the Cross-Border Protocol. Essentially, the term "Insolvency Proceedings" means the CCAA proceedings of the Petitioner and the Chapter 11 proceedings of MM&AR, the term « Debtors » means collectively the Petitioner and MM&AR, the term « Courts » means collectively this Court and the US Bankruptcy Court and the term « Canadian Representatives » means the Monitor and its representatives.

33. Given that the Petitioner and MM&AR (collectively, the "**Debtors**") operate in an integrated international shortline freight railway system and that while separate companies have fully integrated business operations and accounting, given that in addition it is believed that the sale of the business of both companies as a going concern will enhance the realization value for the stakeholders of both Debtors and given that many of the claimants in both Insolvency Proceedings will be the same, the approval and implementation of the Cross-Border Protocol will assist in the efficient and orderly harmonization of the CCAA proceedings and the US Proceedings initiated in respect of the Debtors;

34. The Cross-Border Protocol R-5, at paragraph 23, provides that the Cross-Border Protocol shall only become effective upon its approval by both this Court and the US Bankruptcy Court and will seek to submit it to the US Bankruptcy Court for approval on September 4, 2013;

35. The Chapter 11 Trustee advised the Petitioner's counsel that it filed on August 30, 2013, a Motion for Order adopting the Cross-Border Protocol by the US Bankruptcy Court and will seek to have it approved on September 4, 2013 or as soon as possible thereafter;

36. The Petitioner hereby requests that this Court approve the Cross-Border Protocol and provide that it will become effective only upon its approval by the US Bankruptcy Court;

iv) Developments with respect to the Insurers

37. Prior to the filing of the Petition for the issuance of an initial order, the Petitioner and its representatives and legal counsel had ongoing discussions with XL, with respect to its indemnification obligations under the Canadian Railroad liability insurance policy issued with respect to the Petitioner under which there is a per occurrence limit of $25,000,000 (CDN), the whole as more fully set forth in the Petition for the Issuance of an initial order. Following the August 16, 2013 decision of the Agency suspending the Certificate of Fitness, the Petitioner had negotiated with XL in order to attempt to satisfy the requirements of the Agency at said time, as more fully explained in the Motion with respect to the Agency. As the issue of the suspension of the Certificate of Fitness has been resolved, as indicated above, the discussions with XL have now been resumed with respect to its participation in the CCAA proceedings;

38. As further appears from the Petition for the issuance on an initial order, the Petitioner and MM&AR also hold a Property and Commercial Inland Marine policy with Travelers Property and Casualty Company of America ("**Travelers**") subject to various limits and supplements and that covers, *inter alia*, property, rolling stock, track bed repairs and business interruptions;

39. The Petitioner and its legal counsel have been involved in discussions with Travelers in order to obtain the payment of the indemnities under the policy, for the benefit of Petitioner's stakeholders. However, to date, Travelers has not made any payments thereunder, notwithstanding the formal demand for payment sent by the Petitioner's legal counsel to Travelers on August 21, 2013;

40. On August 27, 2013, Travelers filed a Motion to lift the stay of proceedings with a view to allowing it to submit a Motion for declaratory judgment in the State of Maine as to the applicability of its coverage in the present instance;

41. The Petitioner intends to take all necessary steps to protect the rights and interests of the Petitioner for the benefit of its stakeholders with respect to said insurance policy and is continuing and will continue its efforts to obtain the maximum recovery possible for the benefit of all of its stakeholders;

v) Employees

42. As indicated above, the Petitioner is ultimately seeking to sell the business as a going concern and in so doing is seeking to continue on a temporary basis the operations of the railway. In so doing, the Petitioner is seeking to provide continued employment for its experienced workforce, which will also serve to enhance the going concern value of the Petitioner and may enhance the possibility that they be offered continued employment by a purchaser;

43. However, both prior and subsequently to the issuance of the Initial Order on August 8, 2013, the Petitioner had no other alternative but to temporarily lay off certain employees, due to the reduced operations of the Petitioner and its cash flow requirements. The employees that were temporarily laid off prior to the Initial Order have received since the Initial Order a payment representing the portion of the vacation pay for the year 2012 (due in 2013). As to the portion for the year 2013 accrued to date (normally due in 2014), the Petitioner intends to pay same as soon as possible provided that the cash flow allows such a payment. Two additional employees of the Petitioner have been laid off subsequent to the Initial Order. The total vacation pay owing for 2012 and 2013 approximates $12,000 which will be paid in the coming weeks;

44. As appears from the Monitor's First Report, at the present time, the Petitioner has 62 employees of which 34 are currently active with the balance being on temporary lay-off (14), on CSST (12), and on disability (2);

45. Effective August 30, 2013, it is estimated that the active employees will be owed approximately 143,000$ in accrued payroll, of which approximately $97,000 is due to be paid in the week ending September 6, 2013, and the balance in thepayroll due in the week ending September 20, 2013, the whole in accordance with the Petitioner's payroll cycle;

46. Accrued vacation paid for all is estimated by the Petitioner to be $440,000 (which includes $54,000 for the recently laid off employees);

vi) Governmental Authorities / City of Lac-Mégantic

47. As undertaken by the Petitioner (said undertaking having been acknowledged by this Court in the Initial Order), the Petitioner and its directors and officers, with the assistance of Petitioner's legal counsel, continued to provide ongoing collaboration and cooperation with the Québec Ministry of Sustainable Development, Environment, Wildlife and Parks, the City of Lac-Mégantic and other governmental authorities to the extent of Petitioner's

present capacity and resources in an effort to permit remediation, including granting the access to its property necessary for the execution of the work described in the Order issued by the Minister of Environment on July 29, 2013 pursuant to section 114.1 of the *Environment Quality Act*, A.S.Q., c. Q-2 (the "**Cleanup Order**") or any other work that the Ministry of Sustainable Development, Environment, Wildlife and Parks or the City of Lac-Mégantic consider appropriate to undertake in the public interest;

vii) The Monitor

48. Since the issuance of the Initial Order, the Petitioner and its directors and officers and other employees have been cooperating and working diligently with the Monitor in order to provide the Monitor all necessary information for the Monitor to prepare its reports and fulfill its role and obligations and as well, have kept the Monitor apprised of all developments and indeed have sought the Monitor's assistance with respect to the various steps taken and being taken in connection with all of the above including the steps taken with respect to the Certificate of Fitness, the search for an interim operator, the required steps in connection with the sales process and the discussions with Chapter 11 Trustee as well as with respect to the employees and cash flow;

viii) Future direction

49. As indicated above, the Petitioner, with the assistance of the Monitor, will continue to work on resolving the issues related to the continuation of the operations in the interim pending the sale of the business, including discussions with the appropriate authorities, including the Agency, the Monitor, the Chapter 11 Trustee and other relevant stakeholders and as well continue its efforts to seek a purchaser for the assets and business of the Petitioner as well as MM&AR as a going concerns, in cooperation with the Chapter 11 Trustee, which should enhance the market value of the assets

50. The Petitioner, together with the Monitor and the Chapter 11 Trustee, will also be working on the development and establishment of a formal and orderly claims process acceptable to the various stakeholders in both jurisdictions and this Court as well as the US Bankruptcy Court to deal efficiently with the claims of all of the stakeholders including the victims of the Derailment and their families;

51. As well, the Petitioner will continue to deploy efforts to attempt to obtain the maximum value of indemnification for the stakeholders under the property insurance policy as well continue discussions with the Liability Insurer;

IV. CONCLUSION

i) The Extension of the Stay Period

52. The extension of the Stay Period is necessary in order to provide the Petitioner an adequate period of time to be able to complete the stabilisation of its business and to continue the negotiations with the various key players (purchasers, insurers and others) as well as its stakeholders and the Chapter 11 Trustee with a view to present a plan of compromise or arrangement under the CCAA. It is anticipated that the requested extension of the stay period until October 9, 2013, will afford the Petitioner with an

adequate period of time to make progress towards that objective in view also of the fact that the Certificate of Fitness is scheduled to expire on October 1, 2013;

53. A statement of Petitioner's projected cash flow prepared by Petitioner for the period beginning August 26, 2013 and ending October 11, 2013, is filed herewith as **Exhibit R-6**;

54. Said cash flow statement was prepared based on the following key assumptions (1) that the Petitioner will continue to pay ordinary course obligations, including obligations to employees; (2) that all of the Petitioner's suppliers will wish to operate on a "cash on delivery" basis going forward and (3) that MM&AR will be allowed, throughout the Chapter 11 proceedings, to continue to fund Petitioner's expenses;

55. The Monitor has indicated that it will be filing a second report (the "**Monitor's Second Report**") which shall contain additional information with respect to any ongoing development and which shall include a review of the cash flow forecast and the Monitor's recommendations;

56. As appears from the cash flow forecast, the Petitioner is of the view that no creditor will suffer any undue prejudice by the extension of the Stay Period;

57. The Petitioner is of the view that extending the Stay Period to October 9, 2013 based upon the cash flow forecast to be reported upon in the Monitor's Second Report is appropriate in the present circumstances;

58. As appears from the above, the Petitioner has acted and continues to act in good faith and with the utmost diligence;

59. The Monitor has indicated to the Petitioner that as will appear in the Monitor's Second Report, the Monitor supports the present request for an extension of the Stay Period;

