

CANADA

**SUPERIOR COURT**  
(Commercial Division)

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PROVINCE OF QUÉBEC  
DISTRICT OF ST-FRANÇOIS

(Sitting as a court designated pursuant to the  
*Companies' Creditors Arrangement Act*, R.S.C.  
C. C-36, as amended)

N°: 450-11-000167-134

IN THE MATTER OF THE PLAN OF  
COMPROMISE OR ARRANGEMENT OF:

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

**Debtor-Petitioner**

and

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

**Monitor-Petitioner**

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**MOTION TO INCREASE THE AMOUNT OF THE ADMINISTRATION CHARGE**  
**(Section 11.52 of the *Companies' Creditors Arrangement Act* and**  
**paragraph 54 of the *Initial Order*)**

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**TO THE HONOURABLE JUSTICE GAETAN DUMAS, J.C.S., THE PETITIONERS**  
**RESPECTFULLY SUBMIT:**

**INTRODUCTION**

1. On August 8, 2013, this Honourable Court issued an order (the "**Initial Order**") granting the protection of the *Companies' Creditors Arrangement Act* ("**CCAA**") to the Petitioner, Montreal, Maine & Atlantic Canada Co. ("**MM&A**"), and Richter Advisory Group Inc. (Richter Groupe Conseil Inc.) was appointed to act as monitor to MM&A (the "**Monitor**"), the whole as appears from the court record;
2. In the reasons for judgment with respect to the Initial Order, this Honourable Court noted that judicial chaos would ensue to the detriment of all affected parties if MM&A was not afforded the protection of the CCAA, as appears from the court record, including notably paragraphs 27 to 29 and 55 of the revised reasons for judgment issued from the bench on August 8, 2013;

3. In its petition for the Initial Order, MM&A requested the creation of an administration charge (the "**Administration Charge**") in the amount of \$1,500,000 as security for the professional fees and disbursements of its legal counsel, the Monitor, and the Monitor's legal counsel (collectively, the "**Restructuring Professionals**") related to the CCAA proceedings (the "**Restructuring Fees**"), as appears from the court record;
4. The Initial Order created an Administration Charge in the amount of \$500,000, as appears from the court record;
5. Indeed, at the hearing of MM&A's *Motion for the issuance of an initial order*, the honourable Martin Castonguay, J.S.C., indicated that he considered appropriate, at that early stage of the restructuring process, to limit the administration charge to the aforementioned amount of \$500,000, subject, obviously, to MM&A's and the Monitor's right to apply for an increase of said charge should it be required;
6. On September 4, 2013, the stay of proceedings created by the Initial Order was extended until October 9, 2013, as appears from the court record;
7. Since the issuance of the Initial Order, MM&A has constantly expressed its intention to continue its operations during the restructuring process, for at least two reasons:
  - a. the value that may be realized for the benefit of creditors will almost certainly be greater if the assets of MM&A are sold as a going concern; and
  - b. MM&A provides a service that is important, if not essential, to many businesses in the region (some of which have filed affidavit evidence to the effect that they would not be able to survive without the services provided by MM&A);

the whole as appears from the court record;
8. MM&A has also confirmed its intention, together with the Monitor and the Chapter 11 Trustee appointed to the business and assets of its parent company, Montreal, Maine & Atlantic Railway Ltd ("**MM&AR**"), to proceed as soon as possible with a structured sale process for the sale of the assets and business of MM&A and MM&AR as a going concern;
9. MM&A further confirmed that it will also be working, together with the Monitor and the Chapter 11 Trustee, on the development and establishment of a comprehensive and orderly claims process in order to deal efficiently with the claims of all the stakeholders, including the victims of the derailment and their families, the total of which may well be in the thousands;
10. In addition to the foregoing, many complex and substantial issues (often occurring simultaneously) have had to be dealt with and will continue to arise in the present case that requires a significant and continuous level of work from the Restructuring Professionals on a full time basis, notably:
  - Multiple discussions, meetings and negotiations with the government authorities (Ministry of Environment, Ministry of Transportation, Ministry of Justice, Ministry of Public Safety, City of Lac Mégantic) with respect to:

- The impact of the derailment on MM&A's operations, its numerous customers and, more globally, the various affected industries and regions;
- The assistance and cooperation needed from MM&A with respect to a multitude of issues and emergency situations;
- Work related to MM&A's request for an initial order under the CCAA, including:
  - Numerous discussions and negotiations with various stakeholders;
  - Preparation and presentation of proceedings;
  - Analysis of various particular issues such as the impact of the exclusion of "railway companies" from the application of the CCAA and the extension of the stay to third parties;
- Coordination of MM&A's filing under the CCAA and of MM&AR's filing under Chapter 11 of the US Bankruptcy Code;
- Analysis of XL Insurance Company Ltd's ("XL") third party liability insurance policy issued in favour of MM&A;
- Negotiation with XL with respect to the \$25,000,000 insurance coverage and its further involvement in and potential additional contribution to the restructuring process;
- Analysis of other insurance policies including the D&O insurance policy and the property/business interruption insurance policy;
- Extensive discussions and negotiations with the insurer under the property/business interruption insurance policy, Travelers Property and Casualty Company of America ("**Travelers**");
- Proceedings against Travelers with respect to jurisdiction issues and the extent of coverage;
- Study of the impact of the Motion to be authorized to institute a class action against MM&A and other parties and of multiple other recourses instituted by some of the families of the victims in the United States;
- Numerous discussions with and representations to regulatory bodies, such as the Canadian Transportation Agency ("**CTA**") and Transport Canada concerning, *inter alia*, the upholding and extension of MM&A's certificate of fitness;
- Discussions and meetings with numerous customers of MM&A and with representatives of the various affected industries and regions concerning the severe impact on them of a shutdown of MMA's operations;

- Preparation of urgent proceedings for an extension of the stay of proceedings with respect to the order initially rendered by the CTA cancelling MM&A's certificate of fitness;
  - Preparation and presentation of a Motion and of an Amended Motion to amend the initial order and seek a charge and security on the property of MM&A to secure funds for self-insured obligations in order to satisfy the CTA's requirements for the extension of MM&A's certificate of fitness;
  - Preparation and presentation of proceedings on an urgent basis before the CTA with respect to the embargos issued by Canadian National and Canadian Pacific;
  - Discussions, meetings and negotiations with potential short-term lenders and/or purchasers of MM&A's assets;
  - Constant interaction with the Chapter 11 Trustee in order to ensure a coordinated management of MM&A's CCAA restructuring process and MM&AR Chapter 11 restructuring process, necessary considering MM&A and MM&AR's integrated operations and in view of the fact that many stakeholders are involved in both cases;
  - Negotiation of the Cross-Border Insolvency Protocol and preparation and presentation of a Motion for the approval of same by this Court;
  - Preparation and presentation of a Motion for a first extension of the stay of proceedings; discussions and meetings in that respect;
  - Preparation of a Motion for a second extension of the stay of proceedings; discussions and meetings in that respect;
  - Work related to development and the implementation of a sale process of MM&A and MM&AR's assets and business on a going concern basis;
  - Discussions and negotiations with potential third party interim operators;
  - Negotiations with various parties and representations to Transport Canada with respect to the embargo issued by the latter and the movement of train 283 which is parked in Farnham since the July 6 derailment;
11. MM&A's creditors and other stakeholders will benefit from the efficient administration of this case and the continued involvement of the Restructuring Professionals is essential in that respect;
12. Since the Initial Order, it has not been possible for MM&A nor for MM&AR to make any payments whatsoever to the Restructuring Professionals, as they have used all available cash flow to pay their employees and other suppliers for goods and services necessary to continue their operations, for the benefit of their creditors and clients;

**REQUIREMENT FOR AN INCREASE OF THE ADMINISTRATION CHARGE**

13. As of September 20, 2013, the total unpaid fees and disbursements incurred by the Restructuring Professionals (net of the retainers received from MM&A prior to the Initial Order) with respect to these proceedings, represent an amount of approximately \$1,045,000 (the "**Unpaid Restructuring Fees**");
14. The Unpaid Restructuring Fees now exceed the Administration Charge by an amount of \$545,000,000;
15. Since the commencement of the proceedings, MM&A, with the assistance of the Monitor and the Chapter 11 Trustee, has been working diligently to obtain the interim financing necessary to the continuation of the operations. On October 4, 2013, the Chapter 11 Trustee filed a motion seeking permission to enter into a \$3 million DIP financing agreement with Camden National Bank to be used to fund the operations of both MM&A and MM&AR but such financing would not in any event be sufficient to pay Restructuring Fees;
16. Notwithstanding the proposed DIP financing agreement, there will not be sufficient funds to deal with the Unpaid Restructuring Fees and any additional Restructuring Fees to be incurred, which would thus be paid only by virtue of the Administration Charge further to the sale of MM&A's business or assets;
17. Consequently, unless the Administration Charge is increased, MM&A may well lack the means necessary to pay the Restructuring Professionals, whose services are not only required but essential for the CCAA process, and without which the result would be the abandonment of the CCAA process, each creditor being left with its own individual recourses (which, in many instances, may be in conflict with each other) unless MM&A is put into bankruptcy or a receiver is appointed, in which case the professional fees would be similar to those discussed above;
18. Such a scenario would also result in the legal chaos that the Initial Order was issued to prevent and would almost certainly generate less for the creditors;
19. The Monitor and MM&A respectfully submit that it would be inappropriate and unfair to the Restructuring Professionals to require from them to bear the risk of not being compensated for their services;
20. The Monitor and MM&A submit that it is in the interests of MM&A's creditors, clients, and justice generally that the Administration Charge be increased to an amount sufficient to continue the CCAA process (including the sale process) which they estimate, at this stage, to be \$2,500,000 in order to secure existing and future Restructuring Fees, as set out in the Monitor's Third Report to Court in support of the request for an extension of the stay of protection to January 28, 2013 and this present motion;

