

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 FIFTH 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. The Stay Period has been extended by this Court on four previous occasions with the most recent extension having been granted on February 11, 2014 (the "**Fourth Extension Order**"), the whole as appears from the Court Record;
7. The Fourth Extension Order provided for a short extension of the Stay Period to February 26, 2014 in light of the fact that the financial resources necessary to allow the Petitioner to pay its counsel, the Monitor and Monitor's counsel (the "**Professionals**") had yet to be confirmed going forward;
8. For similar reasons, certain other motions presentable on February 11, 2014 were postponed to February 26, 2014, namely:
 - a) the Petitioner's *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;
 - b) the motions filed by representatives of certain derailment victims regarding class representation and an alternative claims process (collectively, the "**Class Motions**");
9. On February 11, 2014, this Court also heard a *Motion for Directions* presented by the Monitor, which supported the *Motion of Official Committee of Victims Pursuant to the Cross-Border Insolvency Protocol Requesting Joint Status Conference before U.S. and Canadian Court* presented on the same day in the Chapter 11 Case;
10. The Honourable Justice Louis Kornreich of the U.S. Bankruptcy Court, District of Maine, granted the request for a joint status conference in the Chapter 11 Case, the whole subject to the approval of this Court;

11. On February 12, 2014, this Court issued a letter advising that it would grant the request for a joint status conference. Said letter was followed on February 17, 2014 with a judgment formally granting the request for a joint status conference and declaring that a "joint procedural scheduling conference" would be held on February 26, 2014 at 10:00 a.m. at the U.S. Courthouse, Bangor, Maine, as appears from the Court record;
12. In light of the forgoing, it will be impossible to proceed on any motion in this matter on February 26, 2014;
13. It is the Petitioner's understanding that the Claims Motion and Class Motions will thus be postponed to March 12, 2014, hence the extension sought herein to that same date;
14. Furthermore, with respect to the short extension sought, the Petitioner has yet to confirm the financial resources necessary to pay the Professionals and continue the CCAA process;

II. ORDER SOUGHT

15. 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 March 12, 2014 for the reasons explained above and hereinafter;

III. GROUND FOR THIS MOTION

16. Since the issuance of the Initial Order, the Petitioner has acted and continues to act in good faith and with due diligence, the whole as more fully outlined in the *Motion for a Fourth Order Extending the Stay Period* ("**Fourth Motion**"), the content of which is incorporated herein by reference;
17. As of the date of the Fourth Extension Order, the \$3 million of Debtor In Possession ("**DIP**") financing, provided in the form of a line of credit from Camden National Bank ("**Camden**"), had been almost entirely exhausted and the Petitioner and MM&AR required additional credit in order to fund operations pending the sale of their assets to Railroad Acquisition Holdings LLC;
18. Based on this need for additional funds, the Chapter 11 Trustee approached Camden to determine Camden's willingness to increase the DIP financing by up to US\$1.8 million. Camden agreed to this increase and, on February 11, 2014, a judgment was rendered in the Chapter 11 Case increasing the available DIP financing by US\$750,000;
19. Discussions were then conducted by the Chapter 11 Trustee in view of increasing the additional DIP financing from US\$750,000 to US\$1,350,000. As of the date hereof, the Chapter 11 Trustee has confirmed to the Petitioner that the increase has been consented to by all relevant parties and that a form order was being submitted to the court in the Chapter 11 Case;

IV. CONCLUSION

20. The extension sought in the present motion is necessary in order to provide the Petitioner an adequate period of time in order to secure the financial resources necessary to continue the CCAA process and to determine the framework for the process going forward;
21. A statement of Petitioner's projected cash flow prepared by Petitioner for the period beginning February 3, 2014 and ending March 14, 2014, is filed herewith as **Exhibit R-1**;
22. 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 and (3) that MM&AR will be allowed, throughout the Chapter 11 Case, to continue to fund Petitioner's expenses;
23. 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;
24. The Petitioner is of the view that extending the Stay Period to March 12, 2014 is appropriate in the present circumstances;
25. As appears from the above, the Petitioner has acted and continues to act in good faith and with the utmost diligence;
26. The Monitor has indicated to the Petitioner that it supports the present request for an extension of the Stay Period;
27. The Petitioner respectfully requests that this Honourable Court extend the Stay Period to March 12, 2014;
28. The Petitioner respectfully submits that the notices given the presentation of the present Motion are proper and sufficient;
29. 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 Fifth 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 March 12, 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, October 9, 2013, January 23, 2014 and February 11, 2014 (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, February 19, 2014

A handwritten signature in blue ink, appearing to read "Gowling Lafleur Henderson", is written over a horizontal line.

GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

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

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 : Gaynor Ryan
Numéro du télécopieur émetteur : 207-848-4345
Lieu de la transmission : Portland, Maine
Date de la transmission : Le 20 février 2014
Heure de transmission : 12:35

Montréal, ce 20 février 2014



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

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUÉBEC
DISTRICT OF SAINT-FRANÇOIS
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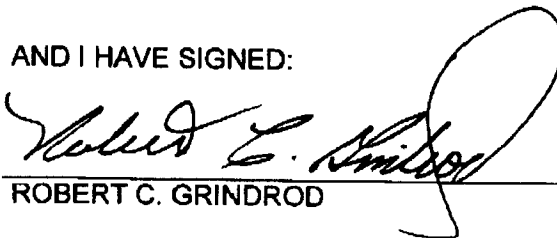
MONITOR

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:

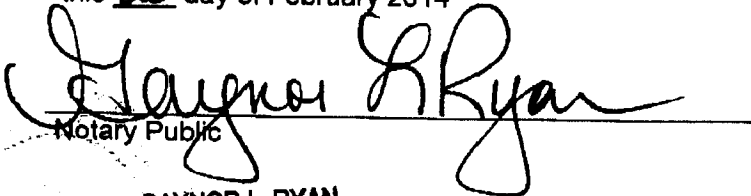
1. I am the President and Chief Executive Officer of Petitioner ;
2. All the facts alleged in the present *Motion for a Fifth Order Extending the Stay Period* are true.

AND I HAVE SIGNED:



ROBERT C. GRINDROD

SWORN TO before me in Bangor, Maine,
this 20 day of February 2014

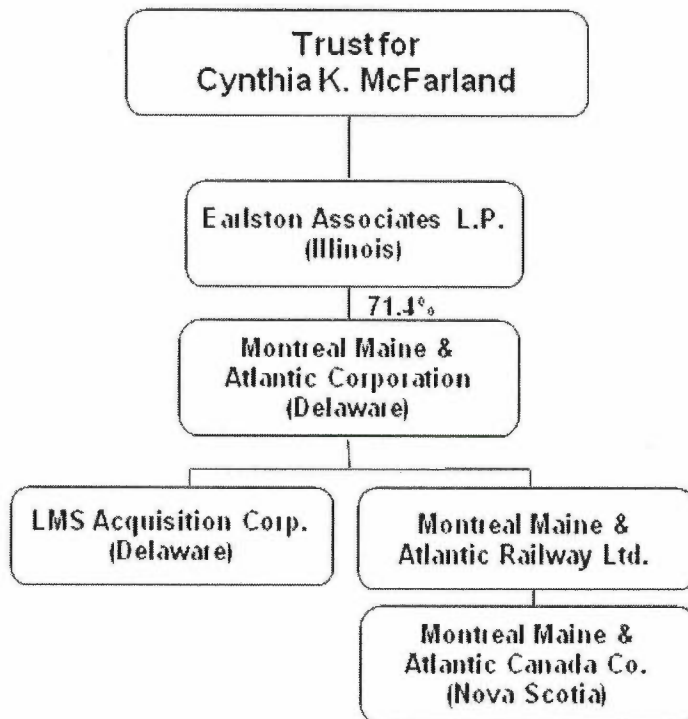


Notary Public

GAYNOR L. RYAN
Notary Public, Maine
My Commission Expires May 4, 2015

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

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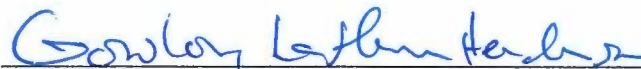
NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present *Motion for a fifth order extending the stay period* will be adjudicated upon on an *ex parte* basis by the honourable Gaétan Dumas, j.s.c., sitting in chambers, in and for the district of Saint-François, the whole subject to any further order of the Court in the event that any member of the Service List gives notice of its intention to contest the motion, which notice must be provided by email to the Service List by no later than 3:00pm on February 21, 2014.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, February 19, 2014