60. The Petitioner respectfully requests that this honourable Court extend the Stay Period to October 9, 2013;

ii) The Cross-Border Protocol

61. Given (i) that the Debtors operate in an integrated railway system; (ii) that while separate companies, they have fully integrated business operations and accounting; (iii) that it is believed that a sale of the business of both companies as a going concern would enhance the realization value for the stakeholders; and (iv) that many of the claimants will be the same in both Insolvency Proceedings, the Petitioner believes and expects that many issues will need to be resolved by both the US Bankruptcy Court and this Court. Further, the Cross-Border Protocol does not diminish or otherwise affect this Court, or any US Courts, independent jurisdiction over the subject matter of the CCAA proceedings and the Chapter 11 case, respectively, as appears at paragraph 7 of the Cross-Border Protocol, Exhibit R-5;

62. Accordingly the Petitioner submits that it would be greatly beneficial that the Cross-Border Protocol (R-5) be approved in order to provide a common framework to

deal with these issues on the basis of principles of cooperation and comity and also to allow the Monitor to intervene as may be required in the US proceedings with the benefit of immunities provided by the Cross-Border Protocol (at paragraph 15);

63. The Monitor has indicated to the Petitioner that it also supports the request for an order to approve the Cross-Border Protocol;

64. The Petitioner submits that it is in the best interests of the Petitioner's stakeholders, as a whole and in the interests of comity between this Court and the US Bankruptcy Court that the Cross-Border Protocol be approved and implemented by this Court;

65. The Petitioner respectfully submits that the notices given the presentation of the present Motion are proper and sufficient;

66. The present Motion is well founded in fact and in law;

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

GRANT the present Motion extending the Stay Period and Approving the Cross-Border Insolvency Protocol (the "**Motion**");

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

ORDER that the Stay Period, as defined in the Initial Order, be extended by this Court up to and including October 9, 2013, the whole subject to all the other terms of the Initial Order;

DECLARE that the Initial Order, as amended on August 23, 2013, shall remain otherwise unchanged;

ORDER that the Cross-Border Insolvency Protocol, being Exhibit R-5 to the Motion and to be attached as Schedule C in support of the Order to be rendered by this Court, be approved in its entirety;

ORDER that the Cross-Border Insolvency Protocol (Exhibit R-5) shall become fully effective upon its approval by the United States Bankruptcy Court for the District of Maine, and the filing with this Court of a certified copy of the US Bankruptcy Court order approving the Cross-Border Protocol;

REQUEST the aid and recognition of any Court or administrative body in any province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America, including the United States Bankruptcy Court for the District of Maine, and of any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of this Order;

ORDER the provisional execution of the order notwithstanding any appeal, without the necessity of furnishing any security.

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

MONTREAL, September 3, 2013

(s) Gowling Lafleur Henderson LLP

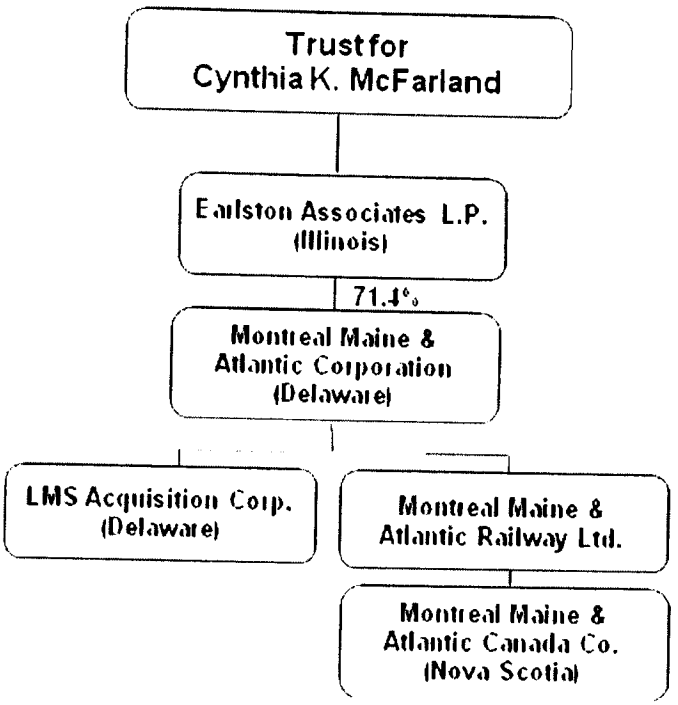
GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

TRUE COPY

Gowling Lafleur Henderson LLP

SCHEDULE « A »

MONTREAL, MAINE & ATLANTIC CORPORATE GROUP



SCHEDULE « B »

NON PETITIONNERS DEFENDANTS :

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

CANADA

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

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

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

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

Nature du document :	Affidavit de Robert C. Grindrod
Numéro de Cour :	450-11-000167-134
Nom de l'expéditeur :	Robert C. Grindrod
Numéro du télécopieur émetteur :	207-848-4252
Lieu de la transmission :	Hernon, Maine
Date de la transmission :	Le 3 septembre 2013
Heure de transmission :	14:37

Montréal, ce 3 septembre 2013

Patrice Benoit
GOWLING LAFLEUR HENDERSON SENCRL, SRL

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF SAINT-FRANÇOIS
N°: 450-11-000137-134

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.)

PROPOSED MONITOR

AFFIDAVIT OF ROBERT C. GRINDROD

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

1. I am the President and Chief Executive Officer of Petitioner ;

2. All the facts alleged in the present *Motion for an order extending the stay period and to approve a cross border insolvency protocol* are true.

AND I HAVE SIGNED:

ROBERT C. GRINDROD

SWORN TO before me in Montreal, province of Quebec, this 3rd day of September 2013

Commissioner of oaths

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

M.TL_LAW\ 2059844\7

CANADA

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

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

NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present *Motion for an order extending the stay period and to approve a cross border insolvency protocol* will be presented for adjudication before one of the honourable Judges of the Superior Court of Quebec, sitting in practice division, in and for the district of Saint-François, on **September 4, 2013,** in room 1, of the Sherbrooke Courthouse, located at 375, rue King Ouest, Sherbrooke, at 10:00 a.m. or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, September 3, 2013

(s) *Gowling Lafleur Henderson LLP*
GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

TRUE COPY

Gowling Lafleur Henderson LLP

CANADA

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

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

LIST OF EXHIBITS

Exhibit **R-1**: Decision of August 23, 2013;

Exhibit **R-2**: Certificate of Appointment;

Exhibit **R-3**: *Preliminary Response of the Chapter 11 Trustee to the Various First Day Motions filed by Montreal Maine & Atlantic Railway, Ltd.*

Exhibit **R-4**: Copy of the two second interim orders

Exhibit **R-5** : Copy of the Cross-Border Protocol

Exhibit **R-6**: Statement of Petitioner's projected cash flow

MONTREAL, September 3, 2013

(s) *Gowling Lafleur Hendeson LLP*
GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

TRUE COPY

Gowling Lafleur Henderson LLP

Exhibit 1

Canadian Transportation Agency / Office des transports du Canada

Canada

Canadian Transportation Agency
www.cta.gc.ca

Decision No. 328-R-2013

August 23, 2013

IN THE MATTER OF operations by Montreal, Maine & Atlantic Canada Co. and Montreal, Maine & Atlantic Railway, Ltd. – Certificate of Fitness No. 02004-3 and Order No. 2013-R-266 dated August 13, 2013 and Decision No. LET-R-98-2013 dated August 16, 2013.

File No.: R8005/M5
R8005/M6

In its Order No. 2013-R-266 dated August 13, 2013, the Canadian Transportation Agency (Agency) suspended Certificate of Fitness No. 02004-3 effective August 20, 2013 because it was not satisfied that Montreal, Maine & Atlantic Canada Co. (MMAC) and Montreal, Maine & Atlantic Railway, Ltd. (MMA) have adequate third party liability insurance coverage and the financial capacity to cover the self-insured portion for the continued operation.

Since the issuance of that Order, MMAC and MMA have filed two applications, pursuant to section 32 of the *Canada Transportation Act*, for a review of Order No. 2013-R-266. The first application was denied as MMAC and MMA did not provide any information to address the inadequacies of the third party liability insurance of MMAC and MMA identified in the Order.

In response to the second application, the Agency, in Decision No. LET-R-98-2013, varied Order No. 2013-R-266 by amending the date of effect of the suspension of Certificate of Fitness No. 02004-3 to October 1, 2013. This variance was granted as MMAC and MMA had provided evidence that satisfied the Agency that they have insurance coverage, including per occurrence, and based on the undertaking by MMAC and MMA to meet the self-insurance portion of the policy. The variance decision was conditional on MMAC/MMA filing with the Agency by 5:00 p.m. Eastern Time on August 23, 2013 confirmation that it has secured funds for the self-insured retention portion of the policy.

On August 21, 2013, MMAC and MMA filed with the Superior Court of Québec a *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*. In Decision No. LET-R-100-2013, the Agency

found that if the order is obtained from the Court, the Agency would be satisfied that MMAC and MMA meet the condition set out in Decision No. LET-R-98-2013.

The Agency has now been advised that MMAC and MMA have obtained an order from the Court. Based on the order of the Superior Court of Québec dated August 23, 2013, the Agency is satisfied that MMAC and MMA meet the condition set out in Decision No. LET-R-98-2013. Accordingly, as set out in that Decision, the suspension of Certificate of Fitness No. 02004-3 comes into effect on October 1, 2013.

