

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

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

**AMENDED APPLICATION FOR A SEVENTEENTH 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"))**

TO THE HONORABLE JUSTICE GAÉTAN 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 (now referred to as the "**Estate Representative**");
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 sixteen (16) occasions, with the most recent extension having been granted until January 31, 2018 pursuant to an order dated as of June 16, 2017 (the "**Sixteenth 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;
9. As appears from the court record, the Certificate of the Monitor was filed on December 22, 2015 (the "**Plan Implementation Date**"), thereby confirming implementation of the Amended Plan;
10. Capitalized terms not otherwise defined in this Application have the meaning ascribed thereto in the Amended Plan;

II. ORDER SOUGHT

11. The Petitioner hereby seeks an extension of the Stay Period until June 29, 2018 for the reasons set out below;
12. 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 June 1, 2017 to November 30, 2017;

III. EXTENSION OF THE STAY PERIOD

13. Since the issuance of the Sixteenth Extension Order, the Petitioner has acted and continues to act in good faith and with due diligence as set forth hereafter;
 - i) **Claims review and status of distributions**
14. Since the Plan Implementation Date, the Monitor, with the participation of its counsel and the Petitioner's counsel, has primarily focused on the review of claims and payment of distributions under the Amended Plan and US Plan (together, the "**Plans**");

15. The Monitor's Twenty-Seventh Report provides an update with respect to the claims review and may be summarized as follows:
- a) **Wrongful Death Claims:** As reported prior to the Sixteenth Extension Order, all the projected distributions have been paid;
 - b) **Bodily Injury and Moral Damage Claims:**
 - i) 100% of the total distribution payable to claimants who have Proven Claims in this category have been paid (prior to any possible reallocation under section 4.2 of the Amended Plan). In total, as of the date hereof, an amount of approximately \$47.1 million has been distributed to 4,327 claimants;
 - ii) As previously reported to the Court, 410 of 457 contested claims were resolved through negotiations;
 - iii) In respect of the remaining unresolved 47 contestations, hearings before the Claims Officer were held on June 13 to 15, 2017 in Lac-Mégantic. The Claims Officer rendered his decisions on July 27, 2017;
 - iv) 3 claimants appealed the decision of the Claims Officer and 2 of those appeals remain unresolved;
 - v) There remains one contestation that was not the subject of a hearing before the Claims Officer, which, along with the 2 appeals, makes a total of 3 unresolved claims out of a total of 4,327;
 - c) **Property and Economic Damages Claims:**
 - i) The Monitor has completed a review of the 1,810 claims filed;
 - ii) 1,796 of those have become Proven Claims and their holders have received the total distribution payable;
 - iii) 78 of 92 contested claims have been resolved through negotiations, including meetings held in Lac-Mégantic from June 13 to 15, 2017 and from August 15 to 16, 2017;
 - iv) Consequently, there remain 14 claims which, if not resolved, will be the subject of a hearing before the Claims Officer, likely in the first quarter of 2018;
 - v) Because Proven Claims in this category will likely be significantly below the \$75 million threshold described in Section 4.2 of the Amended Plan, the Monitor estimates that a reallocation will occur under the terms of that Section of the Amended Plan and that the amount to be reallocated is currently estimated at \$18 million;

d) **Government Claims:**

- i) The only unfinalized claim in this category was the claim of the Province of Quebec and the Monitor received, on December 1, 2017, the Province's final claim;
- ii) The Province initially filed a \$409 million claim and its final claim is \$340,195,223.56, which includes a provision for future expenses of \$79,952,835.76;

e) **Subrogated Insurer Claims:** all the projected distributions were made in 2016;

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

ii) **The Monitor**

- 16. Since the Sixteenth Extension Order, the Petitioner, through its counsel, 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-Seventh Report (R-1), substantial resources have been devoted to the ongoing review and adjudication of claims;
- 18. More specifically, a significant number of contested claims have been resolved, both through negotiations and formal hearings presided over by the Claims Officer;
- 19. Moreover, the Monitor continues to respond to queries from creditors and maintains regular contact with the Estate Representative and major stakeholders;

iii) **Reasonableness of the Extension Sought**

- 20. 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;
- 21. An extension of the Stay Period to June 29, 2018 is necessary to allow for the ongoing review and adjudication of claims, as well as distributions to creditors;
- 22. Moreover, as explained at paragraph 16 of the Monitor's Twenty-Seventh Report (R-1), ongoing litigation in the Chapter 11 Case could impact the Amended Plan in terms of both distribution and overall administration. It is uncertain if that litigation will be resolved before the expiry of the extension period sought;
- 23. The Petitioner is of the view that extending the Stay Period to June 29, 2018 is thus appropriate in the present circumstances;
- 24. 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-Seventh Report (R-1);

IV. APPROVAL OF PROFESSIONAL FEES

25. The following table, drawn from the Monitor's Twenty-Seventh Report (R-1), summarizes the fees for which approval is sought:

Montreal, Maine & Atlantic Canada Co.			
Administration Charge Summary			
As of November 30, 2017			
	Fees /		Total
	Disbursements	Sales Taxes	
Administration Charge ¹	\$ 13,500,000	\$ 2,022,000	\$ 15,522,000
Accrued Professional Fees as of May 31, 2017	(12,512,160)	(1,849,883)	(14,362,043)
Balance of Administration Charge to implement the Plan	987,840	172,117	1,159,957
<u>Fees and Disbursements - June 1, 2017 to November 30, 2017</u>			
Richter	479,030	71,735	550,765
Woods	100,673	15,076	115,748
Gowing WLG	102,920	15,412	118,332
Claims Officer	46,360	6,942	53,302
	<u>728,983</u>	<u>109,165</u>	<u>838,148</u>
Balance of Administration Charge to complete the CCAA ²	<u>\$ 258,858</u>	<u>\$ 62,952</u>	<u>\$ 321,809</u>
¹ As per the Amended Plan of Compromise and Arrangement dated June 8, 2015 and Order dated March 3, 2017.			
² In addition, the Monitor and its counsel will retain a \$150,000 retainer which will be applied to their final invoices.			

