

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 NINETEENTH ORDER EXTENDING THE STAY PERIOD, FOR AN  
INCREASE IN THE ADMINISTRATION CHARGE  
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 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 eighteen (18) occasions, with the most recent extension having been granted until December 14, 2018 pursuant to an order of June 18, 2018 (the "**Eighteenth 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 19, 2019 for the reasons set out below;
12. The Petitioner also seeks the following orders:
  - a) an order increasing the amount of the Administration Charge by \$650,000 (plus taxes);
  - b) an order approving the fees and disbursements of MMAC's counsel, the Monitor and the Monitor's counsel (the "**Professionals**") for the period of May 1, 2018 to October 31, 2018;

## III. EXTENSION OF THE STAY PERIOD

13. Since the issuance of the Eighteenth 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. As appears from the Monitor's Twenty-Ninth Report, the claims review process is essentially complete, the whole as more fully appears from a copy of the Monitor's Twenty-Ninth Report filed in support hereof as **Exhibit R-1**;
16. The following table, drawn from the Twenty-Ninth Report, demonstrates that essentially all distributions have been made, save and except for a portion of the distribution payable under the Government Claims category, which will be further addressed hereafter:

<b>Montreal, Maine &amp; Atlantic Canada Co.</b>			
<b>Summary of Distributions</b>			
<b>As of October 31, 2018</b>			
	Distribution Paid	Distribution Pending	Total
Wrongful Death Claims	\$ 121,561,892	\$ -	\$ 121,561,892
Bodily Injury and Moral Damage Claims	51,137,401	-	51,137,401
Property and Economic Damages Claims	25,634,715	-	25,634,715
Government Claims	103,460,319	98,060,399	201,520,718
Subrogated Insurer Claims	17,641,913	-	17,641,913
	<u>\$ 319,436,240</u>	<u>\$ 98,060,399</u>	<u>\$ 417,496,639</u>

17. A more detailed table, prepared by the Monitor and filed in support hereof as **Exhibit R-2**, outlines the specific amounts paid by the Monitor to creditors of each category of claims over the course of six distributions made between December 2015 and June 2018;
18. With respect to the Government Claims category:
- a) As previously reported to the Court by the Monitor and by the Petitioner, the only unfinalized claim in this category is the claim of the Province of Quebec;
  - b) On December 1, 2017, the Province submitted its final proof of claim in the approximate amount of \$340.7 million (versus an initial claim of \$409 million) which included a provision for future expenses of approximately \$80.0 million;
  - c) The Amended Plan was based on the Province's initial claim amount and did not foresee the possibility that the actual costs of the Province would be lower;

- d) The Province continues to work on updating its provision for future expenses and, with the provincial elections now behind us, the Monitor expects to resume its discussions regarding the implications of the Province's lower claim;
- e) The Monitor, with its counsel and the Petitioner's counsel, is also considering next steps should an agreed upon solution not be reached with the Province;

**ii) Interest Treatment**

- 19. Approximately \$4.8 million has been earned on the Funds for Distribution since the effective date of the Amended Plan;
- 20. As set out in its Twenty-Ninth Report (R-1), the Monitor estimates that it will need to issue tax slips (Relevé 3 and T5) to at least 3,200 individuals and corporations, which can only happen after all claims have been finally determined;

