

CANADA

SUPERIOR COURT  
(COMMERCIAL DIVISION)

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

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

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

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

Petitioner  
and

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

Monitor

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**APPLICATION FOR A FIFTEENTH ORDER EXTENDING THE STAY PERIOD AND FOR  
APPROVAL OF PROFESSIONAL FEES**

**(Sections 9 and 11 et seq. of the *Companies' Creditors Arrangement Act*,  
R.S.C. 1985, c. C-36 ("CCAA"))**

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TO THE HONORABLE JUSTICE GAËTAN DUMAS OF THE SUPERIOR COURT, SITTING IN  
THE COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF  
SAINT-FRANÇOIS, THE PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

**I. INTRODUCTION**

1. On July 6, 2013, a train operated by Montreal Maine & Atlantic Canada Co. ("MMAC") derailed in the city of Lac-Mégantic, Quebec, Canada, causing numerous fatalities, bodily injuries, psychological and moral damages to thousands of people, and extensive property and environmental damages (the "Derailment");
2. Numerous claims were made against MMAC and its parent company, Montreal, Maine & Atlantic Railway Ltd ("MMA"), arising out of the Derailment;
3. On August 7, 2013, MMA filed a voluntary petition in the United States Bankruptcy Court, District of Maine (the "US Court") for relief under Chapter 11 of the U.S. Bankruptcy Code (the "Chapter 11 Case");

4. On August 8, 2013, the Honourable Justice Castonguay of the Quebec Superior Court (the "CCAA Court") granted an initial order in respect of MMAC (the "Initial Order") pursuant to the CCAA and Richter Advisory Group Inc. (Richter Groupe Conseil Inc.) was appointed as monitor of MMAC (the "Monitor");
5. On August 21, 2013, the United States Trustee appointed Robert J. Keach to serve as trustee in the Chapter 11 Case (the "Trustee");
6. Pursuant to the Initial Order, a stay of proceedings was ordered until and including September 6, 2013 (the "Stay Period"). That Stay Period has since been extended by this CCAA Court on fourteen (14) occasions, with the most recent extension having been granted until December 15, 2016 pursuant to an order dated as of May 30, 2016 (the "Fourteenth Extension Order"), the whole as appears from the Court record;
7. MMAC's *Amended Plan of Compromise and Arrangement* dated as of June 8, 2015 (the "Amended Plan") was unanimously approved by the creditors on June 9, 2015 and was approved by the CCAA Court on July 13, 2015 (as amended on October 9, 2015, the "Canadian Approval Order");
8. The Plan of Liquidation filed in the Chapter 11 Case on March 31, 2015 and amended on July 7, 2015 (the "US Plan"), which is intended to mirror the effects of the Amended Plan in the United States, has also been approved by the creditors and the US Court;

## **II. ORDER SOUGHT**

9. The Petitioner hereby seeks an extension of the Stay Period until June 30, 2017 for the reasons set out below;
10. The Petitioner also seeks an order approving the fees and disbursements of MMAC's counsel, the Monitor, the Monitor's counsel and the claims officer (the "Professionals") for the period of March 1, 2016 to September 30, 2016;

## **III. EXTENSION OF THE STAY PERIOD**

11. Since the issuance of the Fourteenth Extension Order, the Petitioner has acted and continues to act in good faith and with due diligence as set forth hereafter;
  - i) **The Implementation of the Amended Plan**
12. As reported prior to the issuance of the Fourteenth Extension Order, the Certificate of the Monitor was filed on December 22, 2015 (the "Plan Implementation Date"), thereby confirming implementation of the Amended Plan, the whole as appears from the Court record;
13. Since the Plan Implementation Date, the Monitor, with the participation of its counsel and of the Petitioner, has primarily focused on the review of claims and payment of distributions under the Amended Plan and US Plan (together, the "Plans");
14. The Monitor's Twenty-Third Report issued on August 31, 2016 provided the following update in this regard:

- “● **Wrongful Death Claims:** as reported in our Twenty-Second Report dated April 19, 2016, the WD Trustee (in the United States) has confirmed that nearly all of the approximately US\$81.7 million (CDN\$114 million) which were transferred by the Monitor to the Chapter 11 Trustee and then to the WD Trustee have been distributed to the WD claimants. An amount of approximately US\$1.6 million is being held pending the resolution of one disputed claim and the final payment of the expenses incurred by the WD Trust.
- **Bodily Injury and Moral Damage Claims:** to date, the Monitor has made interim distributions totalling 75% of Proven Claims in this category, as valued in accordance with Schedule F to the Amended Plan.