Member(s)

Geoffrey C. Hare

Important Notices

Top of Page

Date Modified :
2013-08-23

Exhibit 2

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re	)	Chapter 11
	)	Case No. 13-10670
MONTREAL MAINE & ATLANTIC RAILWAY, LTD.	)	
Debtor.	)	

UNITED STATES TRUSTEE'S CERTIFICATE OF APPOINTMENT OF TRUSTEE PURSUANT TO 11 U.S.C. § 1163

In accordance with the requirements of section 1163 of the United States Bankruptcy Code, the Secretary of Transportation ("the Secretary") provided to the United States Trustee a list of five (5) disinterested persons who are qualified and willing to serve as trustee in this case. Further, the United States Trustee conducted interviews of each of the five (5) disinterested persons provided by the Secretary. Robert J. Keach. was one of the five disinterested candidates provided by the Secretary to the United States Trustee in accordance with section 1163.

PLEASE TAKE NOTICE THAT, pursuant to 11 U.S.C. § 1163, William K. Harrington, the United States Trustee for Region One (the "United States Trustee"), has appointed Robert J. Keach to serve as a trustee in the above-captioned chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"). Attached hereto as **Exhibit A** is Mr. Keach's Affidavit of Disinterestedness and Disclosure Statement.

Dated at Portland, Maine this 21st day of August, 2013.

Respectfully submitted,

William K. Harrington
United States Trustee

By: /s/ Stephen G. Morrell
Stephen G. Morrell, Esq.
Assistant United States Trustee
United States Department of Justice
Office of United States Trustee
537 Congress Street, Suite 303
Portland, ME 04101
PHONE: (207) 780-3564
Stephen.G.Morrell@usdoj.gov

CERTIFICATE OF SERVICE

I, Stephen G. Morrell, being over the age of eighteen and an employee of the United States Department of Justice, U.S. Trustee Program, hereby certify that on August 21, 2013, I electronically filed the above ***United States Trustee's Certificate of Appointment of Trustee Pursuant to 11 U.S.C. §1163*** and this ***Certificate of Service***, which were served upon each of the parties set forth on this Service List via U.S. mail, postage prepaid, on August 21, 2013.

All other parties listed on the Notice of Electronic Filing have been served electronically.

Dated at Portland, Maine this 21st day of August, 2013.

/s/ Stephen G. Morrell

Service List:

N/A

Exhibit 3

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re: MONTREAL MAINE & ATLANTIC RAILWAY, LTD., Debtor.	Chapter 11 Case No. 13-10670

PRELIMINARY RESPONSE OF CHAPTER 11 TRUSTEE TO VARIOUS FIRST DAY MOTIONS FILED BY MONTREAL MAINE & ATLANTIC RAILWAY, LTD.

Robert J. Keach, the chapter 11 trustee (the "Trustee") appointed pursuant to 11 U.S.C. § 1163 in the above-captioned chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor" or "MMA"), by and through his proposed counsel, hereby files this preliminary response (the "Response") to the following "first day" motions filed by the Debtor: (i) *Debtor's Motion for Order Pursuant to 11 U.S.C. §§ 361, 362, and 363; (I) Authorizing Debtor to Use Cash Collateral on Interim Basis; and (II) Scheduling a Hearing to Consider the Use of Cash Collateral on a Final Basis* [Docket No. 5] (the "Cash Collateral Motion"); (ii) *Debtor's Motion Pursuant to Sections 105(a), 363(b), 363(c), 507(a)(4), and 507(a)(5) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004 for Order Authorizing (I) the Payment of Prepetition Employee Obligations and (II) the Continuation of Prepetition Employee Benefits* [Docket No. 6] (the "Payroll Motion"); (iii) *Debtor's Motion for Authorization to Use Pre-Petition Bank Accounts and Business Forms* [Docket No. 7] (the "Cash Management Motion"); and (iv) *Debtor's Motion to (I) Prohibit Utilities from Altering, Refusing or Discontinuing Services, and (II) Establish Procedures for Determining Requests for Additional Adequate Assurance* [Docket No. 9] (the "Utilities Motion") (collectively, the "First Day Motions"). As discussed more fully below, the Trustee requires additional time to consider the appropriateness of the relief requested

in the First Day Motions, and, specifically, to consider and evaluate the impact that the grant of administrative priority to prepetition personal injury and wrongful death claims, pursuant to 11 U.S.C. § 1171, will have on the administration of this case and the companion CCAA proceedings in Canada described below. In support of this Response, the Trustee states as follows:

1. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 157 and 1334 and D. Me. LR 83.6(a), pursuant to which all cases filed in Maine under 11 U.S.C. § 101, et seq. (the "Bankruptcy Code") are referred to this Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding over which the Court has jurisdiction and constitutional authority to enter a final order.

2. On August 7, 2013 (the "Petition Date"), the Debtor filed a voluntary chapter 11 petition for relief. The First Day Motions (other than the Utilities Motion) were set for an emergency hearing on August 8, 2013 (the "First Day Hearing").

3. As set forth on the record by the Debtor's counsel during the First Day Hearing, and as discussed in the *Affidavit of M. Donald Gardner, Jr. in Support of First Day Pleadings* [Docket No. 11] (the "Gardner Affidavit"), MMA's bankruptcy case was precipitated by a derailment, on July 6, 2013, of an unmanned eastbound MMA train with 72 carloads of crude oil and 5 locomotive units, in Lac-Mégantic, Quebec (the "Derailment"). The Derailment set off several massive explosions, destroyed part of downtown Lac-Mégantic, and is presumed to have killed 47 people. Prior to the Petition Date, and as a result of the Derailment and the related injuries, deaths, and property damage, lawsuits were filed against the Debtor both in the United States and Canada. The Trustee expects that the estate will face significant prepetition personal injury, wrongful death, and environmental claims.

4. Also on or around the Petition Date, MMA's wholly-owned Canadian subsidiary, Montreal Maine & Atlantic Canada Co., filed a Petition for the Issuance of an Initial Order (the "Petition") in the Superior Court of Canada pursuant to the Companies' Creditors Arrangement Act (CCAA). The Petition in that case (the "Canadian Case") was granted on August 8, 2013.

5. At the First Day Hearing, the Debtor was granted authority to "carry on normal business operations," including the possession of its assets, the collection of accounts receivable, and the expenditure funds in accordance with the budget attached to the Cash Collateral Motion, pending appointment of a chapter 11 trustee. *See* Order Authorizing the Debtor's Continued Business Operations Pending Appointment of a Chapter 11 Railroad Trustee [Docket No. 34].

6. The Court also granted the Payroll Motion and entered orders granting the Cash Management Motion and the Cash Collateral Motion on an interim basis.

7. The Utilities Motion was set for hearing on August 22, 2013, and continued hearings on the Payroll Motion, the Cash Collateral Motion, and the Cash Management Motion were also set for hearing on that date (the "August 22 Hearing").

8. On August 21, 2013, the United States Trustee for Region 1 appointed the Trustee [Docket No. 64]. The Trustee will be filing an application seeking to retain Bernstein, Shur, Sawyer & Nelson, P.A. as his counsel in this case. The Trustee expects to file that application on August 21, 2013.

9. The Trustee has reviewed the First Day Motions but, due to his appointment shortly before the August 22 Hearing, requires additional time within which to consider the relief requested by the First Day Motions and to conduct appropriate due diligence with respect to the First Day Motions and all other aspects of the case.

10. Without limitation, the Trustee requires additional time to review the relief requested in the First Day Motions in light of the impact of section 1171 of the Bankruptcy Code. Section 1171(a) of the Bankruptcy Code, which applies only in railroad reorganization cases, provides as follows:

> There shall be paid as an administrative expense any claim of an individual or of the personal representative of a deceased individual against the debtor or the estate, for personal injury to or death of such individual arising out of the operation of the debtor or the estate, whether such claim arise before or after the commencement of the case.

11 U.S.C. § 1171(a). Section 1171(a) thus provides prepetition wrongful death and personal injury claims—of which there are many at issue in this case—with administrative expense status. In light of the significant wrongful death and personal injury claims asserted against the Debtor prior to the Petition Date, and assuming that section 1171 applies to the personal injury and wrongful death claims arising out of the Derailment, the Debtor's bankruptcy case may be administratively insolvent. The Trustee intends to negotiate carve-outs with certain secured parties to finance the administration of this case as well as the Canadian Case. To the extent the Trustee is successful in doing so, or in otherwise financing the cases, this case may be fully and successfully administered. However, all parties need to acknowledge the prospect that this case will be administered, beyond the need to preserve an operating railroad for the benefit of the Maine and regional economies (perhaps via a prompt sale), primarily for the benefit of the wrongful death and personal injury claimants. The Trustee has an obligation to assess the appropriateness of the relief requested in the First Day Motions in light of the issues raised by section 1171(a) and requires additional time within which to do so.

11. Accordingly, the Trustee respectfully requests that the Court schedule a continued hearing on the First Day Motions for September 10, 2013 at 10:00 a.m. in Bangor, which is the

Court's next available, regularly scheduled hearing date, or schedule a continued hearing on the First Day Motions at such other date and time as may be appropriate. Pending this continued hearing, the Trustee requests that the relief requested in the First Day Motions, with the exception of the Utilities Motion, be granted only on an interim basis, through September 10, 2013 or until a continued hearing on the First Day Motions may be held, and to the extent necessary to permit the Debtor to continue operating. Given that the Utilities Motion is largely procedural, and given the deadlines provided in section 366, an order may be entered granting the Utilities Motion, provided that the order provides that the Trustee is substituted for the Debtor with respect to any action required by or under the Utilities Motion and that order.