**iii) Ongoing Litigation and Possible Further Distribution**

- 21. As outlined in previous Monitor's reports, including its Twenty-Seventh and Twenty-Eighth Reports, a number of matters remain ongoing in the Chapter 11 Case that could have an impact on the Amended Plan, both in terms of distribution and in respect of the overall administration:
  - a) The WD Trustee's proceedings against Canadian Pacific Railway ("CP") under the Carmack Amendment remain ongoing. In fact, A CP motion to dismiss, which had previously been granted in part, was recently overturned by the United States Court of Appeals. The WD Trustee's claim is for an amount of approximately USD \$180 million;
  - b) The Estate Representative's separate litigation against CP remains in the discovery phase. The amount claimed is not less than USD \$35 million;
  - c) The Monitor continues to maintain a \$10 million reserve in connection with administrative claims by Irving and Wheeling, which are contested by the Estate Representative. Both matters are currently on appeal. Should both claims be dismissed, settled or resolved, these additional funds will be made available for distribution;
- 22. Civil proceedings also remain ongoing against CP in the Province of Quebec, including class proceedings and those instituted by the Province. While the Petitioner's role in the daily administration of those matters is minimal, these CCAA proceedings and the framework of the Amended Plan could prove useful in the event of settlement discussions;

**iv) The Monitor**

- 23. Since the Eighteenth 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;
- 24. As outlined in the Monitor's Twenty-Ninth Report (R-1), substantial resources have been devoted to the ongoing review and adjudication of claims, as well as to matters that

could potentially allow for additional distributions to creditors, beyond what was originally expected;

25. Moreover, the Monitor continues to respond to queries from creditors and maintains regular contact with the Estate Representative and major stakeholders;

**v) Reasonableness of the Extension Sought**

26. Given the implementation of the Plans and the distributions to creditors, no creditor will suffer any prejudice by the extension of the Stay Period;
27. An extension of the Stay Period to June 19, 2019 is necessary to allow for the resolution of the Province's claim, distribution of interest income and monitoring of ongoing litigation that could impact the Amended Plan;
28. The Petitioner is of the view that extending the Stay Period to June 19, 2019 is thus appropriate in the present circumstances;
29. 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-Ninth Report (R-1);

**IV. INCREASE TO THE ADMINISTRATION CHARGE AND APPROVAL OF PROFESSIONAL FEES**

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

<b>Montreal, Maine &amp; Atlantic Canada Co.</b>			
<b>Administration Charge Summary</b>			
<b>As of October 31, 2018</b>			
	<b>Fees /</b>		
	<b>Disbursements</b>	<b>Sales Taxes</b>	<b>Total</b>
Administration Charge <sup>1</sup>	\$ 13,500,000	\$ 1,998,000	\$ 15,498,000
Accrued Professional Fees as of April 30, 2018	(13,369,104)	(1,978,143)	(15,347,247)
Balance of Administration Charge to implement the Plan	130,896	19,857	150,753
Richter	195,278	29,243	224,521
Woods	22,560	3,378	25,938
Gowing WLG	36,015	5,344	41,360
Verrill Dana <sup>2</sup>	1,681	-	1,681
	<u>255,534</u>	<u>37,966</u>	<u>293,500</u>
Balance of Administration Charge to complete the CCAA <sup>3</sup>	(124,638)	(18,109)	(142,747)

<sup>1</sup> As per the Amended Plan of Compromise and Arrangement dated June 8, 2015 and Order dated March 3, 2017.

<sup>2</sup> US counsel to the Monitor, no sales taxes are charged.

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

31. Pursuant to section 7.1 of the Amended Plan and pursuant to an order of this Court dated March 3, 2017, the payment of the fees of the Professionals is secured by the Administration Charge;
32. Upon seeking the Eighteenth Extension Order, both the Petitioner and the Monitor reported that the balance of the Administration Charge following the payment of fees to April 30, 2018, namely an amount of \$130,896.32 plus taxes, would not suffice to cover the fees and disbursements of the Professionals to complete the administration of the CCAA proceedings;
33. As appears from the table above, the Administration Charge has now been fully utilized and there is a need to seek a further increase both to cover costs incurred to October 31, 2018, as well as for ongoing work to complete the administration of the CCAA proceedings;
34. As a result of the uncertain nature of litigation and ongoing discussions with the Province, it is difficult to precisely assess the cost to complete these proceedings. That said, the Monitor and the Petitioner believe that an increase to the Administration Charge in the amount of \$650,000 is reasonable under the circumstances;

