

CANADA

SUPERIOR COURT  
(Commercial Division)

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

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

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

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

**Debtor-PETITIONER**

-and-

**TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA**

**Respondent**

-and-

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

**Monitor**

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**MOTION FOR AN ORDER APPROVING A COMPROMISE  
AND SETTLEMENT WITH TRAVELERS PROPERTY  
CASUALTY COMPANY OF AMERICA  
(Sections 9, 10 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985,  
c. C-36 ("CCAA"))**

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**TO THE HONOURABLE JUSTICE GAETAN DUMAS OF THE SUPERIOR COURT, SITTING  
IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF SAINT-FRANÇOIS, THE  
PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:**

**PREAMBLE**

1. On August 8, 2013, this Honourable Court issued an 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 (as amended on August 23, 2013, the "**Initial Order**");

2. Pursuant to the Initial Order, Richter Advisory Group Inc. (Richter Groupe Conseil Inc.) was appointed as monitor of the Petitioner (the "**Monitor**");
3. MM&A's filing under the CCAA was precipitated by the tragic train derailment in Lac-Mégantic on July 6, 2013 (the "**Derailment**"). The Derailment also precipitated the filing of Chapter 11 bankruptcy proceedings by Montreal, Maine & Atlantic Railway Ltd ("**MM&AR**"), (the Petitioner's parent company), in the United States Bankruptcy Court, District of Maine (the "**Chapter 11 Case**");
4. On August 21, 2013, the United States trustee appointed Robert J. Keach to serve as trustee in the Chapter 11 Case (the "**Chapter 11 Trustee**");
5. By the present Motion, Petitioner seeks an order approving a compromise and settlement with Travelers Property Casualty Company of America ("**Travelers**") on the terms set forth hereafter;
6. The compromise and settlement resolves a dispute between MM&A and the Chapter 11 Trustee, on the one hand, and Travelers, on the other hand, concerning the coverage under a commercial property insurance policy which Petitioner claims provides, among certain other coverages, business interruption coverage to Petitioner and other named insureds (described hereafter);
7. The settlement results in a U.S.\$3.8 million dollar payment to MM&A and MM&AR, with the payment being allocated as provided for herein;
8. Petitioner and the Monitor believe that approval of the compromise and settlement is in the best interest of creditors and other stakeholders. The settlement avoids protracted litigation with Travelers over whether MM&A has asserted a covered claim under the policy in the first instance and whether, assuming MM&A has asserted a covered claim, the coverage is void due to what Travelers contends was a mutual mistake in including the coverage in the policy at issue. It also avoids time consuming and expensive litigation concerning the amount and extent of any claim for business interruption;

#### **BACKGROUND**

9. Prior to the Initial Order, on or about April 19, 2013, Travelers issued a commercial property insurance policy, No. QT-630-6357L188-TIL-12, under which MM&A and MM&AR are insureds for total coverage in the amount of \$7,500,000.00 (the "**Policy**"). LMS Acquisition Corporation, Montreal, Maine & Atlantic Corporation and Rail World, Inc. are also named as insureds under the Policy.
10. Although the Policy provides coverage for certain types of property damage, importantly, Petitioner contends that the Policy also provides coverage for loss of business income (the "**Business Interruption Coverage**") and for "Extra Expense" arising out of a disruption to business (the "**Extra Expense Coverage**");
11. In relation to the Business Interruption Coverage and the Extra Expense Coverage, the Policy states as follows:

*“Business Income” and “Extra Expense”*

*[Travelers] will pay:*

- a. *The amount by which your “Business Income” is actually reduced during the “period of restoration” due to loss of or damage to Covered Property from a Covered Cause of Loss; and*
  - b. *Your necessary “Extra Expense” to continue normal operations following loss of or damage to Covered Property from a Covered Cause of Loss.*
12. After the Derailment, Petitioner filed a claim under the Policy for resulting damages to locomotives, railcars, railroad track, and roadbed. Additionally, Petitioner asserted claims under the Business Interruption Coverage and the Extra Expense Coverage premised on the loss of revenue arising out of the Derailment and the extra expenses being incurred as a result of the accident. Petitioner claimed that Travelers should pay the entire Policy limit of U.S.\$7,500,000.00 premised on the asserted claims;
  13. Travelers responded to Petitioner's claims for coverage by denying that coverage exists under the Policy for the type of claims asserted. First, in relation to Business Interruption Coverage and Extra Expense Coverage, Travelers argued that there is simply no coverage because the claimed loss of business income did not arise out of damage to “Covered Property” as such term is defined by the Policy. Second, in relation to the Business Interruption Coverage specifically, Travelers argued, to the extent coverage exists, it was provided by mistake because the parties intended to include only Extra Expense Coverage and did not intend to include Business Interruption Coverage in the Policy, and the inclusion of such coverage in the Policy occurred in error;
  14. Premised on these contentions, on August 27, 2013, Travelers filed a *Motion to Lift the Stay of Proceedings* so that it may seek a declaratory judgment regarding the object and scope of the Policy before the United States District Court for the District of Maine (the “**Travelers Motion**”). Similar proceedings were filed in the Chapter 11 Case;
  15. On October 9, 2013, this Honourable Court dismissed the Travelers Motion, the whole as more fully appears from the Court record. A similar decision was rendered on the Travelers Motion filed in the Chapter 11 Case, in which the stay was lifted on a limited basis in order to allow Travelers to debate the coverage issue before the Quebec Superior Court;
  16. Travelers appealed the decisions rendered in both Quebec and Maine and those appeals have been stayed pending consideration of the present Motion (the “**Appeals**”);
  17. MM&A and the Chapter 11 Trustee have been in active negotiations with Travelers for months, which negotiations included a daylong meeting of all parties in Hartford, Connecticut. As a result of these negotiations, which have included the review of documents relating to whether the Business Interruption Coverage was provided by mistake, MM&A and the Chapter 11 Trustee, on the one hand, and Travelers, on the other hand, have reached a compromise and settlement to resolve the issues arising

under the Policy, namely the issue of Business Interruption Coverage. The general terms of that compromise and settlement are as follows:

- a) Travelers shall pay a total of Three Million Eight Hundred Thousand United States Dollars (U.S.\$3,800,000.00) to MM&A and MM&AR (the "**Settlement Payment**"). The Settlement Payment shall be allocated 65% to MM&A and 35% to MM&AR. Contemporaneously with the filing of this Motion, MM&AR has filed a motion in the Chapter 11 Case seeking similar approval of the settlement with Travelers on the terms set forth herein. The relief sought in this Motion is conditioned upon approval of the relief sought by MM&AR in the Chapter 11 Case. The Settlement Payment shall be paid by Travelers in immediately available funds two (2) business days after the settlement being approved by both the U.S. Bankruptcy Court and this Court under orders which are executory. The Settlement Payment shall be made in two payments to account for the allocation described above: (i) one payment in the amount of U.S.\$2,470,000.00 shall be paid to MM&A through the Monitor to the order of Richter Advisory Group Inc. IN TRUST (the "**Canadian Settlement Amount**"); and (ii) one payment in the amount of U.S.\$1,330,000.00 shall be paid to MM&AR through the Chapter 11 Trustee to the order of Robert J. Keach IN TRUST;
- b) The Settlement Payment shall be in full and final satisfaction of any and all claims of the named insureds arising under the Policy and resulting from the Derailment and Travelers shall be released from any and all liability arising under or relating to the Policy in relation to such claims of the named insureds;
- c) Consequently, the settlement is conditioned on LMS Acquisition Corporation, Montreal, Maine & Atlantic Corporation and Rail World, Inc., as named insureds under the Policy, executing a release of any claim they may have under the Policy and resulting from the Derailment, to which said parties have already agreed;
- d) Travelers shall cause the Appeals to be dismissed, with prejudice, within seven (7) days of payment of the Settlement Payment;
- e) The parties shall enter into any documents reasonably necessary to effectuate the terms of the settlement described herein;

#### **RELIEF SOUGHT**

18. Petitioner requests that the Court:

- a) Grant this Motion and approve the compromise and settlement as provided for by the terms hereof;
- b) Authorize the payment of the Settlement Payment upon the allocation percentages outlined above;
- c) Authorize the distribution of the Settlement Payment as outlined below;

- d) Authorize the Petitioner and Travelers to enter into any and all documents necessary to effectuate the terms of the settlement; and
- e) Approve service of this Motion to the parties;