Further to more than 4,250 distributions (see the Monitor's Twenty-Second Report), the Monitor received 443 contestations and has been working to resolve these disputes. To date, 262 of these disputes have been resolved or are no longer being pursued and the Monitor believes that a further 116 contestations are close to resolution based on negotiations with Class Counsel (with respect to Class Members) and counsel to other claimants. The Monitor is still attempting to resolve the remaining 65 contestations. If these remaining contestations cannot be consensually resolved, the Monitor will refer them to the claims officer and possibly seek directions from this Court in order to proceed with certain claims as test cases.

Based on the status of the discussions concerning the resolution of the various contestations, the Monitor hopes to proceed with the payment of the balance of the distribution payable on account of Bodily Injury and Moral Damages, with respect to Proven Claims, in September or October of 2016.

- **Property and Economic Damages Claims:** Approximately 1,800 claims were filed in the CCAA and the Chapter 11.

The Monitor's review of those claims is ongoing but as of August 2016 the Monitor has allowed approximately 1,200 of the claims, as filed (or as amended). The remaining claims are still under review but the Monitor expects that the majority of those claims will be totally or partially disallowed.

The Monitor has determined that it can proceed with the payment of interim distributions to claimants holding Proven Claims. This interim distribution will be equal to 50% of the projected total distribution for each Proven Claim.

In the upcoming weeks, the Monitor will also begin to issue notices of total or partial disallowance in respect of the claims that are still under review. As those disallowances are resolved and the claims relating thereto become Proven Claims, the Monitor will pay out further interim distributions until a full distribution has been paid to all Proven Claims and all other claims have been finally disallowed.

- ***Subrogated Insurer Claims:*** the distribution with respect to these claims was made in May, 2016;
- ***Government Claims:*** a distribution with respect to these claims was made in June, 2016;"

the whole as more fully appears from a copy of the Monitor's Twenty-Third Report filed in support hereof as **Exhibit R-1**;

**iii) Claims review update**

15. The Monitor's Twenty-Fourth Report provides a further update with respect to the claims review and may be summarized as follows:

**a) Bodily Injury and Moral Damage Claims:**

- i) Multiple distributions to 4,324 claimants;
- ii) 457 claims contested (up from 443);
- iii) 297 contested claims resolved (up from 262);
- iv) 114 further contestations are close to being resolved;
- v) The Monitor is attempting to resolve the remaining 46 contestations;

**b) Property and Economic Damages Claims:**

- i) 1,807 claims were filed in the CCAA and the Chapter 11;
- ii) 831 claims have been accepted as filed, or as amended, and the Monitor has issued an interim distribution of 50% of the estimated total distribution for each of these Proven Claims;
- iii) A further 612 claims have received notices of partial disallowance and interim distributions on these claims will be issued in the week of October 31, 2016, unless these claims are contested;
- iv) Of the remaining 364 claims, the Monitor expects to issue notices of total or partial disallowance with respect to the majority of these claims by the end of November, 2016. As certain claimants are still negotiating compensation under various provincial aid programs which the Monitor understands expire at the end of March 2017, the final review and evaluation of these claims may not be completed until after March 31, 2017;

the whole as more fully appears from a copy of the Monitor's Twenty-Fourth Report filed in support hereof as **Exhibit R-2**;

**iv) The Monitor**

16. Since the Fourteenth Extension Order, the Petitioner has continued to cooperate and work diligently with the Monitor in order to provide the latter with all necessary information to prepare reports and fulfill its role and obligations;

17. As outlined in the Monitor's Twenty-Fourth Report (R-2), substantial resources have been devoted to the ongoing review of claims;
18. Moreover, the Monitor continues to respond to numerous queries from creditors and maintains regular contact with the Trustee and major stakeholders;