21. Finally, the Monitor and MM&A were informed by the Chapter 11 Trustee that he has recently concluded an agreement with the Federal Railroad Administration ("FRA"), which appears to hold security over all of the assets of MM&A and of MM&AR, whereby the Chapter 11 Trustee will be entitled to keep an amount up to US \$5,000,000 out of the proceeds of sale of MM&AR's assets to which the FRA is entitled to satisfy his fees and expenses and those of the professionals retained by him in connection with MM&AR's Chapter 11 proceedings;
22. This \$5,000,000 "carve-out" negotiated by the Chapter 11 Trustee with respect to the fees and costs related to the administration of MM&AR's estate is the financial equivalent of the Administration Charge required for the administration of MM&A's restructuring process under the CCAA but it does not cover the Restructuring Fees incurred by MM&A.

**WHEREFORE, MAY IT PLEASE THE COURT:**

**GRANT** the present Motion to Increase the Amount of the Administration Charge;

**ORDER** that paragraph 41 of the Initial Order be amended to read as follows:

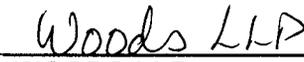
***DECLARES** that the Monitor, the Monitor's legal counsel (Woods LLP), the Petitioner's legal counsel (Gowling Lafleur Henderson LLP) and the Monitor and the Petitioner's respective advisers, as security for the professional fees and disbursements uncured both before and after the making of the Order and directly related to these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$2,500,000 (the "Administration Charge"), having the priority established by paragraphs [42] and [43] hereof.*

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

MONTREAL, October 4, 2013

MONTREAL, October 4, 2013

  
**GOWLING LAFLEUR HENDERSON LLP**  
 Attorneys for Petitioner

  
**WOODS LLP**  
 Attorneys for the Monitor

CANADA

**SUPERIOR COURT**  
(Commercial Division)

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PROVINCE OF QUÉBEC  
DISTRICT OF ST-FRANÇOIS

(Sitting as a court designated pursuant to the  
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C. C-36, as amended)

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COMPROMISE OR ARRANGEMENT OF:

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**(MONTREAL, MAINE & ATLANTIQUE CANADA**  
**CIE)**

**Petitioner**

and

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

**Monitor**

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**NOTICE OF PRESENTATION**

TO: **SERVICE LIST (see attached)**

**TAKE NOTICE** that the present *Motion to Increase the Amount of the Administration Charge* will be presented for adjudication before the Honourable Gaetan Dumas, J.S.C., sitting in commercial division in and for the district of St-François in **room 2** of the Sherbrooke Courthouse, located at 375 King Street West in Sherbrooke, on **October 9, 2013, at 10:00 a.m.** or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, October 4, 2013

MONTREAL, October 4, 2013

  
**GOWLING LAFLEUR HENDERSON LLP**  
Attorneys for Petitioner

  
**WOODS LLP**  
Attorneys for the Monitor

N° 450-11-000167-134

SUPERIOR COURT  
PROVINCE OF QUEBEC  
DISTRICT OF SAINT-FRANÇOIS

Sitting as a court designated pursuant to the  
*Companies' Creditors Arrangement Act*, R.S.C.  
C. C-36, as amended)

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COMPROMISE OR ARRANGEMENT OF:

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

DEBTOR-PETITIONNER

and

**RICHTER ADVISORY GROUP INC.**

MONITOR-PETITIONER

BL0052

**MOTION TO INCREASE THE AMOUNT OF  
THE ADMINISTRATION CHARGE  
(Section 11.52 of the Companies' Creditors  
Arrangement Act and  
paragraph 54 of the Initial Order)**

ORIGINAL

Me Patrice Benoit BL0052  
**Gowling Lafleur Henderson LLP**  
1 Place Ville Marie, 37<sup>th</sup> Floor  
Montreal, Québec  
Canada H3B 3P4  
Tel.: 514-392-9550 / Fax: 514-876-9550  
Patrice.benoit@gowlings.com  
File No.: 02381115  
INIT.: PB/cl c/o 3511