#### **BASIS FOR RELIEF SOUGHT**

19. After substantial negotiation, Petitioner and the Monitor believe that entering into the settlement with Travelers as described herein is in the best interest of the estate and its creditors. Although the Policy has a policy limit of U.S.\$7,500,000.00, the terms and extent of coverage have been and will continue to be the subject of considerable litigation if the compromise is not approved, which will be costly and time consuming to the estate;
20. Additionally, not only could the litigation to resolve the coverage disputes take years to resolve, there is a risk of an outright loss of the litigation, which would reduce the recovery to zero. Premised on the risk, time and expense of litigation, Petitioner and the Monitor believe that payment of the Settlement Payment provides considerable benefit to the estate and that the settlement is in the best interests of the estate;
21. Concerning the probability of success in the litigation being pursued by Travelers, although Petitioner believes that there is a reasonable probability of prevailing in the litigation, Travelers has raised considerable claims concerning the scope and existence of coverage. As outlined above, Travelers has raised issues concerning whether "Covered Property" was damaged in the Derailment, and whether such damage caused a business income loss. In the event "Covered Property" was not damaged, or such damage to "Covered Property" was negligible and did not cause a business income loss, there is no claim under the Business Interruption Coverage or the Extra Expense Coverage;
22. Additionally, even if the "Covered Property" issues could be overcome, as explained above, Travelers claims that it was a mutual mistake to have included the Business Interruption Coverage in the Policy in the first instance;
23. Importantly, assuming the Business Interruption Coverage is determined to exist and that the claims arise out of damage to "Covered Property," there would likely be considerable disputes concerning the amount of the claim arising under the Business Interruption Coverage. The Policy contains limitations on the time periods that can be used to calculate amounts owed for loss of business. As evidenced by the language quoted above, the business loss coverage extends only through the "period of restoration";
24. Depending on how this time limitation to coverage is determined and premised on likely unavoidable disputes concerning the calculation of the loss of business even within the "period of restoration," there is a real risk that the claims under the Business Interruption Coverage would not reach the limits of the Policy;

25. Litigating the coverage issues could be complex, expensive and time consuming. The negotiations between MM&A, the Monitor, the Chapter 11 Trustee and Travelers have made clear that the Policy contains inconsistencies and, according to Travelers, mutual mistakes. Resolving the issues of coverage would require extensive discovery at tremendous cost to the estate;
26. Furthermore, as described above, the complexity, time and expense involved in dealing with establishing the timeframes of the Business Interruption Coverage and the amount of loss that occurred within the timeframes could be considerable. For these reasons, the complexity, expense and delay caused by litigating these issues weigh in favour of the settlement;
27. Instead of facing the uncertainty and risk of further litigation, the estate is receiving a payment immediately for its allocated share of U.S.\$3.8 million. Accordingly, this Motion should be granted because the compromise and settlement is in the best interest of creditors;

#### **THE ALLOCATION OF THE SETTLEMENT PAYMENT**

28. As noted above, the Settlement Payment will be allocated 65% to MM&A and 35% to MM&AR. This allocation has been determined by analysis performed by the Chapter 11 Trustee's financial advisor, Development Specialists, Inc. ("DSI"), with which the Monitor concurs. DSI analyzed the projected loss of business suffered by both MM&A and MM&AR caused by the Derailment by looking at the tonnage that would have been carried across Canadian and U.S. rail lines but for the Derailment and based the allocation on this projected tonnage analysis. Based on this work, the parties believe the allocation approximates the loss of income suffered by both MM&A and MM&AR;
29. The Canadian Settlement Amount shall be kept in trust by the Monitor until a further order of this Court authorizes the Monitor to pay the professional fees and costs secured by the Administration Charge pursuant to a further Motion seeking such relief;
30. In light of the forgoing, it is respectfully submitted that the present Motion should be granted in accordance with its conclusions;

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

1. **ORDER** that the Motion is properly presentable on December 19, 2013 [and that the time for service of the Motion herein be and is hereby abridged];
2. **GRANT** the Motion;
3. **APPROVE** the following compromise and settlement :
  - a) Travelers shall pay a total of Three Million Eight Hundred Thousand United States Dollars (U.S.\$3,800,000.00) to MM&A and MM&AR (the "**Settlement Payment**"). The Settlement Payment shall be allocated 65% to MM&A and 35% to MM&AR. The Settlement Payment shall be paid by Travelers in immediately

available funds at the latest two ((2) business days after the settlement being approved by both the U.S. Bankruptcy Court and this Court under orders which are executory;

- b) The Settlement Payment shall be made in two payments to account for the allocation described above: (i) one payment in the amount of U.S.\$2,470,000.00 shall be paid to MM&A through the Monitor to the order of Richter Advisory Group Inc. IN TRUST and shall be kept in trust by the Monitor until further order of this Court; and (ii) one payment in the amount of U.S.\$1,330,000.00 shall be paid to MM&AR through the Chapter 11 Trustee to the order of Robert J. Keach IN TRUST;
  - c) The Settlement Payment shall be in full and final satisfaction of any and all claims of the named insureds arising under the Policy and resulting from the Derailment and Travelers shall be released from any and all liability arising under or relating to the Policy in relation to such claims of the named insureds;
  - d) The settlement is conditioned on LMS Acquisition Corporation, Montreal, Maine & Atlantic Corporation and Rail World, Inc., as named insureds under the Policy, executing a release of any claim they may have under the Policy and resulting from the Derailment;
  - e) Travelers shall cause the Appeals to be dismissed, with prejudice, within seven (7) days of payment of the Settlement Payment;
4. **ORDER** that the settlement contemplated herein is conditioned upon approval of the similar relief sought by MM&AR in the Chapter 11 Case;
  5. **AUTHORIZE** the parties to enter into any documents reasonably necessary to effectuate the terms of the settlement described in conclusion three (3) hereof;
  6. **GRANT** such further relief as this Honourable Court may deem appropriate;
  7. **ORDER** the provisional execution of the Order notwithstanding any appeal, without the necessity of furnishing any security;
  8. **THE WHOLE** without costs, except if contested.