**v) Reasonableness of the Extension Sought**

19. Given the implementation of the Plans and the ongoing distributions to creditors, no creditor will suffer any prejudice by the extension of the Stay Period;
20. An extension of the Stay Period to June 30, 2017 is necessary to allow for the ongoing review and adjudication of claims, as well as distributions to creditors. The Petitioner is of the view that extending the Stay Period to June 30, 2017 is thus appropriate in the present circumstances;
21. The Monitor has indicated to the Petitioner that it supports the present request for an extension of the Stay Period, as appears from its Twenty-Fourth Report (R-2);

**IV. APPROVAL OF PROFESSIONAL FEES**

22. The following table, drawn from the Monitor's Twenty-Fourth Report (R-2), summarizes the fees for which approval is sought:

Montreal, Maine & Atlantic Canada Co. Administration Charge Summary As of September 30, 2016				
	Fees / Disbursements	Sales Taxes	Total	
Administration Charge <sup>1</sup>	\$ 12,000,000	\$ 1,797,000	\$ 13,797,000	
Payment of Accrued Professional Fees to February 29, 2016	(9,633,319)	(1,418,790)	(11,052,109)	
Balance of Administration Charge as of February 29, 2016	2,366,681	378,210	\$ 2,744,891	
<u>Accrued Fees and Disbursements (March 1, 2016 to Sept. 30, 2016)</u>				
Richter	1,133,672	169,767	1,303,439	
Woods	241,467	36,160	277,627	
Gowlings	61,981	9,282	71,263	
Claims Officer <sup>2</sup>	11,979	1,794	13,773	
	1,449,099	217,003	1,666,102	
Balance of Administration Charge to complete the CCAA <sup>3</sup>	\$ 917,582	\$ 161,207	\$ 1,078,789	

<sup>1</sup> As per the Amended Plan of Compromise and Arrangement dated June 8, 2015.

<sup>2</sup> Mr. Andre Rochon is acting as the Claims Officer.

<sup>3</sup> In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.

- 23. Pursuant to section 7.1 of the Amended Plan, the Professionals benefit from an Administration Charge in the amount of \$12 million plus taxes;
- 24. The balance of the Administration Charge, following previous approval of the Professionals' fees for the period ending February 29, 2016, is \$2,744,891 tax included;
- 25. The present request covers the period of March 1, 2016 to September 30, 2016, with fees and disbursements totalling \$1,449,099 plus taxes;
- 26. Should this motion be granted, there would remain \$1,078,789 tax included (plus the Monitor's pre-filing retainer of \$150,000) to cover the remaining work to be performed by the Professionals (including the Claims Officer) to complete the claims process and the administration of the CCAA proceedings;
- 27. As alluded to above and as more fully set out in the Monitor's Twenty-Fourth Report (R-2), a substantial amount of work remains to be completed with respect to the review and adjudication of claims, namely in view of the over 450 contestations received by the Monitor to date and the 160 contestations that remain unresolved;
- 28. Discussions with major stakeholders and creditor groups remain ongoing in an effort to consensually resolve disputed claims;
- 29. Disputes that cannot be resolved will be submitted to the Claims Officer pursuant to the Claims Resolution Order of April 15, 2015, or to the CCAA Court if necessary and appropriate;
- 30. As appears from the above excerpt from the Monitor's Twenty-Third Report (R-1), if remaining contestations cannot be consensually resolved, the Monitor will refer them to the claims officer and possibly seek directions from this Court in order to proceed with certain claims as test cases;

**V. CONCLUSION**

- 31. The Petitioner respectfully requests that this Honourable Court extend the Stay Period to June 30, 2017 and approve the Professionals' fees pursuant to the conclusions set out below;
- 32. The Petitioner respectfully submits that the notices given of the presentation of the present Motion are proper and sufficient;

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

**GRANT** the present *Application for a Fifteenth Order Extending the Stay Period and for Approval of Professional Fees* (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 June 30, 2017, the whole subject to all the other terms of the Initial Order;

**ORDER** that all capitalized terms not otherwise defined in the order to be rendered hereon shall have the meanings ascribed thereto in the Amended Plan of Compromise and Arrangement dated as of June 8, 2015 (the "Amended Plan")

**DECLARE** that the Initial Order, as amended on August 23, 2013, September 4, 2013, October 9, 2013, January 23, 2014, February 11, 2014, February 25, 2014, March 12, 2014, April 29, 2014, June 30, 2014, September 24, 2014, November 24, 2014, April 15, 2015, November 30, 2015 and May 30, 2016 shall remain otherwise unchanged;