**V. CONCLUSION**

35. The Petitioner respectfully requests that this Honourable Court (i) extend the Stay Period to June 19, 2019, (ii) grant an increase to the Administration Charge in the amount of \$650,000 (plus taxes), and (iii) approve the Professionals' fees pursuant to the conclusions set out below;
36. The Class Representatives have confirmed, through their counsel, that they consent to the present Application;
37. 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 *Application for a Nineteenth Order Extending the Stay Period, for an Increase in the Administration Charge 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 19, 2019, 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, June 16, 2017, December 20, 2017 and June 18, 2018 shall remain otherwise unchanged;

**APPROVE** the fees and disbursements (including taxes) of the following professionals as at October 31, 2018, in the following amounts:

- a) \$224,521 to Richter Advisory Group Inc., Monitor;
- b) \$25,938 to the Monitor's counsel, Woods LLP;
- c) \$1,681 to the Monitor's US counsel, Verrill Dana LLP;
- d) \$41,360 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;

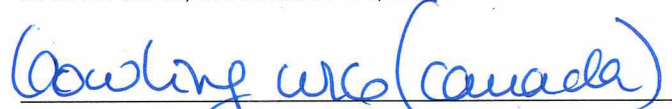
**ORDER** that the amount of the Administration Charge, as it pertains to the Canadian Professionals, as contemplated by the Amended Plan and the Canadian Approval Order, and as amended by Order dated March 3, 2016, is hereby increased from \$13,500,000 plus any applicable taxes to \$14,150,000 plus any applicable taxes;

**ORDER** that the balance of the Administration Charge in the amount of \$525,362 plus taxes be held by the Monitor to secure the payment of all fees and disbursements to be incurred from November 1, 2018 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, November 14, 2018



**Gowling WLG (Canada) LLP**  
Attorneys for Petitioner

CANADA

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

SUPERIOR COURT  
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CIE)**

Petitioner

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

Monitor

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**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 *Application for a Nineteenth Order Extending the Stay Period, for an Increase in the Administration Charge and for Approval of Professional Fees* are true.

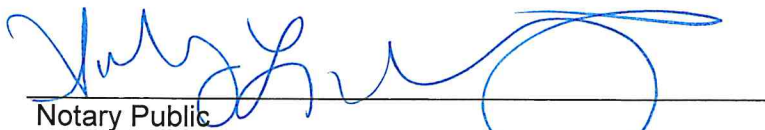
AND I HAVE SIGNED:



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ROBERT J. KEACH

SWORN TO before me in Portland, Maine,  
this 14<sup>th</sup> day of November, 2018



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Notary Public

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



CANADA

SUPERIOR COURT  
(COMMERCIAL DIVISION)

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PROVINCE OF QUÉBEC  
DISTRICT OF SAINT-FRANÇOIS

N°: 450-11-000167-134

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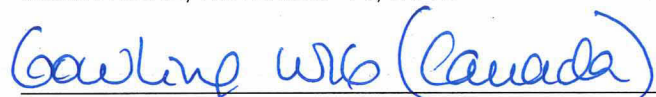
**NOTICE OF PRESENTATION**

TO: **SERVICE LIST**

**TAKE NOTICE** that the present ***Application for a Nineteenth Order Extending the Stay Period, for an Increase in the Administration Charge 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 November 19, 2018**, of its intention to contest the Application. In that case, the Application will be heard at the Sherbrooke Courthouse located at 375 King Street West on **November 21, 2018 at a time to be determined.**

**DO GOVERN YOURSELVES ACCORDINGLY.**

MONTREAL, November 14, 2018



**Gowling WLG (Canada) LLP**  
Attorneys for Petitioner

No. 450-11-000167-134

SUPERIOR COURT  
(COMMERCIAL DIVISION)  
DISTRICT OF ST-FRANÇOIS

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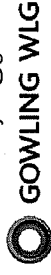
Monitor

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**APPLICATION FOR A NINETEENTH ORDER  
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(Sections 9 and 11 et seq. of the Companies'  
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ORIGINAL

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