MONTREAL, December 13, 2013

  
**GOWLING LAFLEUR HENDERSON LLP**  
 Attorneys for Petitioner

CANADA

**COUR SUPÉRIEURE**

(Chambre commerciale)

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

*(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)**

**Débitrice-Requérante**

-eet-

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

**Contrôleur-Requérant**

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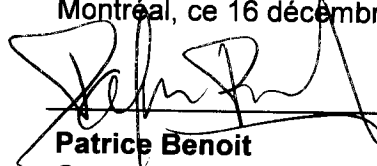
**ATTESTATION D'AUTHENTICITÉ**  
Selon l'art. 82.1 du *C.p.c.*

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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 :** 500-11-000167-134  
**Nom de l'expéditeur :** Gaynor Ryan  
**Numéro du télécopieur émetteur :** 207-848-4252  
**Lieu de la transmission :** Bangor, Maine  
**Date de la transmission :** Le 16 décembre 2013  
**Heure de transmission :** 13h03

Montréal, ce 16 décembre 2013



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**Patrice Benoit**  
GOWLING LAFLEUR HENDERSON SENCRL, SRL



CANADA

SUPERIOR COURT  
(Commercial Division)

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)

N°: 450-11-000137-134

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.)**

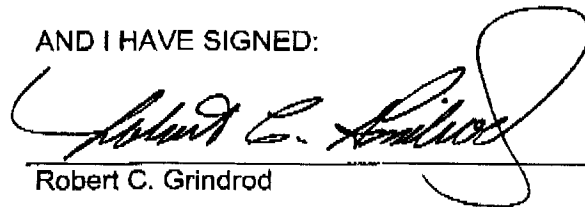
**Monitor**

**AFFIDAVIT OF ROBERT C. GRINDROD**

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

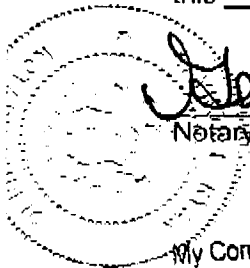
1. I am the President and Chief Executive Officer of Petitioner;
2. All the facts alleged in the present *Motion for an order approving compromise and settlement with Travelers Property Casualty Company of America and for directions as to the distribution of the settlement proceeds* are true.

AND I HAVE SIGNED:



Robert C. Grindrod

SWORN TO before me in Bangor, Maine  
this 16<sup>th</sup> day of December, 2013



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

N° 450-11-000167-134

**SUPERIOR COURT  
PROVINCE OF QUEBEC  
DISTRICT OF SAINT-FRANÇOIS**

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CIE)**

Debtor-PETITIONNER

and

**RICHTER ADVISORY GROUP INC.**

MONITOR

BL0052

**AFFIDAVIT OF ROBERT C. GRINDROD**

ORIGINAL

Me Patrice Benoit  
**Gowling Lafleur Henderson LLP** BL0052  
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CANADA

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

SUPERIOR COURT  
(Commercial Division)

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CIE)**

**Debtor-PETITIONER**

and

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

**Monitor**

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**NOTICE OF PRESENTATION**

TO: **Service list**

**TAKE NOTICE** that the present *Motion for an order approving compromise and settlement with Travelers Property Casualty Company of America* will be presented for adjudication before the Honourable Justice Gaétan Dumas of the Superior Court of Quebec on **December 19, 2013** in room 2 of the Courthouse located at 375 King St. West in Sherbrooke, at 10:00 am or so soon as counsel may be heard

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, December 13, 2013

  
**GOWLING LAFLEUR HENDERSON LLP**  
Attorneys for Petitioner

N° 450-11-000167-134

**SUPERIOR COURT  
PROVINCE OF QUEBEC  
DISTRICT OF SAINT-FRANÇOIS**

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COMPANY OF AMERICA**

Respondent

**RICHTER ADVISORY GROUP INC. (RICHTER  
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Monitor

BL0052

**MOTION FOR AN ORDER APPROVING A  
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(SECTIONS 9, 10 AND 11 OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT, R.S.C. 1985,  
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