

CANADA

SUPERIOR COURT
(Commercial Division)

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

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*)

**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;
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 payment of 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 more fully appears from the Initial Order;

4. The Initial Order created an Administration Charge in the amount of \$500,000, as appears from the court record;
5. On October 4 2013 the Petitioners requested that the Administration Charge be increased to the amount of \$2,500,000 for the reasons set out in Petitioners' Motion to Increase the Amount of the Administration Charge ("Motion") dated October 4, 2013;
6. On October 9, 2013, this Court granted the Motion and increased the Administration Charge to the amount of \$2,500,000;
7. Since October 9, 2013 MM&A has continued together with the Monitor and the Chapter 11 Trustee (appointed to the business and assets of its parent company, Montreal, Maine & Atlantic Railway Ltd (the "**Chapter 11 Trustee**")), to structure a sale process for the sale of the assets and business of MM&A and MM&AR as a going concern;
8. MM&A has also continued together with the Monitor and the Chapter 11 Trustee to develop 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;
9. In addition to the foregoing, many complex and substantial issues have had to be dealt with and have required a continuous level of work from the Restructuring Professionals on a full time basis, notably:
 - Analysis of XL Insurance Company Ltd's ("**XL**") third party liability insurance policy issued in favour of MM&A;
 - Analysis of other insurance policies including the D&O insurance policy and the property/business interruption insurance policy;
 - Review of security interests charging debtor's assets;
 - Managing issues with tank cars in Farnham;
 - Work on issues relating to settlement with Irving;
 - 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 including preparation for a hearing before the Court of Appeal on Travelers' Motion to obtain leave to appeal the jurisdiction issue;
 - Work on issues with the Motion to be authorized to institute a class action against

MM&A and other parties and of the other recourses instituted by some of the families of the victims in the United States;

- 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;
 - Discussions, meetings and negotiations with potential short-term lenders and/or purchasers of MM&A’s assets;
 - Discussion 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 the fact that many stakeholders are involved in both cases;
 - Work related to the sale process of MM&A and MM&AR’s assets and business on a going concern basis;
10. MM&A’s creditors and other stakeholders continue to benefit from the efficient administration of this case and the continued involvement of the Restructuring Professionals is essential in that respect;
 11. 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 and the Restructuring Professionals have agreed to postpone the payment of the Restructuring Fees until such time as funds are available to pay those fees;
 12. On or about October 18, 2013, the Chapter 11 Trustee entered 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 that financing is insufficient to fund the payment of the Restructuring Fees or the fees of the professionals involved in the Chapter 11 proceedings;
 13. Therefore, the Chapter 11 Trustee is relying on the Carve Out Agreement it has entered into with the Federal Railroad Administration to ensure the payment of the Chapter 11 professionals and the Administration Charge is the only available mechanism which can ensure the payment of the Restructuring Fees to be incurred in the context of the CCAA proceedings;

REQUIREMENT FOR AN INCREASE OF THE ADMINISTRATION CHARGE

14. As of November 30, 2013, the total unpaid fees and disbursements of the Restructuring Professionals (excluding taxes and net of the retainers received from MM&A prior to the Initial Order) is approximately \$2,160,000 (the “**Unpaid Restructuring Fees**”);
15. The Administration Charge is now insufficient to secure the payment of the Unpaid Restructuring Fees and the future Restructuring Fees expected to be incurred before they can be paid from the proceeds of the sale of the assets of MM&A ;
16. Indeed, although a stalking horse bidder may be chosen in December 2013, it is not expected that the sale will actually close and that the purchase price will actually be disbursed before early March 2014;
17. It is projected that the amount of Restructuring Fees to be incurred from December 2013 to early March 2014 will substantially exceed the difference between the amount of the actual Administration Charge and the amount of the Unpaid Restructuring Fees;
18. Consequently, unless the amount of the Administration Charge is increased, MM&A will not be able to secure the payment of the Restructuring Fees to the Restructuring Professionals, whose services are needed to pursue the CCAA process which is essential because without that process each creditor will be left to its own individual recourses (which, in many instances, may be in conflict with the recourses of others) 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;
19. The interruption of the CCAA process would also result in the legal chaos that the Initial Order was issued to prevent and would almost certainly generate less value for the creditors;
20. The Monitor and MM&A submit that it would be inappropriate, and contrary to the provisions of the CCAA, as well as unfair to the Restructuring Professionals, to require that they bear the risk of not being compensated for their services;
21. The Monitor and MM&A submit that it is in the interests of MM&A’s creditors and clients and of justice generally that the Administration Charge be increased by an amount sufficient to secure the payment of the Restructuring Fees to be incurred to pursue the CCAA process (including the administration of the claims process, the conclusion of the sale process and the negotiation with all stakeholders of the terms of a possible plan of arrangement) which they estimate, at this stage, to be approximately \$2,500,000;
22. This increase of the amount of the Administration Charge would create a charge equal to the amount of the carve-out entered into by the Chapter 11 Trustee to secure the fees of the Chapter 11 professionals;

