

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

MOTION FOR A THIRD ORDER EXTENDING THE STAY PERIOD
(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 August 8, 2013, the Superior Court, Commercial Division, in and for the district of Montreal, issued an order (as amended on August 23, 2013, the "**Initial 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;
2. Pursuant to the Initial Order, Richter Advisory Group Inc. (Richter Groupe Conseil Inc.) was appointed as monitor of the Petitioner (the "**Monitor**") and a stay of proceedings (the "**Stay of Proceedings**") was ordered until and including September 6, 2013 (the "**Stay Period**");

3. In addition to protecting the Petitioner, the Stay of Proceedings issued by this Court also extends to *inter alia* the members of the Petitioner's corporate group (the Petitioner and the other members of its corporate group collectively referred to as the "**Petitioner's Corporate Group**") listed in Schedule "A" thereto and to the persons listed in Schedule "B" thereto (collectively, the "**Non-Petitioner Defendants**"), Schedules A and B being attached to the present Motion. As appears from Schedules "A" and "B", the members of the Petitioner's Corporate Group and the Non-Petitioner Defendants include, *inter alia*, Montreal, Maine & Atlantic Railway Ltd ("**MM&AR**"), (the Petitioner's parent company), as well as their liability insurer, XL Insurance Company Ltd. (the "**Liability Insurer**" or "**XL**");
4. In addition to filing under the CCAA, MM&AR filed Chapter 11 bankruptcy proceedings in the United States Bankruptcy Court, District of Maine (the "**Chapter 11 Case**");
5. 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**");
6. On September 4, 2013, this Court issued an order (the "**First Extension Order**") extending the Stay Period to October 9, 2013, the whole as appears from the Court Record;
7. On October 9, 2013, this Court issued an order (the "**Second Extension Order**") extending the Stay Period to January 28, 2014, the whole as appears from the Court Record;

II. ORDER SOUGHT

8. The Petitioner hereby seeks an extension of the Stay Period in respect of *inter alia* the Petitioner, the other members of the Petitioner's Corporate Group and the Non-Petitioner Defendants until February 11, 2014 for the reasons explained hereinafter;

III. GROUND FOR THIS MOTION

9. Since the issuance of the Second Extension Order, the Petitioner has acted and continues to act in good faith and with due diligence as set forth hereinafter;
10. The Petitioner has made and continues to make significant efforts to maintain the stability of its business and address the concerns of all of its stakeholders including, *inter alia*, the following:
 - i) **The Petitioner's efforts to maintain the Certificate of Fitness**
11. The certificate of fitness No. 02004-3 issued in favour of the Petitioner and MM&AR under the *Canada Transportation Act* (the "**Certificate of Fitness**") expires on February 1, 2014;
12. On January 16, 2014, the Petitioner requested an extension of the Certificate of Fitness until March 31, 2014;

13. On January 10, 2014, the Petitioner and MM&AR were informed by the Liability Insurer that the existing liability insurance policy, which expires on April 1, 2014, will not be renewed. There are ongoing discussions between the Chapter 11 Trustee and XL to determine whether an extension of the policy for an interim period is possible in the event that the sale of the Petitioner's assets is not completed by March 31, 2014;
14. Despite the efforts of the Petitioner, it has become clear that there is no available and affordable source of alternative liability insurance;
15. Without liability insurance, the Petitioner will be unable to maintain the Certificate of Fitness beyond March 31, 2014;
16. Thus, in the event this Court grants the present Motion, as noted in paragraph 12 above, the Petitioner and MM&AR will engage in further discussions with the Agency for the purpose of maintaining the Certificate of Fitness until at least March 31, 2014, and will keep the Court apprised of the developments in this regard;

ii) Cash flow and interim financing

17. Since the Second Extension Order, the Petitioner and MM&AR have continued efforts to maintain operations pending the sale of their assets;
18. The Chapter 11 Trustee was able to obtain \$3 million of Debtor In Possession ("DIP") financing in the form of a line of credit from Camden National Bank ("**Camden**"). The DIP financing is being used to support the operations of both MM&AR and the Petitioner, although it is not sufficient to permit any capital expenditures for necessary track repairs nor the payment of the fees of its professionals, including its legal counsel, the Monitor and the Monitor's legal counsel (the "**Professionals**");
19. As the date hereof, the Petitioner and MM&AR have US\$0.5 million available under the Camden line of credit;

iii) Sale process

20. On September 4, 2013, the Court entered an order adopting the Cross-Border Insolvency Protocol (the "**Protocol**");
21. On October 9, 2013, this Honourable Court authorized MM&A to execute the agreement negotiated by MM&A, the Monitor and the Chapter 11 Trustee with an investment banker, namely Gordian Group, whereby the latter, in accordance with the joint instructions of the Monitor, MM&A and the Chapter 11 Trustee, was to manage a sale process of both MM&A's and MM&AR's assets and business, including to identify potential bidders, to obtain from them expressions of interest and select a stalking horse bidder;
22. Ultimately, MM&A and the Chapter 11 Trustee, with the assistance of Gordian Group and the Monitor, successfully negotiated and concluded a satisfactory stalking horse asset purchase agreement (the "**Stalking Horse APA**") with Railroad Acquisition LLC