WHEREFORE, the Trustee respectfully requests that this Court: (i) set a continued hearing on the First Day Motions (other than the Utilities Motion) for September 10, 2013 at 10:00 a.m. in Bangor, Maine, or on such other date and time as may be appropriate; (ii) grant the relief requested in the First Day Motions on an interim basis, through September 10, 2013 or until a continued hearing on the First Day Motions may be held, and grant such relief to the extent necessary to permit the Debtor to continue operating; (iii) grant the Utilities Motion substituting the Trustee for the Debtor; and (iv) grant such other and further relief as may be necessary.

ROBERT J. KEACH,
CHAPTER 11 TRUSTEE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.
By his proposed attorneys:

Dated: August 21, 2013

/s/ Michael A. Fagone

Michael A. Fagone, Esq.
D. Sam Anderson, Esq.
BERNSTEIN, SHUR, SAWYER & NELSON, P.A.
100 Middle Street
P.O. Box 9729
Portland, ME 04104
Telephone: (207) 774-1200
Facsimile: (207) 774-1127
E-mail: mfagone@bernsteinshur.com

Exhibit 4

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re	)	Chapter 11
	)	Case No. 13-10670
MONTREAL MAINE & ATLANTIC RAILWAY, LTD.	)	
Debtor.	)	

***SECOND* INTERIM ORDER AUTHORIZING DEBTOR TO USE CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION**

On August 7, 2013, Montreal, Maine & Atlantic Railway Ltd. ("**MMA**" or "**Debtor**") filed a Motion for Order Pursuant to 11 U.S.C. §§ 361, 362, and 363: (I) Authorizing Debtor to Use Cash Collateral on Interim Basis; and (II) Scheduling a Hearing to Consider the Use of Cash Collateral on a Final Basis [D.E. 4] (the "**Motion**"). The Court previously entered an *Interim Order Authorizing the Debtor to Use Cash Collateral and Granting Adequate Protection* [D.E. 51]. On August 21, 2013, the United States Trustee appointed Robert J. Keach (the "**Trustee**") as the chapter 11 trustee of MMA pursuant to 11 U.S.C. § 1163 [D.E. 64], and the appointment of the Trustee terminated the Debtor's authority pursuant to the Court's order dated August 8, 2013 [D.E. 34]. Notwithstanding that termination, the Trustee adopted the Debtor's request for relief in the Motion at a continued hearing on the Motion conducted on August 22, 2013. Based on the Court's review of the Motion and the representations of counsel at the hearing on August 22, 2013, the Court finds that: (i) the Trustee requires the use of Cash Collateral (as defined herein) for ordinary course operations; (ii) the Trustee's ability to protect and preserve MMA's going concern operations will be seriously undermined in the absence of the use of Cash Collateral; (iii) the Wheeling & Lake Erie Railway Company ("**W&LER**") claims an interest in

the Cash Collateral; (iv) the Trustee's offer of adequate protection to W&LER having been accepted by W&LER subject to and upon the terms and conditions of this Order; and (v) the Debtor has given sufficient notice under the circumstances of the continued hearing on the Motion, the Court hereby further finds as follows:

A. This Court has jurisdiction over these proceedings and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. The subject matter of the Motion is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) upon which the Court has the Constitutional authority to enter this Order.

B. On August 7, 2013, (the "**Petition Date**"), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the United States Bankruptcy Code (the "**Bankruptcy Code**"). Accordingly, it is hereby:

ORDERED, ADJUDGED AND DECREED

1. The Trustee is authorized, effective as of August 22, 2013, to use Cash Collateral,[1] including cash on hand and cash from collection of MMA's pre-petition accounts receivables on an interim basis for ordinary course business purposes through close of business on September 6, 2013 (the "**Expiration Date**"), pursuant to the interim budget attached hereto as Exhibit A (the "**Budget**") and incorporated herein by reference; and

2. Notwithstanding section 552(a) of the Bankruptcy Code, as and for adequate protection for the post-petition use of Cash Collateral in which W&LER claims an interest, including accounts and inventory of the Debtor and proceeds thereof, the Trustee is hereby authorized and by entry of this Order does grant to W&LER a valid, perfected, and enforceable

[1] Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Motion.

security interest in all accounts, inventory, and proceeds of accounts acquired by the Debtor on or after the Petition Date to the same extent that W&LER had a valid, perfected, and enforceable security interest in all accounts, inventory, and proceeds of accounts acquired by the Debtor prior to the Petition Date (the "**Replacement Lien**"); provided, however, that the Replacement Lien shall not attach to funds collected on behalf of other carriers to the extent such funds are subsequently determined by the Court to be held by MMA in an express or implied trust for such other carriers. The Replacement Lien shall (i) secure all obligations of the Debtor to the W&LER; (ii) be limited in amount to the amount of Cash Collateral actually utilized by the Debtor or the Trustee on or after the Petition Date; (iii) in any event be limited to the amount of Cash Collateral that the Debtor had on hand as of the Petition Date; and (iv) shall have the same validity, enforceability, and priority as the security interests of W&LER had with respect to Cash Collateral as of the Petition Date. The Replacement Lien has the validity, enforceability, and priority as is set forth in the preceding sentence without the need for any public filing or other action.

3. If, notwithstanding the grant of adequate protection provided in this Order, W&LER has a claim allowable under Section 507(a)(2) of the Bankruptcy Code arising from the use of Cash Collateral pursuant to this Order, then, such claim shall have priority over all other claims allowable under Section 507(a)(2).

4. From the date of this Order and until the Expiration Date, the Debtor shall provide the Trustee, W&LER, the United States Trustee ("**UST**"), the Federal Rail Administration (the "**FRA**"), and the Maine Department of Transportation ("**MDOT**") and each of the twenty largest unsecured creditors of the Debtor making a written request of the Debtor for such reporting, the following regular reports on its financial condition and cash flow no later than each Wednesday

by 10:00 A.M. of each week, commencing the week of August 12, 2013, and for the one week period ending on the preceding Saturday: (a) a report comparing the Debtor's actual performance during the week to the Budget; (b) a report on the balances, as of the end of each weekly period, in each of the Debtor's debtor-in-possession banking accounts, the balance of the Debtor's accounts receivable, and an aging report of all outstanding accounts receivable, and the balances of all inventory; and (c) a rolling forward projection of sources and uses of cash, and balance sheet accounts for cash, accounts receivable and inventory for the ensuing thirteen (13) week period. These reports shall be transmitted via e-mail to FRA (John.Stemplewicz@usdoj.gov) and MDOT (Nathan.Moulton@maine.gov and Toni.Kemmerle@maine.gov). The Trustee, W&LER, UST, FRA and MDOT shall also have the right to request and to promptly receive further information and reports necessary to evaluate the Debtor's profitability and cash flow. The foregoing is without prejudice to, and shall not be deemed a waiver of any parties' right to seek examination of the Debtor pursuant to Fed. R. Bankr. P. 2004. Without limiting the generality of the foregoing, the Debtor shall cooperate with W&LER and the Trustee to find a mutually agreeable date, time and place for an examination of the Debtor. In the event that on or prior to August 26, 2013, the Trustee, the Debtor, and W&LER are unable to agree upon such date, time and place, then the W&LER is hereby authorized to examine the Debtor, and to require the production of documents, pursuant to Fed. R. Bankr. P. 2004 and D. ME. LBR 2004-1(a), upon three (3) business day's written notice to the Trustee and the Debtor, at the offices of counsel for W&LER in Portland, Maine. In furtherance of the timely production of documents, W&LER shall provide the Debtor and the Trustee with a list of requested documents on or before the close of business on Monday, August 26, 2013.

5. For so long as the Trustee is authorized under the terms of this Order to use Cash Collateral, the Trustee shall not seek authority for, or otherwise allow, any other liens to be granted which are superior or in any way prime W&LER's pre-petition liens or the Replacement Lien, without the express written consent of W&LER.

6. Unless cured within five (5) business days after W&LER provides written notice of default by electronic mail to the Trustee (rkeach@bernsteinshur.com), the UST (jennifer.h.pincus@usdoj.gov), FRA (John.Stemplewicz@usdoj.gov) and MDOT (Nathan.Moulton@maine.gov and Toni.Kemmerle@maine.gov), each of the following shall constitute an "**Event of Default**" for purposes of this Order:

(a) the Debtor's chapter 11 case is either dismissed or converted to a case under chapter 7 pursuant to an Order of this Court, the effect of which has not been stayed;

(b) the occurrence of the Expiration Date, without the express written consent of W&LER or an Order of the Court authorizing the continued use of cash collateral beyond the Expiration Date;

(c) the Trustee expends Cash Collateral in an amount that exceeds one hundred and ten percent (110%) of the amount shown on the row entitled "Total Disbursements" on the Budget; or (ii) fails to provide the requisite financial reports within 5 business days of receipt of notice of any failure of reporting,

(d) this Court enters an Order terminating the Trustee's authority to use Cash Collateral;

(e) the Trustee ceases the operation of substantially all of MMA's present businesses or takes any material action for the purpose of effecting the foregoing without the prior written consent of W&LER, provided, however, that filing of a motion for sale of all or substantially all of the Debtor's assets shall not constitute an Event of Default;

(f) the Trustee expends any funds or monies for any purpose other than as set forth in the Budget or as otherwise authorized by the Court after notice and a hearing; and

(g) non-compliance or default by the Trustee with any of the other terms, provisions, and conditions of this Order.