SUBSEQUENT DECREASE OF THE ADMINISTRATION CHARGE

23. The Petitioners suggest that the order of this Court to increase the amount of the Administration Charge also order that it be decreased by the amount of any payment made on account of the Restructuring Fees;

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 re-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 incurred 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 \$5,000,000 (the "Administration Charge"), having the priority established by paragraphs [42] and [43] hereof;

ORDER that, the Administration Charge shall be decreased by the amount of any payment made on account of the Restructuring Fees;

ORDER the provisional execution of the order to intervene herein notwithstanding any appeal, without the necessity of furnishing any security;

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

MONTREAL, December 13, 2013

MONTREAL, December 13, 2013

Gowling Lafleur Henderson LLP

Woods LLP

GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

WOODS LLP
Attorneys for the Monitor

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUÉBEC
DISTRICT OF ST-FRANÇOIS

(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act, R.S.C.
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N°: 450-11-000167-134

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Debtor-Petitioner

and

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

Monitor-Petitioner

AFFIDAVIT OF ANDREW ADESSKY

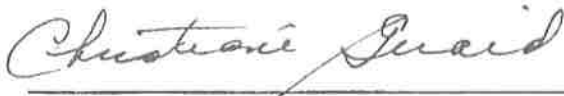
I, the undersigned, Andrew Adessky, partner at Richter Advisory Group Inc., doing business at 1981 McGill College, 11th Floor, Montreal, Québec, H3A 0G6, solemnly declare as follows:

1. I am an authorized representative of the Monitor;
2. All the facts alleged in the *Motion to increase the amount of the administration charge* are true.

AND I HAVE SIGNED:


ANDREW ADESSKY

SWORN TO before me in Montreal, Quebec,
this 13 day of December 2013



Commissioner of oaths for the province of Quebec



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

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 : 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


Patrice Benoit

GOWLING LAFLEUR HENDERSON SENCRL, SRL

CANADA

SUPERIOR COURT
(Commercial Division)

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

(Sitting as a court designated pursuant to the
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Debtor-PETITIONER

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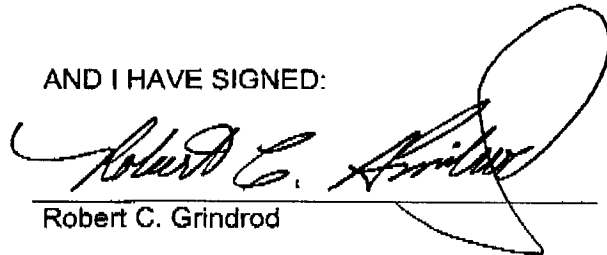
Monitor-Petitioner

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:

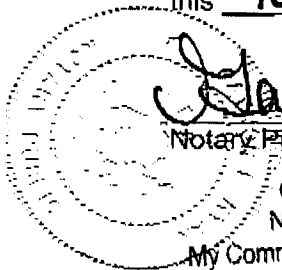
1. I am the President and Chief Executive Officer of Petitioner;
2. All the facts alleged in the present *Motion to increase the amount of the administration charge* are true.

AND I HAVE SIGNED:



Robert C. Grindrod

SWORN TO before me Bangor, Maine
this 16th 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

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Debtor-PETITIONNER

and

RICHTER ADVISORY GROUP INC.

MONITOR

BL0052

AFFIDAVIT OF ROBERT C. GRINDROD

ORIGINAL

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CANADA

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Monitor

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 practice 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 December **19, 2013, at 10:00 a.m.** or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, December 13, 2013

MONTREAL, December 13, 2013

Gowling Lafleur Henderson LLP

Woods LLP

GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

WOODS LLP
Attorneys for the Monitor

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SERVICE LIST

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(MONTREAL, MAINE & ATLANTIQUE CANADA
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