GOWLING LAFLEUR HENDERSON LLP

Attorneys for Petitioner

CANADA

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

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PETITIONER

and

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

MONITOR

LIST OF EXHIBITS

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

MONTREAL, February 19, 2014



GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

R-1

Montreal, Maine & Atlantic Railway & Montreal Maine & Atlantic Canada Co. Budget thru 3/14/14 (in USD)		FORECAST						
		W/E 07/02/2014	W/E 14/02/2014	W/E 21/02/2014	W/E 28/02/2014	W/E 07/03/2014	W/E 14/03/2014	Total
Net Freight Revenue	195,000	243,144	256,244	272,144	319,855	316,455	1,602,842	
MOW Rental Income	8,500	-	-	-	8,500	-	17,000	
Switching	40,000	-	-	-	40,000	-	80,000	
Total Frt/Switch Revenue	<u>243,500</u>	<u>243,144</u>	<u>256,244</u>	<u>272,144</u>	<u>368,355</u>	<u>316,455</u>	<u>1,699,842</u>	
Receipts:								
Transportation Revenue								
Freight Revenue and Zone Switching	\$ 150,000	\$ 179,700	\$ 179,700	\$ 179,700	\$ 188,750	\$ 266,597	1,144,447	
MCC Pre 10/18 Collections	-	-	-	30,000	40,000	40,000	110,000	
ISS Settlement	25,000	-	-	-	25,000	-	50,000	
Sub Total - Transportation Revenue	<u>175,000</u>	<u>179,700</u>	<u>179,700</u>	<u>209,700</u>	<u>253,750</u>	<u>306,597</u>	<u>1,304,447</u>	
Other Operating Revenue								
Switching & Miscellaneous	-	-	-	-	-	40,000	40,000	
Railcar Storage	-	-	-	10,000	-	-	10,000	
Contract Shop & Car Repairs	-	-	-	-	-	-	-	
Equipment Rental	-	8,500	-	-	-	8,500	17,000	
45G Credit	-	-	-	-	-	-	-	
Car Hire Revenue (Payable)	-	-	-	50,000	-	-	50,000	
Sub Total - Other Operating Revenue	<u>-</u>	<u>8,500</u>	<u>-</u>	<u>60,000</u>	<u>-</u>	<u>48,500</u>	<u>117,000</u>	
Total Cash Receipts	<u>175,000</u>	<u>188,200</u>	<u>179,700</u>	<u>269,700</u>	<u>253,750</u>	<u>355,097</u>	<u>1,421,447</u>	
Disbursements:								
Transportation Revenue Offsets								
ISS payout	-	-	-	-	200,000	-	200,000	
NBSR, MNR, SLQ, CN	-	-	-	-	-	-	-	
Sub Total - Transportation Revenue Offsets	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>200,000</u>	<u>-</u>	<u>200,000</u>	
Payroll & Related								
Salaries, Wages & Commissions US	-	236,049	-	236,049	-	226,049	698,148	
Employee Benefits & Claims - US	60,000	48,150	48,150	48,150	48,150	48,150	300,750	
Salaries, Wages & Commissions CDN	120,000	-	131,694	-	126,694	-	378,388	
Group Health, pension and union dues- CDN	14,400	788	15,188	788	40,188	788	72,138	
Sub Total - Payroll & Related	<u>194,400</u>	<u>284,987</u>	<u>195,031</u>	<u>284,987</u>	<u>215,031</u>	<u>274,987</u>	<u>1,449,423</u>	
Materials & Supplies								
Diesel Fuel	60,000	84,662	84,662	84,662	79,662	79,662	473,312	
Inventory Payments	7,500	7,500	5,000	5,000	5,000	5,000	35,000	