Upon the occurrence of an Event of Default, and provided that such default remains uncured after 5 business days after notification thereof by W&LER, the Trustee's authority to use Cash Collateral pursuant to this Order shall immediately cease and terminate. Nothing in this Order shall prohibit the Trustee from filing motions with the Court seeking emergency and/or expedited hearing, and continued and/or renewed authority to use cash collateral.

7. The terms and conditions of this Order shall be in effect and immediately enforceable upon its entry by the Clerk of the Court and shall be binding against the Trustee, the Debtor, the estate and/or any trustee subsequently appointed in this case, whether under Chapter 7 or Chapter 11 of the Bankruptcy code, and notwithstanding any potential application of Bankruptcy Rule 6004(g), 7062 or 9014; and not be stayed absent (a) an application by a party-in-interest for such stay in conformance with Bankruptcy Rule 8005, and (b) a hearing upon notice to the Debtor, W&LER and the United States Trustee.

8. A further hearing on Trustee's request to use Cash Collateral shall be held on the Motion on **September 4, 2013 at 10:00 a.m**. at the United States Bankruptcy Court, 202 Harlow Street, Bangor, Maine. The Trustee shall promptly provide notice of such further hearing in accordance with the applicable Bankruptcy Rules and Local Bankruptcy Rules. Objections, if any, to any proposed further order shall be filed and served on or before September 3, 2013 at 4:00 p.m.

Dated: August__, 2013

Hon. Louis H. Kornreich
United States Bankruptcy Judge

EXHIBIT
Exhibit A

Montreal, Maine & Atlantic Railway Confidential
8/20/2013

Current Status

Current Status	Forecast W/E 8/18/2013	Actual W/E 8/18/2013	W/E 8/23/2013	W/E 8/30/2013	W/E 9/6/2013	W/E 9/13/2013
Receipts:						
Transportation Revenue						
Freight Revenue and Zone Switching	$ 150,000	$ 93,623	$ 145,000	$ 150,000	$ 150,000	$ 150,000
ISS Receipt	-	-	-	-	(20,000)	
Sub Total - Transportation Revenue	150,000	93,623	145,000	150,000	130,000	150,000
Other Operating Revenue						
Switching & Miscellaneous	30,000	155	30,000	30,000	30,000	30,000
Contract Shop & Car Repairs		581		20,000		
Car Hire Revenue			72,500			
Sub Total - Other Operating Revenue	30,000	736	102,500	50,000	30,000	30,000
Non-Operating Revenue						
Traveler Business Interruption				-	-	-
Sub Total - Non-Operating Revenue	-	-	-	-	-	-
Total Cash Receipts	180,000	94,359	247,500	200,000	160,000	180,000
Disbursements:						
Transportation Revenue Offsets						
NBSR, MNR, SLQ, CN	25,000	25,000	22,000	53,204	20,204	20,204
Sub Total - Transportation Revenue Offsets	25,000	25,000	22,000	53,204	20,204	20,204
Payroll & Related						
Salaries, Wages & Commissions US	180,000	178,048		160,076		160,076
Employee Benefits Claims - US	-	(1,142)	-	5,000	5,000	5,000
Salaries, Wages & Commissions CDN		5,372	117,444		110,128	
Group Health, pension and union dues- CDN	33,000	31,142	2,000		25,000	
Vacation pay arrears - CDN	16,000	16,041		50,000		
Sub Total - Payroll & Related	229,000	229,459	119,444	265,076	140,128	165,076
Materials & Supplies						
Diesel Fuel	-		-	-	-	-
Material Costs US	25,000	6,134	20,000	25,000	20,000	20,000
Material Costs CDN	24,125	4,063	9,300	14,125	9,300	9,300
Sub Total - Material & Supplies	49,125	10,198	29,300	39,125	29,300	29,300
Freight Car & Locomotive Expense						
Leases - Car					5,000	
Leases - Locomotive	-		-	-	-	-
Car Repair Debits	-					
Sub Total - Freight Car & Locomotive	-	-	-	-	5,000	-
Other Operating Costs						
Rent					15,000	
Electricity				9,000		
Liability Insurance Payments					21,346	43,500
Phone, Internet, Radio, Other expenses	10,000	5,247	10,000	10,000	10,000	10,000
Sub Total - Rent, Heat & Utilities	10,000	5,247	10,000	19,000	46,346	53,500
Restructuring Costs						
Utility Deposits - US						
Utility Deposits - CDN			10,000		10,000	
Notice in newspaper			15,000			
Professional fees - US	-	-	-	-	-	-
Professional fees - CDN						
Sub Total - Other Indirect/Operating Costs	-	-	25,000	-	10,000	-
Total Disbursements	313,125	269,903	205,744	316,405	250,978	258,080
Net Cash Flow (Use) - Operations	(133,125)	(175,544)	41,756	(116,405)	(90,978)	(78,080)
SUMMARY						
Cash Beginning	378,834	378,834	203,290	245,046	128,641	37,665
Net Weekly Cash Flow	(133,125)	(175,544)	41,756	(116,405)	(90,976)	(78,080)
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Montreal, Maine & Atlantic Railway Confidential
8/20/2013

Current Status

	8/18/2013	8/16/2013	8/23/2013	8/30/2013	9/6/2013	9/13/2013
Collateral Analysis						
Accounts Receivable						
Accounts Receivable A/R Trade Beg Balance	$ 6,469,391	$ 6,008,422	$ 5,199,383	$ 5,254,383	$ 5,304,383	$ 5,424,383
Add: Net Sales	200,000	284,584	200,000	200,000	250,000	250,000
Less: Collections	150,000	93,623	145,000	150,000	130,000	150,000
A/R Trade Ending	6,519,391	6,199,383	5,254,383	5,304,383	5,424,383	5,524,383
Less: Ineglble A/R	(2,977,434)	(1,812,176)	(1,812,176)	(1,812,176)	(1,812,176)	(1,812,176)
A/R - Ending - Eligible	3,541,957	3,387,207	3,442,207	3,492,207	3,612,207	3,712,207
Inventory value	1,181,097	1,136,938	1,136,938	1,136,938	1,136,938	1,136,938
Total Inventory Collateral Value	1,181,097	1,136,938	1,136,938	1,136,938	1,136,938	1,136,938
Gross Collateral	4,723,054	4,524,145	4,579,145	4,629,145	4,749,145	4,849,145
Line of Credit Maximum	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000
Eligible Collateral	4,723,054	4,524,145	4,579,145	4,629,145	4,749,145	4,849,145
Beginning Line of Credit Balance	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000
Advances / (Payments) (incl write down)	-	-	-	-	-	-
Ending Line of Credit Balance	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000	6,000,000
	(1,276,946)	(1,475,855)	(1,420,855)	(1,370,855)	(1,250,855)	(1,150,855)
Diesel Fuel	286523	286523	271523	256523	241523	226523

For Management Discussion Pur

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re	)	Chapter 11
	)	Case No. 13-10670
MONTREAL MAINE & ATLANTIC RAILWAY, LTD.	)	
Debtor.	)	

***SECOND INTERIM* ORDER AUTHORIZING THE CONTINUED USE OF PRE-PETITION BANK ACCOUNTS AND BUSINESS FORMS**

Upon consideration of the Motion for Authorization to Use Pre-Petition Bank Accounts and Business Forms [D.E. 7] (the "**Motion**"), Montreal, Maine & Atlantic Railway Ltd. ("**MMA**" or "**Debtor**"), debtor in the above captioned case, the United States Trustee having appointed, Robert J. Keach as the chapter 11 trustee (the "Trustee") in the above-captioned chapter 11 case of MMA, and it appearing that due and proper notice of the Motion has been given, and that no other or further notice need be given; the Court having conducted an initial hearing on the Motion on August 8, 2013 and having entered an order granting the motion on an interim basis [D.E. 42], the Court having conducted a further hearing on the Motion on August 22, 2013 (the "Hearing") and the Trustee having adopted the request for relief set contained in the Motion on an interim basis; and after due deliberation and sufficient cause appearing therefore and after such hearing as was necessary being held, it is hereby **ORDERED, ADJUDGED**, and **DECREED** as follows:

A. The Motion is **GRANTED** on an interim basis through close of business on September 4, 2013.

B. The Trustee is authorized, but not directed, in the reasonable exercise of his business judgment, to: (a) designate, maintain and continue to use, with the same account

numbers, the bank accounts in existence at TD Bank, Bank of American, Bangor Savings Bank, and the Canadian Imperial Bank of Commerce on the date of the filing of the Debtor's chapter 11 petition (collectively, the "**Bank Accounts**"). No officer, director, employee, or agent of the Debtor may cause any disbursement from the Bank Accounts (or any of them) without the consent of the Trustee or his designee.

C. The Trustee is authorized to continue use of the Debtor's existing checks and business forms provided that he affixes a stamp designating the Trustee's status as "Chapter 11 Trustee for MMA, as the Debtor, Chapter 11 Case No. 13-10670 (D. Me.)" on such checks and business forms.

D. The Trustee is authorized to make disbursements from the Bank Accounts to the extent consistent with the Debtor's existing cash management practices or other orders of this Court.

E. TD Bank, Bank of American, Bangor Savings Bank, and the Canadian Imperial Bank of Commerce are hereby authorized to continue to service and administer all such accounts as accounts, without interruption and in the usual and ordinary course, and to receive, process, honor and pay any and all checks and drafts drawn on, or electronic transfer requests made on, said account by the holders or makers thereof, as the case may be.