**APPROVE** the fees and disbursements (including taxes) of the following professionals (the "Professionals") as at September 30, 2016 in the following amounts:

- a) \$1,303,439.46 to Richter Advisory Group Inc., Monitor;
- b) \$277,627.04 to the Monitor's counsel, Woods LLP;
- c) \$13,773.41 to the Claims Officer Me André Rochon;
- d) \$71,262.10 to Petitioner's counsel, Gowling WLG (Canada) LLP;

**ORDER** the Monitor to pay those fees and disbursements, which include applicable sales taxes, from the Indemnity Fund;

**ORDER** that the balance of the Administration Charge be held by the Monitor to secure the payment of all fees and disbursements to be incurred from October 1, 2016 to the closing of the CCAA Proceeding;

**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, October 20, 2016

Gowling WLG (Canada)

Gowling WLG (Canada) LLP  
Attorneys for Petitioner

CANADA

SUPERIOR COURT  
(COMMERCIAL DIVISION)

PROVINCE OF QUÉBEC  
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)**

Petitioner  
and

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

Monitor

**AFFIDAVIT OF ROBERT J. KEACH**

I, the undersigned, Robert J. Keach, Shareholder of Bernstein Shur, doing business at 100 Middle Street, West Tower, Portland, Maine, USA, 04101, solemnly declare as follows:

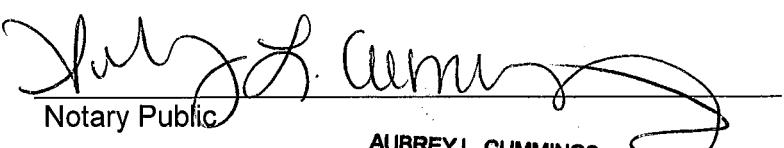
1. I am the Estate Representative to the estate of Montreal, Maine & Atlantic Railway Ltd., the sole shareholder of the Petitioner;
2. All the facts alleged in the present *Application for a Fifteenth Order Extending the Stay Period and for Approval of Professional Fees* are true.

AND I HAVE SIGNED:

  
ROBERT J. KEACH

  
ESTATE R.R.

SWORN TO before me in Portland, Maine,  
this 20<sup>th</sup> day of October, 2016

  
Notary Public

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

CANADA

SUPERIOR COURT  
(COMMERCIAL DIVISION)

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PROVINCE OF QUÉBEC  
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)**

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 *Application for a Fifteenth Order Extending the Stay Period and for Approval of Professional Fees* will be presented for adjudication before the honourable Gaétan Dumas, J.S.C., of the District of Saint-François, in chambers and without a hearing, save and except in the event that any interested party advises the Service List, by no later than **4:00 p.m. on October 26, 2016**, of its intention to make representations in respect of the Motion. In that case, the Motion will be heard at the Sherbrooke Courthouse located at 375 King Street West on **October 31, 2016, at 10:00 a.m.** in a room to be determined, or so soon thereafter as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

MONTRÉAL, October 20, 2016

*(Gowling WLG (Canada))*

Gowling WLG (Canada) LLP  
Attorneys for Petitioner

## **EXHIBIT R-1**

**CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF ST-FRANÇOIS  
No.: 450-11-000167-134**

**SUPERIOR COURT  
(Commercial Division)  
*The Companies' Creditors Arrangement Act***

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**IN THE MATTER OF THE PLAN OF  
COMPROMISE AND ARRANGEMENT OF:**

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

**Petitioner**

-and-

**RICHTER ADVISORY GROUP INC. (RICHTER  
GROUPE CONSEIL INC.)** a duly incorporated legal  
person having its principal place of business at  
1981 McGill College, 12<sup>th</sup> Floor, in the city and  
district of Montreal, Quebec, H3A 0G6

**Monitor**

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**TWENTY-THIRD REPORT OF THE MONITOR  
August 31, 2016**

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**INTRODUCTION**

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. ("MMAC") filed a Motion for the Issuance of an Initial Order pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "CCAA"). On August 8, 2013, the Honourable Martin Castonguay, J.S.C., issued an initial order (the "Initial Order") which *inter alia* appointed Richter Advisory Group Inc. as the Monitor in these CCAA proceedings (the "Monitor"). An initial stay of proceedings was ordered until September 6, 2013 ("Stay Period").
2. The CCAA proceedings have since been supervised by the Honourable Gaétan Dumas, J.S.C. and the Stay Period has been extended fourteen times with the most recent extension having been granted to December 15, 2016.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.
4. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in MMAC's Plan of Compromise and Arrangement filed on March 31, 2015 and amended on June 8, 2015 (the "Amended Plan"). All amounts reflected in this report are stated in Canadian currency unless otherwise noted.
5. The purpose of this Twenty-Third Report of the Monitor is to inform the Court with respect to the claims review and the status of distributions.