(the “**Stalking Horse**”), which provides for the purchase by the Stalking Horse of substantially all the assets of MM&A and MM&AR’s assets;

23. On December 19, 2013, this Honourable Court approved the Stalking Horse APA as well as the Bid Procedures (as defined in the Order of December 19, 2013 approving the Bid Procedures);
24. More particularly, and in order to ensure that MM&A’s estate received the highest and best offer for its assets, MM&A was authorized and directed to conduct, together with the Chapter 11 trustee and the Monitor, the competitive bidding process set out in the Bid Procedures and, to the extent that qualified bids other than the Stalking Horse APA are received before January 17 at 5:00 p.m. eastern time, to conduct, on January 21, 2014, an auction (the “**Auction**”) for the sale of its assets;
25. Finally, on December 19, 2013, this Honourable Court ordered that a hearing shall take place on January 23, 2014 in order to authorize and approve the sale of MM&A’s assets, pursuant to the terms set out in the Stalking Horse APA or pursuant to the terms of an alternative transaction with the Successful Bidder(s) (as these terms are defined in the Bid Procedures) selected at the Auction, as the case may be;

iv) Continuation of operations

26. Since the First and Second Extension Orders, the Petitioner has continued to deploy efforts to maintain the railway transportation services to the fullest extent possible for the benefit of its customers in Québec and to avoid the negative consequences described in the First Motion on:
 - the employees who would have been laid off in the event of the permanent shutdown of the Petitioner’s operations in Canada; and
 - the economies of several towns and municipalities in the province of Québec and elsewhere, which in some respects are highly dependent on railway services, and on third parties (industries and businesses) who rely on freight services;
27. As more fully outlined in the *Motion for a Second Order Extending the Stay Period* (the “**Second Motion**”) the Monitor has received communications from third parties and customers reiterating the importance and necessity of maintaining the railway services on which they are highly dependent. Certain copies of those communications, along with a chart summarizing the businesses that would be affected by the shutdown of the operations of the Petitioner (received by the Monitor from a representative of a Centre local de développement), were filed in support of the Second Motion;
28. In addition to the forgoing, the contemplated sale of the Petitioner’s assets is conditional upon rail service being maintained until closing, at which time the buyer will assume responsibility for same. It is thus crucial that rail service be maintained until the sale of the Petitioner’s assets has been completed;

v) Developments with respect to Property / Business Interruption Insurance Policy

29. On December 19, 2013, the Court entered an Order approving a compromise and settlement with Travelers Property and Casualty Company of America ("**Travelers**"), the whole as appears from the Cour record. A similar order was entered in the Chapter 11 Case on December 24, 2013 (the "**Travelers Settlement**");
30. Pursuant to the Travelers Settlement, an amount of US\$3,800,000 ("**Settlement Payment**") is to be paid to MM&A and MM&AR as a full an final settlement, allocated as follows:
- a) US\$2,470,000 or 65% is to be paid to the Monitor in respect of amounts due to MM&A;
 - b) US\$1,330,000 or 35% is to be paid to the Chapter 11 Trustee in respect of amounts due to MM&AR;
31. As a result of a contestation filed by Wheeling & Lake Erie Railway Company ("**Wheeling**") in respect of the allocation of the Settlement Payment between MM&A and MM&AR, no amounts will be disbursed until further order of the Courts. In this respect, a joint hearing is scheduled for February 26, 2014;
32. Upon receipt of the Settlement Payment, the Monitor will hold the funds in trust pending the resolution of the Wheeling contestation and a further order by the Court permitting it to pay accrued professional fees owing to the Professionals that are secured by the Administration Charge (as defined in the Order of December 19, 2013 approving an increase to the Administration Charge);