F. Nothing contained herein shall prevent the Trustee from opening any new bank accounts or closing any of the Bank Accounts as it may deem necessary and appropriate; *provided, however*, that (i) any new account shall be with a bank that is on the U.S. Trustee's Authorized Depository list for the District of Maine; (ii) any new account will be opened and maintained in accordance with the U.S. Trustee's guidelines; and (iii) the Trustee shall disclose

any new accounts to the U.S. Trustee in writing within forty-eight (48) hours of opening any new account.

G. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: August ___, 2013

Honorable Louis H. Kornreich
United States Bankruptcy Judge

Exhibit 5

R-5

CROSS-BORDER INSOLVENCY PROTOCOL

This cross-border insolvency protocol (the "Protocol") shall govern the conduct of all parties in interest in the Insolvency Proceedings (as such term is defined herein).

The American Law Institute's Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (the "Guidelines") attached as Schedule "A" hereto, shall be incorporated by reference and form part of this Protocol. Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

A. Background

1. Montreal, Maine & Atlantic Railway Ltd. ("MMA") operates in an integrated, international shortline freight railway system with its wholly-owned Canadian subsidiary, Montreal, Maine & Atlantic Canada Co. ("MMA Canada"). MMA is a Delaware corporation and operates from its head office in Hermon, Maine. MMA and MMA Canada, while separate companies, have fully integrated business operations and accounting, with MMA collecting most of the revenue and then transferring to MMA Canada the funds it requires to pay its expenses.

2. MMA (the "U.S. Debtor") has commenced reorganization proceedings (the "U.S. Proceedings") under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Maine (the "U.S. Court"). The U.S. Debtor is continuing in possession of its properties and is operating and managing its business, as debtor in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. MMA Canada (the "Canadian Debtor"), has commenced a concurrent proceeding (the "Canadian Proceeding") under Canada's Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, seeking relief from its creditors (collectively, the "Canadian Proceedings"). The Canadian Debtor has obtained an initial order of the Canadian Court (as amended and restated, the "Canadian Order"), under which, inter alia: (a) the Canadian Debtor has been determined to be entitled to relief under the CCAA; (b) Richter Advisory Group Inc. has been appointed as monitor (the "Monitor") of the Canadian Debtor, with the rights, powers, duties and limitations upon liabilities set forth in the CCAA and the Canadian Order; and (c) a stay of proceedings in respect of the Canadian Debtor has been granted.

4. For convenience, (a) the U.S. Debtor and the Canadian Debtor shall be referred to herein collectively as the "Debtors," (b) the U.S. Proceedings and the Canadian Proceedings shall be referred to herein collectively as the "Insolvency Proceedings," and (c) the U.S. Court and the Canadian Court shall be referred to herein collectively as the "Courts", and each individually as a "Court."

B. Purpose and Goals

5. Though full and separate plenary proceedings are pending in the United States for the U.S. Debtor and in Canada for the Canadian Debtor, the implementation of administrative

procedures and cross-border guidelines is both necessary and desirable to coordinate certain activities in the Insolvency Proceedings, protect the rights of parties thereto, ensure the maintenance of the Courts' respective independent jurisdiction and give effect to the doctrines of comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in the Insolvency Proceedings:

a. harmonize and coordinate activities in the Insolvency Proceedings before the Courts;

b. promote the orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith and avoid duplication of effort;

c. honor the independence and integrity of the Courts and other courts and tribunals of the United States and Canada, respectively;

d. promote international cooperation and respect for comity among the Courts, the Debtors, the Estate Representatives (which include the Chapter 11 Representatives and the Canadian Representatives as such terms are defined below) and other creditors and interested parties in the Insolvency Proceedings;

e. facilitate the fair, open and efficient administration of the Insolvency Proceedings for the benefit of all of the Debtors' creditors and other interested parties, wherever located; and

f. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Insolvency Proceedings.

As the Insolvency Proceedings progress, the Courts may also jointly determine that other cross-border matters that may arise in the Insolvency Proceedings should be dealt with under and in accordance with the principles of this Protocol. Where an issue is to be addressed only to one Court, in rendering a determination in any cross-border matter, such Court may: (a) to the extent practical or advisable, consult with the other Court; and (b) in its sole discretion and bearing in mind the principles of comity, either (i) render a binding decision after such consultation; (ii) defer to the determination of the other Court by transferring the matter, in whole or in part to the other Court; or (iii) seek a joint hearing of both Courts.

C. Comity and Independence of the Courts

6. The approval and implementation of this Protocol shall not divest nor diminish the U.S. Court's and the Canadian Court's respective independent jurisdiction over the subject matter of the U.S. Proceedings and the Canadian Proceedings, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors nor any

creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States of America or Canada.

7. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Proceedings and the hearing and determination of matters arising in the U.S. Proceedings. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceedings and the hearing and determination of matters arising in the Canadian Proceedings.

8. In accordance with the principles of comity and independence recognized herein, nothing contained herein shall be construed to:

a. increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an ex parte or "limited notice" basis;

b. require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States;

c. require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

d. require the Debtors, the Estate Representatives or the U.S. Trustee to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

e. authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or preclude the Debtors, the U.S. Trustee, any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other relevant jurisdiction including, without limitation, the rights of parties in interest to appeal from the decisions taken by one or both of the Courts.

9. The Debtors, the Estate Representative and their respective employees, members, agents and professionals shall respect and comply with the independent, non-delegable duties imposed upon them, if any, by the Bankruptcy Code, the CCAA, the CCAA Order and other applicable laws.

D. Cooperation

10. To assist in the efficient administration of the Insolvency Proceedings and in recognizing that the U.S. Debtor and Canadian Debtor may be creditors of the others' estates, the

Debtors and their respective Estate Representatives shall, where appropriate: (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court and (b) take any other appropriate steps to coordinate the administration of the Insolvency Proceedings for the benefit of the Debtors' respective estates.

11. To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court. In furtherance of the foregoing:

a. The U.S. Court and the Canadian Court may communicate with one another with respect to any procedural matter relating to the Insolvency Proceedings.

b. Where the issue of the proper jurisdiction or Court to determine an issue is raised by an interested party in either of the Insolvency Proceedings with respect to a motion or application filed in either Court, the Court before which such motion or application was initially filed may contact the other Court to determine an appropriate process by which the issue of jurisdiction will be determined; which process shall be subject to submissions by the Debtors, the U.S. Trustee, the Monitor and any interested party prior to a determination on the issue of jurisdiction being made by either Court.

c. The Courts may, but are not obligated to, coordinate activities in the Insolvency Proceedings such that the subject matter of any particular action, suit, request, application, contested matter or other proceeding is determined in a single Court.

d. The U.S. Court and the Canadian Court may conduct joint hearings with respect to any cross-border matter or the interpretation or implementation of this Protocol where both the U.S. Court and the Canadian Court consider such a joint hearing to be necessary or advisable. With respect to any joint hearings, unless otherwise ordered, the following procedures will be followed:

(i) A telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court.

(ii) Submissions or applications by any party that are or become the subject of a joint hearing of the Courts (collectively, "Pleadings") shall be made or filed initially only to the Court in which such party is appearing and seeking relief Promptly after the scheduling of any joint hearing, the party submitting such Pleadings to one Court shall file courtesy copies with the other Court. In any event, Pleadings seeking relief from both Courts shall be filed with both Courts.

(iii)Any party intending to rely on any written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in

connection with any joint hearing or application (collectively, "Evidentiary Materials") shall file or otherwise submit such materials to both Courts in advance of the joint hearing. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court.

(iv) If a party has not previously appeared in or attorned or does not wish to attorn to the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the joint hearing without, by the mere act of such filings, being deemed to have attorned to the jurisdiction of the Court in which such material is filed, so long as it does not request in its materials or submissions any affirmative relief from such Court.

(v) The Judge of the U.S. Court and the Justice of the Canadian Court who will preside over the joint hearing shall be entitled to communicate with each other in advance of any joint hearing, with or without counsel being present, to establish guidelines for the orderly submission of Pleadings, Evidentiary Materials and other papers and for the rendering of decisions by the Courts, and to address any related procedural, administrative or preliminary matters.

(vi) The Judge of the U.S. Court and the Justice of the Canadian Court, shall be entitled to communicate with each other during or after any joint hearing, with or without counsel present, for the purposes of determining whether consistent rulings can be made by both Courts, coordinating the terms upon of the Courts' respective rulings, and addressing any other procedural or administrative matters.

12. Notwithstanding the terms of the paragraph 11 above, this Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to: (a) matters presented to such Court; and (b) the conduct of the parties appearing in such matters.

13. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court in order to determine an issue before it, the Court with jurisdiction over such matter may, among other things, hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to paragraph 26 herein.

E. Retention and Compensation of Estate Representative and Professionals

14. The Monitor, its officers, directors, employees, counsel and agents, wherever located, (collectively the "Monitor Parties") and any other estate representatives in the Canadian

Proceedings (collectively, the "Canadian Representatives") shall be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives' tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the Canadian Debtor and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Proceedings under the CCAA or other applicable Canadian law. The Canadian Representatives shall not be required to seek approval of their retention in the U.S. Court for services rendered to the Debtors. Additionally, the Canadian Representatives: (a) shall be compensated for their services to the Debtors solely in accordance with the CCAA, the CCAA Order and other applicable Canadian law or orders of the Canadian Court; and (b) shall not be required to seek approval of their compensation in the U.S Court.

15. The Monitor Parties shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceedings, the Monitor Parties shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Monitor, the carrying out of its duties or the provisions of the CCAA and the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or willful misconduct.