## **CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS**

6. The status of the claims review and the payment of distributions under the Amended Plan is as follows:
  - **Wrongful Death Claims:** as reported in the Monitor's Twenty-Second Report dated April 19, 2016, the WD Trustee (in the United States) has confirmed that nearly all of the approximately US\$81.7 million (approx. CDN\$114 million) which were transferred by the Monitor to the Chapter 11 Trustee and then to the WD Trustee have been distributed to the WD claimants. An amount of approximately US\$1.6 million is being held pending the resolution of one disputed claim and the final payment of the expenses incurred by the WD Trust.
  - **Bodily Injury and Moral Damage Claims:** to date, the Monitor has made interim distributions totalling 75% of Proven Claims in this category, as valued in accordance with Schedule F to the Amended Plan.

Further to more than 4,250 distributions (see the Monitor's Twenty-Second Report), the Monitor received 443 contestations and has been working to resolve these disputes. To date, 262 of these disputes have been resolved or are no longer being pursued and the Monitor believes that a further 116 contestations are close to resolution based on negotiations with Class Counsel (with respect to Class Members) and counsel to other claimants. The Monitor is still attempting to resolve the remaining 65 contestations. If these remaining contestations cannot be consensually resolved, the Monitor will refer them to the claims officer and possibly seek directions from this Court in order to proceed with certain claims as test cases.

Based on the status of the discussions concerning the resolution of the various contestations, the Monitor hopes to proceed with the payment of the balance of the distribution payable on account of Bodily Injury and Moral Damages, with respect to Proven Claims, in September or October of 2016.

- **Property and Economic Damages Claims:** Approximately 1,800 claims were filed in the CCAA and the Chapter 11.

The Monitor's review of those claims is ongoing but as of August 2016 the Monitor has allowed approximately 1,200 of the claims, as filed (or as amended). The remaining claims are still under review but the Monitor expects that the majority of those claims will be totally or partially disallowed.

The Monitor has determined that it can proceed with the payment of interim distributions to claimants holding Proven Claims. This interim distribution will be equal to 50% of the projected total distribution for each Proven Claim.

In the upcoming weeks, the Monitor will also begin to issue notices of total or partial disallowance in respect of the claims that are still under review. As those disallowances are resolved and the claims relating thereto become Proven Claims, the Monitor will pay out further interim distributions until a full distribution has been paid to all Proven Claims and all other claims have been finally disallowed.

- **Subrogated Insurer Claims:** the distribution with respect to these claims was made in May, 2016.
- **Government Claims:** a distribution with respect to these claims was made in June, 2016.

## CHAPTER 11

7. As noted in the Monitor's twenty-first report to court dated November 24, 2015, various administrative/secured claims have been filed in the Chapter 11 which the Chapter 11 Trustee has contested. A hearing in respect of many of these contested claims is scheduled for October, 2016 in the U.S. Bankruptcy Court in Portland, Maine.

Respectfully submitted at Montreal, this 31<sup>st</sup> day of August, 2016.

**Richter Advisory Group Inc.**  
Monitor



Andrew Adessky, CPA, CA, CIPR

No. 450-11-000167-134

SUPERIOR COURT  
(COMMERCIAL DIVISION)  
DISTRICT OF ST-FRANÇOIS

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

Debtor

and

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

Monitor

BL0052

**APPLICATION FOR A FIFTEENTH ORDER  
EXTENDING THE STAY PERIOD AND FOR  
APPROVAL OF PROFESSIONAL FEES**  
(Sections 9 and 11 et seq. of the Companies'  
Creditors Arrangement Act,  
R.S.C. 1985, c. C 36 ("CCAA"))

ORIGINAL

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c/o 4127