Material/Repair Costs US	40,000	30,000	12,500	12,500	12,500	10,000	117,500	
Material/Repair Costs CDN	30,000	12,500	12,500	12,500	12,500	10,000	90,000	
Sub Total - Material & Supplies	<u>137,500</u>	<u>134,662</u>	<u>114,662</u>	<u>114,662</u>	<u>109,662</u>	<u>104,662</u>	<u>715,812</u>	
Freight Car & Locomotive Expense								
Leases - Car	-	35,000	-	-	-	35,000	70,000	
Leases - Locomotive	38,000	-	-	-	18,200	-	56,200	
Sub Total - Freight Car & Locomotive	<u>38,000</u>	<u>35,000</u>	<u>-</u>	<u>-</u>	<u>18,200</u>	<u>35,000</u>	<u>126,200</u>	
Other Operating Costs								
Rent	16,000	-	-	-	16,000	-	32,000	
Electricity	9,000	-	-	-	9,000	-	18,000	
Heat at Derby maintenance facility	5,400	5,400	5,400	5,400	5,400	5,400	32,400	
Insurance Payments	29,906	43,500	-	-	-	-	73,406	
Bank Chges /Interest Exp/Points	-	-	1,000	1,000	15,363	1,000	18,363	
2% Points for New Financing	-	54,000	-	-	-	-	54,000	
Other Closing Costs	-	-	20,000	-	-	-	20,000	
Rail Testing	-	15,000	-	-	-	-	15,000	
Restructuring Related	-	32,400	-	-	-	-	32,400	
Phone, Internet, Radio, Other expenses	33,250	43,250	43,250	55,000	43,250	43,250	261,250	
Sub Total - Rent, Heat & Utilities	<u>93,556</u>	<u>193,550</u>	<u>69,650</u>	<u>61,400</u>	<u>149,013</u>	<u>49,650</u>	<u>616,819</u>	
Total Operating Disbursements	<u>463,456</u>	<u>648,199</u>	<u>379,344</u>	<u>461,049</u>	<u>691,907</u>	<u>464,299</u>	<u>3,108,255</u>	
Net Cash Inc(Dec) From Ops	<u>(288,456)</u>	<u>(459,999)</u>	<u>(199,644)</u>	<u>(191,349)</u>	<u>(438,157)</u>	<u>(109,202)</u>	<u>(1,686,808)</u>	
SUMMARY								
Cash Beginning	224,206	215,750	100,000	100,000	100,000	100,000	224,206	
Net Weekly Cash Flow	(288,456)	(459,999)	(199,644)	(191,349)	(438,157)	(109,202)	(1,686,808)	
Financing Advance(Paydowns)	280,000	344,249	199,644	191,349	438,157	109,202	1,562,602	
Cash Ending	<u>\$ 215,750</u>	<u>\$ 100,000</u>	<u>\$ 100,000</u>	<u>\$ 100,000</u>	<u>\$ 100,000</u>	<u>\$ 100,000</u>	<u>\$ 100,000</u>	
Principal Bal New Financing	<u>2,692,159</u>	<u>2,972,159</u>	<u>3,316,408</u>	<u>3,516,052</u>	<u>3,707,401</u>	<u>4,145,559</u>	<u>2,692,159</u>	
Net Weekly Cash Advance(Paydown)	<u>280,000</u>	<u>344,249</u>	<u>199,644</u>	<u>191,349</u>	<u>438,157</u>	<u>109,202</u>	<u>1,562,602</u>	
End of Period Principal Balance	<u>2,972,159</u>	<u>3,316,408</u>	<u>3,516,052</u>	<u>3,707,401</u>	<u>4,145,559</u>	<u>4,254,761</u>	<u>4,254,761</u>	

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CIE)**

Debtor-PETITIONNER

-and-

RICHTER ADVISORY GROUP INC.

MONITOR

BL0052

**MOTION FOR A FIFTH 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**

COPY

Me Patrice Benoit
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INIT.: PB/cl

BL0052

c/o 3511