16. Any estate representative appointed in the U.S. Proceedings, including without limitation any examiners or trustees appointed in accordance with section 1163 of the Bankruptcy Code (collectively, the "Chapter 11 Representatives") shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the Chapter 11 Representatives' tenure in office; (b) the retention and compensation of the Chapter 11 Representatives; (c) the Chapter 11 Representatives' liability, if any, to any person or entity, including the U.S. Debtor and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the Chapter 11 Representatives arising in the U.S. Proceedings under the Bankruptcy Code or other applicable laws of the United States. The Chapter 11 Representatives and their counsel and other professionals retained therefor shall not be required to seek approval of their retention in the Canadian Court. Additionally, the Chapter 11 Representatives and their counsel and such other professionals: (a) shall be compensated for their services to the Debtors solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their compensation for services performed for the Debtors in the Canadian Court.

17. Any professionals retained by or with the approval of the Canadian Debtor (collectively, the "Canadian Professionals"), shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in Canada with respect to services performed on behalf of the Canadian Debtor; and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court with respect to services performed on behalf of the Canadian Debtor.

18. Any professionals retained by the U.S. Debtor (the "Chapter 11 Professionals") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the Chapter 11 Professionals: (a) shall be subject to the procedures and standard for retention and compensation applicable in the U.S. Court under the Bankruptcy Code with respect to services performed on behalf of the U.S. Debtor and any other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court with respect to services performed on behalf of the U.S. Debtor.

F. Appearances

19. Upon any appearance or filing, as may be permitted or provided for by the rules of the applicable Court, the Debtors, their creditors and other interested parties in the Insolvency Proceedings, including the Estate Representatives and the U.S. Trustee, shall be subject to the personal jurisdiction of the Canadian Court or the U.S. Court, as applicable, with respect to the particular matters as to which they appear before that Court.

G. Notices

20. Notice of any motion, application or other pleading or paper filed in one or both of the Insolvency Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, telecopier or other electronic forms of communication) to the following: (a) all creditors and interested parties, in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under clause (a) of this sentence, counsel to the Debtors; the U.S. Trustee; the Monitor and any other statutory committees appointed in these cases and such other parties as may be designated by either of the Courts from time to time. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the U.S. Debtor or the Canadian Debtor shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of any orders, decisions, opinions or similar papers issued by the other Court in the Insolvency Proceedings.

21. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notices shall be provided in the manner and to the parties referred to in paragraph 20 above.

H. Effectiveness; Modification

22. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

23. The Guidelines attached hereto as Schedule A are subject to the following modifications:

a. the words 'in which case Guideline 7 should apply" are deleted from Guideline 6(c) and are replaced with the words "in which case Guideline 7(d) should apply";

b. Guidelines 7(a), (b) and (c) are deleted;

c. Guidelines 8(b) and (c) are deleted;

d. the words "Subject to Guideline 7(b)" from Guidelines 9(d) and (e) are deleted; and

e. Guideline 9(e) is further amended as follows:

The Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural, substantive or nonsubstantive matters relating to the joint hearing.

24. This Protocol may not be supplemented, modified, terminated, or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceeding to supplement, modify, terminate or replace this Protocol shall be given accordance with the notice provisions set forth in paragraph 20 above.

I. Procedure for Resolving Disputes Under this Protocol

25. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to the U.S. Court, the Canadian Court or both Courts upon notice in accordance with the notice provisions outlined in paragraph 20 above. In rendering a determination in any such dispute, the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either: (i) render a binding decision after such consultation; (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to such other Court; or (iii) seek a joint hearing of both Courts in accordance with paragraph 11 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity and inherent jurisdiction of the other Court established under existing law.

26. In implementing the terms of this Protocol, the U.S. Court and the Canadian Court may, in their sole, respective discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

a. the U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;

b. the Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;

c. copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 20 hereof; and

d. the Courts may jointly decide to invite the Debtors, the Estate Representatives, the U.S. Trustee and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court.

J. Preservation of Rights

27. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall: (a) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Estate Representatives, the U.S. Trustee or any of the Debtors' creditors under applicable law, including the Bankruptcy Code and the CCAA, and the orders of the Courts; or (b) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the United States.

THE AMERICAN LAW INSTITUTE

in association with

THE INTERNATIONAL INSOLVENCY INSTITUTE

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

As Adopted and Promulgated in Transnational Insolvency: Principles of Cooperation Among the NAFTA Countries

BY

THE AMERICAN LAW INSTITUTE
At Washington, D.C., May 16, 2000

And as Adopted by

THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001

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At New York, June 10, 2001

The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* were developed by The American Law Institute during and as part of its Transnational Insolvency Project and the use of the *Guidelines* in cross-border cases is specifically permitted and encouraged.

The text of the *Guidelines* is available in English and several other languages including Chinese, French, German, Italian, Japanese, Korean, Portuguese, Russian, Swedish, and Spanish on the website of the International Insolvency Institute at http://www.iiiglobal.org/international/guidelines.html.

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Foreword by the Director of The American Law Institute

In May of 2000 The American Law Institute gave its final approval to the work of the ALI's Transnational Insolvency Project. This consisted of the four volumes eventually published, after a period of delay required by the need to take into account a newly enacted Mexican Bankruptcy Code, in 2003 under the title of *Transnational Insolvency: Cooperation Among the NAFTA Countries*. These volumes included both the first phase of the project, separate Statements of the bankruptcy laws of Canada, Mexico, and the United States, and the project's culminating phase, a volume comprising *Principles of Cooperation Among the NAFTA Countries*. All reflected the joint input of teams of Reporters and Advisers from each of the three NAFTA countries and a fully transnational perspective. Published by Juris Publishing, Inc., they can be ordered on the ALI website (www.ali.org).

A byproduct of our work on the Principles volume, these *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* appeared originally as Appendix B of that volume and were approved by the ALI in 2000 along with the rest of the volume. But the *Guidelines* have played a vital and influential role apart from the *Principles*, having been widely translated and distributed, cited and applied by courts, and independently approved by both the International Insolvency Institute and the Insolvency Institute of Canada. Although they were initially developed in the context of a project arrived at improving cooperation among bankruptcy courts within the NAFTA countries, their acceptance by the III, whose members include leaders

of the insolvency bar from more than 40 countries, suggests a pertinence and applicability that extends far beyond the ambit of NAFTA. Indeed, there appears to be no reason to restrict the *Guidelines* to insolvency cases; they should prove useful whenever sensible and coherent standards for cooperation among courts involved in overlapping litigation are called for. See, e.g., American Law Institute, International Jurisdiction and Judgments Project § 12(e) (Tentative Draft No. 2, 2004).

The American Law Institute expresses its gratitude to the International Insolvency Institute for its continuing efforts to publicize the *Guidelines* and to make them more widely known to judges and lawyers around the world; to III Chair E. Bruce Leonard of Toronto, who as Canadian Co-Reporter for the Transnational Insolvency Project was the principal drafter of the Guidelines in English and has been primarily responsible for arranging and overseeing their translation into the various other languages in which they now appear; and to the translators themselves, whose work will make the *Guidelines* much more universally accessible. We hope that this greater availability, in these new English and bilingual editions, will help to foster better communication, and thus better understanding, among the diverse courts and legal systems throughout our increasingly globalized world.

LANCE LIEBMAN
Director
The American Law Institute

January 2004

Foreword by the Chair of the International Insolvency Institute

The International Insolvency Institute, a world-wide association of leading insolvency professionals, judges, academics, and regulators, is pleased to recommend the adoption and the application in cross-border and multinational cases of The American Law Institute's *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases.* The *Guidelines* were reviewed and studied by a Committee of the III and were unanimously approved by its membership at the III's Annual General Meeting and Conference in New York in June 2001.

Since their approval by the III, the *Guidelines* have been applied in several cross-border cases with considerable success in achieving the coordination that is so necessary to preserve values for all of the creditors that are involved in international cases. The III recommends without qualification that insolvency professionals and judges adopt the *Guidelines* at the earliest possible stage of a cross-border case so that they will be in place whenever there is a need for the courts involved to communicate with each other, e.g., whenever the actions of one court could impact on issues that are before the other court.

Although the *Guidelines* were developed in an insolvency context, it has been noted by litigation professionals and judges that the *Guidelines* would be equally valuable and constructive in any international case where two or more courts are involved. In fact, in multijurisdictional litigation, the positive effect of the *Guidelines* would be even greater in cases where several courts are involved. It

is important to appreciate that the *Guidelines* require that all domestic practices and procedures be complied with and that the *Guidelines* do not alter or affect the substantive rights of the parties or give any advantage to any party over any other party.

The International Insolvency Institute expresses appreciation to its members who have arranged for the translation of the *Guidelines* into French, German, Italian, Korean, Japanese, Chinese, Portuguese, Russian, and Swedish and extends its appreciation to The American Law Institute for the translation into Spanish. The III also expresses its appreciation to The American Law Institute, the American College of Bankruptcy, and the Ontario Superior Court of Justice Commercial List Committee for their kind and generous financial support in enabling the publication and dissemination of the *Guidelines* in bilingual versions in major countries around the world.

Readers who become aware of cases in which the *Guidelines* have been applied are highly encouraged to provide the details of those cases to the III (fax: 416-360-8877; e-mail: *info@iiiglobal.org*) so that everyone can benefit from the experience and positive results that flow from the adoption and application of the *Guidelines*. The continuing progress of the *Guidelines* and the cases in which the *Guidelines* have been applied will be maintained on the III's website at *www.iiiglobal.org*.