26. Pursuant to section 7.1 of the Amended Plan, the payment of the fees of the Professionals secured by the Administration Charge;
27. The balance of the Administration Charge, following the payment of fees up to May 31, 2017, is \$987,840 plus taxes;
28. The present request for approval of fees covers the period of June 1, 2017 to November 30, 2017, with fees and disbursements totalling \$728,983 plus taxes;
29. After the payment of the fees and disbursements described above, the balance of the Administration Charge will be \$258,858 plus taxes and will be used to cover the cost of the work required to complete the claims process and the administration of the CCAA proceedings;
30. As alluded to above in the description of the status of the claims review and as more fully set out in the Monitor's Twenty-Seventh Report (R-1), a substantial amount of work remains to be completed with respect to the review and adjudication of claims, as well as the distribution of the remaining Settlement Funds;

V. CONCLUSION

31. The Petitioner respectfully requests that this Honourable Court extend the Stay Period to June 29, 2018 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 Application are proper and sufficient;

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

GRANT the present *Amended Application for a Seventeenth Order Extending the Stay Period and for Approval of Professional Fees* (the "**Application**");

DECLARE that the notices given of the presentation of the Application 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 29, 2018, 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, May 30, 2016, October 20, 2016 and June 16, 2017 shall remain otherwise unchanged;

APPROVE the fees and disbursements (including taxes) of the following professionals (the "**Professionals**") as at November 30, 2017 in the following amounts:

- a) \$550,765.03 to Richter Advisory Group Inc., Monitor;
- b) \$115,748.36 to the Monitor's counsel, Woods LLP;
- c) \$53,302.41 to the Claims Officer Me André Rochon (Prévost Fortin D'aoust Avocats);
- d) \$118,332.33 to Petitioner's counsel, Gowling WLG (Canada) LLP;

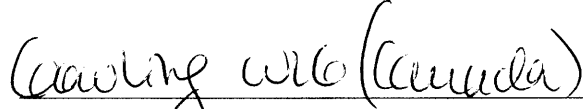
ORDER the Monitor to pay those fees and disbursements, which include applicable sales taxes, from the Indemnity Fund;

ORDER that the balance of the Administration Charge in the amount of \$258,858 plus taxes be held by the Monitor to secure the payment of all fees and disbursements to be incurred from December 1, 2017 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, December 14, 2017



Gowling WLG (Canada) LLP
Attorneys for Petitioner

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

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

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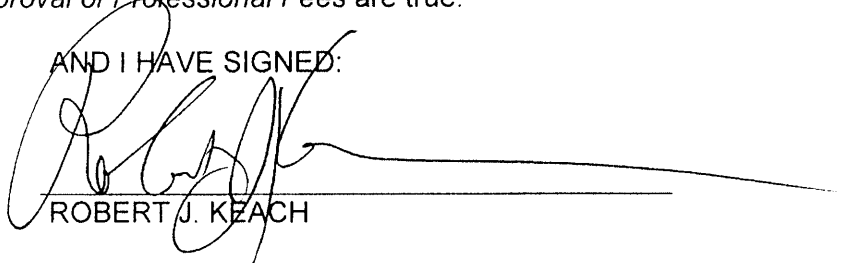
Monitor

SWORN DECLARATION 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:

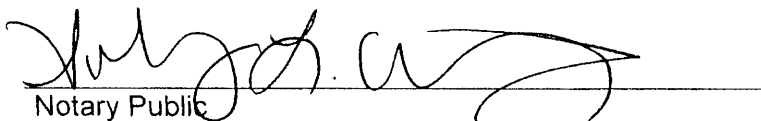
1. I am the Estate Representative to the estate of Montreal, Maine & Atlantic Railway Ltd., the sole shareholder of the Petitioner;
2. All the facts alleged in the present *Amended Application for a Seventeenth Order Extending the Stay Period and for Approval of Professional Fees* are true.

AND I HAVE SIGNED:



ROBERT J. KEACH

SWORN TO before me in Portland, Maine,
this 14th day of December, 2017



Notary Public

AUBREY L. CUMMINGS
NOTARY PUBLIC
State of Maine
My Commission Expires
October 21, 2024

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

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

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C. C-36, as amended)

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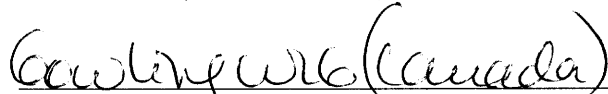
NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present *Amended Application for a Seventeenth 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 December 19, 2017**, of its intention to make representations in respect of the Application. In that case, the Application will be heard at the Sherbrooke Courthouse located at 375 King Street West **at a time and date to be determined**.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, December 14, 2017



Gowling WLG (Canada) LLP
Attorneys for Petitioner

No. 450-11-000167-134

SUPERIOR COURT
(COMMERCIAL DIVISION)
DISTRICT OF ST-FRANÇOIS

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

Petitioner

and

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

Monitor

BL0052

**AMENDED APPLICATION FOR A
SEVENTEENTH 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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