vi) Claims process

33. On December 13, 2013, the Petitioner filed a *Motion for an order approving a process to solicit claims and for the establishment of a claims bar date* ("**Claims Motion**") which included a detailed claims package to be completed by all claimants and a bar date of May 31, 2014;
34. The Claims Motion is scheduled to be heard on February 11, 2014 in a joint hearing with the United States Bankruptcy Court, which has been asked to set a claims bar date in the Chapter 11 Case of May 31, 2014;
35. At the February 11, 2014 hearing, this Court will also hear a request to appoint class representatives to represent certain of the derailment victims in this case. The Petitioner and the Chapter 11 Trustee have contested the appointment of the class representatives and their ability to file class claims (among other matters) and the Monitor has expressed its concerns with the terms and conditions surrounding the appointment of the class representatives;

vii) The Monitor

36. Since the Second 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 and have kept the Monitor apprised of all developments. Indeed, the Petitioner has continued to seek the Monitor's assistance with respect to all of the above, including, in particular, the discussions with respect to the sales process and with respect to the preparation of the cashflow discussed below;

viii) Future direction

37. As indicated above, the Petitioner, the Monitor and the Chapter 11 Trustee will work diligently to complete the sale process to maximize the value of its assets and sell the company on a going concern basis, which is in the best interest of all of Petitioner's stakeholders, employees and customers;
38. Following the joint hearing of the Claims Motion, the Petitioner, the Monitor and the Chapter 11 Trustee will implement the claims process to ensure a fair and methodical treatment of all claims;
39. The Petitioner does not anticipate that it will be in a position to file a plan of arrangement prior to the expiry of the extension sought;

IV. CONCLUSION

40. The extension sought in the present motion is necessary in order to provide the Petitioner an adequate period of time in order to work towards completing the sale of its assets and securing whatever additional financing may be required;
41. A statement of Petitioner's projected cash flow prepared by Petitioner for the period beginning January 13, 2014 and ending February 14, 2014, is filed herewith as **Exhibit R-1**;
42. Said cash flow statement was prepared based on the following key assumptions (1) that the Petitioner will continue to pay ordinary course obligations, including obligations to employees; (2) that all of the Petitioner's suppliers will wish to operate on a "cash on delivery" basis going forward; (3) that MM&AR will be allowed, throughout the Chapter 11 Case, to continue to fund Petitioner's expenses and (4) a favourable outcome to the January 23, 2014 hearing in the Chapter 11 Case regarding Wheeling's claim to entitlement over tax credits in the amount of approximately US\$490,000;
43. As appears from the cash flow forecast and based on the assumptions set out above, the Petitioner is of the view that no creditor will suffer any undue prejudice by the extension of the Stay Period;
44. The Petitioner is of the view that extending the Stay Period to February 11, 2014 is appropriate in the present circumstances;

45. As appears from the above, the Petitioner has acted and continues to act in good faith and with the utmost diligence;
46. The Monitor has indicated to the Petitioner that it supports the present request for an extension of the Stay Period;
47. The Petitioner respectfully requests that this Honourable Court extend the Stay Period to February 11, 2014;
48. The Petitioner respectfully submits that the notices given the presentation of the present Motion are proper and sufficient;
49. The present Motion is well founded in fact and in law;

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

GRANT the present *Motion for a Third Order Extending the Stay Period* (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 February 11, 2014 the whole subject to all the other terms of the Initial Order;

DECLARE that the Initial Order, as amended on August 23, 2013, September 4, 2013 and October 9, 2013 (amendment of the Stay Period) shall remain otherwise unchanged;

ORDER the provisional execution of the order notwithstanding any appeal, without the necessity of furnishing any security.

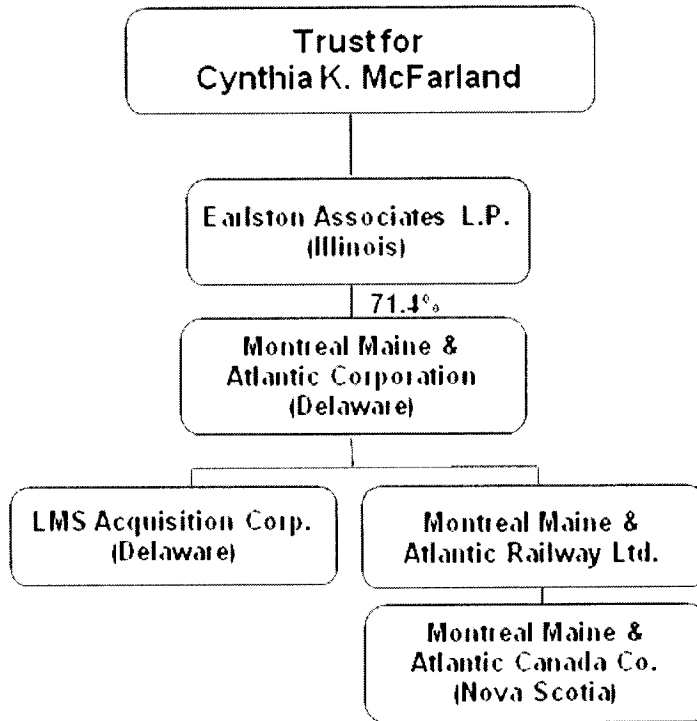
THE WHOLE without costs, save and except in the event of contestation.