The III and all of its members are very pleased to have been a part of the development and success of the *Guidelines* and commend The American Law Institute for its vision in developing the *Guidelines* and in supporting

their worldwide circulation to insolvency professionals, judges, academics, and regulators. The use of the *Guidelines* in international cases will change international insolvencies and reorganizations for the better forever, and the insolvency community owes a considerable debt to The American Law Institute for the inspiration and vision that has made this possible.

E. BRUCE LEONARD
Chairman
The International Insolvency Institute

Toronto, Ontario
March 2004

Judicial Preface

We believe that the advantages of co-operation and co-ordination between Courts is clearly advantageous to all of the stakeholders who are involved in insolvency and reorganization cases that extend beyond the boundaries of one country. The benefit of communications between Courts in international proceedings has been recognized by the United Nations through the *Model Law on Cross-Border Insolvency* developed by the United Nations Commission on International Trade Law and approved by the General Assembly of the United Nations in 1997. The advantages of communications have also been recognized in the European Union Regulation on Insolvency Proceedings which became effective for the Member States of the European Union in 2002.

The *Guidelines for Court-to-Court Communications in Cross-Border Cases* were developed in the American Law Institute's Transnational Insolvency Project involving the NAFTA countries of Mexico, the United States and Canada. The *Guidelines* have been approved by the membership of the ALI and by the International Insolvency Institute whose membership covers over 40 countries from around the world. We appreciate that every country is unique and distinctive and that every country has its own proud legal traditions and concepts. The *Guidelines* are not intended to alter or change the domestic rules or procedures that are applicable in any country and are not intended to affect or curtail the substantive rights of any party in proceedings before the Courts. The *Guidelines* are intended to encourage and facilitate co-operation in international cases while observing all applicable rules and procedures of the Courts that are respectively involved.

The *Guidelines* may be modified to meet either the procedural law of the jurisdiction in question or the particular circumstances in individual cases so as to achieve the greatest level of co-operation possible between the Courts in dealing with a multinational insolvency or liquidation. The *Guidelines*, however, are not restricted to insolvency cases and may be of assistance in dealing with non-insolvency cases that involve more than one country. Several of us have already used the *Guidelines* in cross-border cases and would encourage stakeholders and counsel in international cases to consider the advantages that could be achieved in their cases from the application and implementation of the *Guidelines*.

Mr. Justice David Baragwanath
High Court of New Zealand
Auckland, New Zealand

Chief Justice Donald I. Brenner
Supreme Court of British Columbia
Vancouver

Hon. Sidney B. Brooks
United States Bankruptcy Court
District of Colorado
Denver

Hon. Charles G. Case, II
United States Bankruptcy Court
District of Arizona
Phoenix

Mr. Justice Miodrag Dordević
Supreme Court of Slovenia
Ljubljana

Hon. James L. Garrity, Jr.
United States Bankruptcy Court
Southern District of New York (Ret'd)
Shearman & Sterling
New York

Mr. Justice Paul R. Heath
High Court of New Zealand
Auckland, New Zealand

Chief Judge Burton R. Lifland
United States Bankruptcy Appellate
Panel for the Second Circuit
New York

Hon. George Paine II
United States Bankruptcy Court
District of Tennessee
Nashville

Mr. Justice Adolfo A.N. Rouillon
Court of Appeal
Rosario, Argentina

Mr. Justice Wisit Wisitsora – At
Business Reorganization Office
Government of Thailand
Bangkok

Mr. Justice J.M. Farley
Ontario Superior Court of Justice
Toronto

Hon. Allan L. Gropper
Southern District of New York
United States Bankruptcy Court
New York

Hon. Hyungdu Kim
Supreme Court of Korea
Seoul

Mr. Justice Gavin Lightman
Royal Courts of Justice
London

Hon. Chiyong Rim
District Court
Western District of Seoul
Seoul, Korea

Hon. Shinjiro Takagi
Supreme Court of Japan (Ret'd)
Industrial Revitalization Corporation of Japan
Tokyo

Mr. Justice R.H. Zulman
Supreme Court of Appeal of South Africa
Parklands

Guidelines
Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administrating authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting

Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an autho-

rized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

(a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

(b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affect-

ed parties in such manner as the Court considers appropriate;

(c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both

Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

(d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official tran-

script prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and

(d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

(a) Each Court should be able to simultaneously hear the proceedings in the other Court.

(b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.

(c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.

(d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.

(e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized

Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as

may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

Exhibit 6

R-6

Montreal, Maine & Atlantic Railroad Ltd. and Montreal, Maine & Atlantic Canada Co.

(in USD)	Actual W/E 30/08/2013	Forecast W/E 06/09/2013	Forecast W/E 13/09/2013	Forecast W/E 20/09/2013	Forecast W/E 27/09/2013	Forecast W/E 04/10/2013	Forecast W/E 11/10/2013	Total
Receipts:								
Transportation Revenue								
Freight Revenue and Zone Switching	$ 160,961	$ 150,000	$ 150,000	$ 150,000	$ 175,000	$ 200,000	$ 200,000	$ 1,185,961
ISS Receipt	-	(27,416)	-	-	-	180,000	-	152,584
Other Operating Revenue	-			-				-
Sub Total - Transportation Revenue	160,961	122,584	150,000	150,000	175,000	380,000	200,000	1,338,545
Other Operating Revenue								
Switching & Miscellaneous	-	-	-	16,000	-	-	-	16,000
Railcar storage	-	85,000	-	-	-	-	-	85,000
Contract Shop & Car Repairs	-	-	-	-	16,000	-	-	16,000
Equipment rental	-	20,000	-	-		20,000	-	40,000
Car Hire Revenue	-	-	-	-	38,000	-	-	38,000
Sub Total - Other Operating Revenue	-	105,000	-	16,000	54,000	20,000	-	195,000
Non-Operating Revenue								
Travelers	-		250,000	-	-	-	-	250,000
Sub Total - Non-Operating Revenue	-	-	250,000	-	-	-	-	250,000
Total Cash Receipts	**160,961**	**227,584**	**400,000**	**166,000**	**229,000**	**400,000**	**200,000**	**1,783,545**
Disbursements:								
Transportation Revenue Offsets								
NBSR, MNR, SLQ, CN	-	19,600	17,950	19,100	17,950	19,600	17,950	112,150
Sub Total - Transportation Revenue Offsets	-	19,600	17,950	19,100	17,950	19,600	17,950	112,150
Payroll & Related								
Salaries, Wages & Commissions US	84,605	66,721	150,076		150,076		-	451,478
Employee Benefits Claims - US	119	31,500	31,500	31,500	31,500	31,500	31,500	189,119
Salaries, Wages & Commissions CDN	-	110,126	-	110,126		110,126		330,378
Group Health, pension and union dues- CDN	-	43,400	-	11,400		31,400		86,200
Vacation pay arrears - CDN	-	-	-	-	-	-	50,000	50,000
Sub Total - Payroll & Related	84,724	251,747	181,576	153,026	181,576	173,026	81,500	1,107,175
Materials & Supplies								
Diesel Fuel	-	-	-	-	-	36,750	-	36,750
Material Costs US	(5,090)	5,000	5,000	5,000	20,000	20,000	20,000	69,910
Material Costs CDN	3,419	20,000	20,000	20,000	9,300	9,300	9,300	91,319
Sub Total - Material & Supplies	(1,671)	25,000	25,000	25,000	29,300	66,050	29,300	197,979
Freight Car & Locomotive Expense								
Leases - Car and Locomotive	-	5,000	-			5,000		10,000
Leases - Locomotive	-	10,000	-	-	-	10,000	-	20,000
Sub Total - Freight Car & Locomotive	-	15,000	-	-	-	15,000	-	30,000
Other Operating Costs								
Rent	-	15,600	-			15,600		31,200
Electricity	788	-	-			9,000		9,788
Liability Insurance Payments	-	21,346	43,500			21,346	43,500	129,692
Bank charges and interest expense				20,400				20,400
Phone, Internet, Radio, Other expenses	12,751	37,000	11,500	41,500	11,500	12,000	11,500	137,751
Sub Total - Rent, Heat & Utilities	13,539	73,946	55,000	61,900	11,500	57,946	55,000	328,831
Restructuring Costs								
Utility Deposits - US	-	-	-	22,500				22,500
Utility Deposits - CDN	-	12,500	-	10,000				22,500
Notice in newspaper	-	-	-		-			-
Professional fees - US	-	-	-	-	-	-	-	-
Professional fees - CDN	-		-		-			-
Sub Total	-	12,500	-	32,500	-	-	-	45,000
Total Disbursements	**96,592**	**397,793**	**279,526**	**291,526**	**240,326**	**331,622**	**183,750**	**1,821,135**
Net Cash Flow (Use) - Operations	**64,369**	**(170,209)**	**120,474**	**(125,526)**	**(11,326)**	**68,378**	**16,250**	**(37,590)**
SUMMARY								
Cash Beginning	217,098	281,467	111,258	231,732	106,206	94,880	163,258	217,098
Net Weekly Cash Flow	64,369	(170,209)	120,474	(125,526)	(11,326)	68,378	16,250	(37,590)
Cash Ending - USD	**$ 281,467**	**$ 111,258**	**$ 231,732**	**$ 106,206**	**$ 94,880**	**$ 163,258**	**$ 179,508**	**$ 179,508**