MONTREAL, January 20, 2014


GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

SCHEDULE « A »

MONTREAL, MAINE & ATLANTIC CORPORATE GROUP



SCHEDULE « B »

NON PETITIONNERS DEFENDANTS :

MONTREAL, MAINE & ATLANTIC CORPORATION
MONTREAL, MAINE & ATLANTIC RAILWAY LTD
EARLSTON ASSOCIATES L.P.
EDWARD BURKHARDT
ROBERT GRINDROD
GAYNOR RYAN
DONALD GARNER JR.
JOE McGONIGLE
THOMAS HARDING
XL INSURANCE COMPANY LIMITED
XL GROUP PLC

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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(MONTREAL, MAINE & ATLANTIQUE CANADA
CIE)

PETITIONER

and

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

MONITOR


NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present *Motion for a third order extending the stay period* will be presented for adjudication before the the honourable Gaétan Dumas, j.s.c., sitting in commercial division, in and for the district of Saint-François, on **January 23, 2014**, in **room 1**, of the Sherbrooke Courthouse, located at 375, rue King Ouest, Sherbrooke, at 10:00 a.m. or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, January 20, 2014


GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUÉBEC
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CIE)

PETITIONER

and

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

MONITOR

LIST OF EXHIBITS

Exhibit : R-1: Cash flow through February 14, 2014.

MONTREAL, January 20, 2014


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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(MONTREAL, MAINE & ATLANTIQUE CANADA
CIE)**

Debtor-PETITIONNER

-and-
RICHTER ADVISORY GROUP INC.

MONITOR

BL0052

**MOTION FOR A THIRD ORDER EXTENDING
THE STAY PERIOD (SECTIONS 9 AND 11
ET SEQ. OF THE COMPANIES CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, C. C-36
("CCAA") AND EXHIBIT R-1**

ORIGINAL

Me Patrice Benoit BL0052
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Canada H3B 3P4
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INIT.: PB/cl c/o 3511

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

-et-

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

Contrôleur

-et-

RAILROAD ACQUISITION HOLDINGS LLC

Mise en cause

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 : 450-11-000167-134
Nom de l'expéditeur : Aubrey Cummings
Numéro du télécopieur émetteur : 207-774-1127
Lieu de la transmission : Portland, Maine
Date de la transmission : Le 21 janvier 2014
Heure de transmission : 08:44

Montréal, ce 21 janvier 2014


Patrice Benoit

GOWLING LAFLEUR HENDERSON S.E.N.C.R.L., S.R.L.

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUÉBEC
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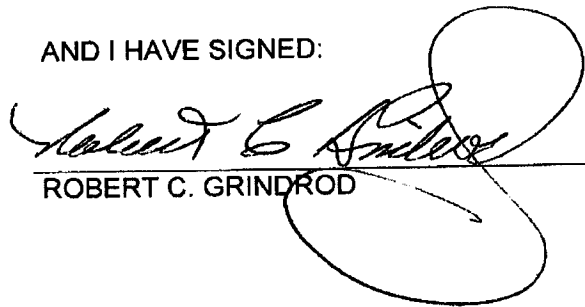
MONITOR

AFFIDAVIT OF ROBERT C. GRINDROD

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

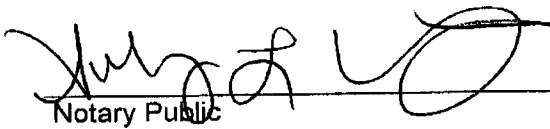
1. I am the President and Chief Executive Officer of Petitioner;
2. All the facts alleged in the present *Motion for a Third Order Extending the Stay Period* are true.

AND I HAVE SIGNED:



ROBERT C. GRINDROD

SWORN TO before me in Bangor, Maine,
this 21st day of January 2014



Notary Public

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



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

-and-
**RAILROAD ACQUISITION HOLDINGS LLC et
als.**

Mis en cause

BL0052

AFFIDAVIT OF ROBERT GRINDROD
(RE: MOTION FOR A THIRD ORDER EXTENDING THE
STAY PERIOD)

ORIGINAL

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