

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. ("**MMA**"), and Richter Advisory Group Inc. (Richter Groupe Conseil Inc.) was appointed to act as monitor to MMA (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 MMA was not afforded the protection of the CCAA;
3. In its petition for the Initial Order, MMA 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 dated October 4, 2013;
 6. On October 9, 2013, this Court granted the October 4, 2013 motion and increased the Administration Charge to the amount of \$2,500,000;
 7. On December 13, 2013, the Petitioners requested that the Administration Charge be increased to the amount of \$5,000,000 for the reasons set out in Petitioners' Motion to Increase the Amount of the Administration Charge dated December 13, 2013 ("Motion");
 8. Further to discussions between the Petitioners, the Federal Railroad Administration ("FRA") and the Province of Quebec, it was agreed to increase the charge by an amount of \$750,000;
 9. On December 19, 2013, this Court ordered that the amount of the Administration Charge be increased to \$3,250,000;
 10. The increase approved by this Court in December therefore allowed the sale process to proceed to the motion which was held on January 21, 2014 and this Court's approval of the sale on January 23, 2014;
 11. As of January 31, 2014, the unpaid Restructuring Fees total approximately \$3,300,000 (including taxes) and the Administration Charge is no longer sufficient to secure the payment of any Restructuring Fees to be incurred to complete the further steps which would normally be required in a CCAA case such as the present case and those steps which are particular to this case;
 12. Those steps can be summarized as follows:
 - 12.1 Ensuring that the conditions precedent to closing the Court authorized sale of MMA's assets are satisfied or waived and that the sale is closed in due time;
 - 12.2 Ensuring the proper distribution of the sale proceeds;
 - 12.3 Extending if need be the stay period under the Initial Order;
 - 12.4 Dealing with the Wheeling & Lake Erie Railway Company contestation of the allocation between MMA Canada and MMA USA of the amount of the Travelers Settlement;

- 12.5 Negotiating the payment by XL Insurance Company Limited (“XL”) of the insurance coverage of 25 million dollars to the Monitor in trust for the benefit of those creditors entitled thereto;
- 12.6 Determining which creditors are entitled to the XL insurance coverage;
- 12.7 Launching a claims process and assisting creditors with the filing of claims;
- 12.8 Negotiating with potentially liable third parties for contributions to a distribution fund in exchange for full and final releases;
- 12.9 Reviewing claims filed through the claims process;
- 12.10 Determining the scheme of distribution of the XL 25 million dollars and the third party contributions;
- 12.11 Filing a plan of arrangement, holding a creditors’ meeting to vote on the plan and submitting the plan for Court approval;
- 12.12 Distributing the XL 25 million dollars and the third party contributions;
13. It is estimated that the total cost of this CCAA process including the steps described above would be between 5 and 7 million dollars depending greatly on the extent of the review of the claims which will be filed through the claims process;
14. Given the uncertainty of the amount which will ultimately be available for distribution, it has been suggested that the claims process be launched but that a substantive review of the claims be delayed until the stakeholders understand what is available for distribution;
15. The Monitor has agreed with that suggestion and in that context estimates that the fees to launch the claims process and proceed to a first phase review of such claims, complete the sale of MMA’s assets, litigate the allocation of the proceeds of the Travelers Settlement, continue discussions with XL and hopefully reach a settlement allowing the payment of the indemnity owed under the XL Policy, would total approximately 1.5 to 2 million dollars excluding taxes, which represents an additional charge of approximately 1.7 to 2.3 million dollars including taxes and an amended total Administration Charge of approximately 5 to 5.5 million dollars;
16. The Monitor and MMA believe that it is in the interest of MMA’s stakeholders 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 as described above;
17. The Monitor and MMA have discussed the foregoing extensively with the FRA and the province of Quebec and had done so before the hearing of February 11, 2014;
18. Neither the FRA nor the province of Quebec would agree to an increase of the amount of the Administration Charge;

19. As a result, the extension of the stay period which was sought by MMA at the February 11, 2014 hearing was limited to a period of two (2) weeks in order to ascertain whether funding to allow the CCAA process to be pursued could be secured;
20. On February 13, 2014, the Monitor invited some of the major stakeholders to a conference call to be held on February 17, 2014 to discuss funding possibilities;
21. A conference call was held but did not result in any offer to fund an on-going process despite the Monitor's advice that without further funding the CCAA process would unfortunately come to an end;
22. Despite the absence of further funding and that the fees of the Restructuring Professionals for February 2014 were not secured, the Restructuring Professionals have continued to act in this case on all matters including attendance at the Joint Status Conference held on February 26, 2014 in the hope, once again, of securing funding to allow the CCAA process to continue;
23. Throughout discussions with various parties, both during and prior to the Joint Status Conference, it became quite clear to the Monitor that no one wishes the CCAA process to come to an end and that most stakeholders wish the process to continue;
24. It also became clear that notwithstanding the foregoing, none of the stakeholders are, as of the date hereof, willing to fund the process or allow an increase of the amount of the Administration Charge although discussions were held between certain parties in order to provide funding if certain conditions are met;
25. The Monitor and MMA are therefore compelled to bring this motion seeking an increase of the Administration Charge to i) at least secure the Restructuring Fees incurred to date (approximately 3.6 million dollars (including taxes) as at February 28, 2014) and those required to preserve the rights of MMA and its creditors to the Travelers Settlement amount and to close the sale of MMA's assets and ii) allow the CCAA process to continue in order to pursue the discussions which began during the Joint Status Conference with respect to further funding of the process;
26. The increase being sought is an amount of \$750 000, assuming a closing of the sale by March 31, 2014;

WHEREFORE, MAY IT PLEASE THE COURT TO:

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:

DECLARE *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 \$4,000,000 (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, March 10, 2014

MONTREAL, March 10, 2014

Gowling Lafleur Henderson LLP

Woods LLP

GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

WOODS LLP
Attorneys for the Monitor

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(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:

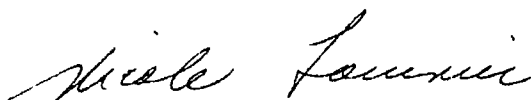
1. I am an authorized representative of the Monitor;
2. All the facts alleged in the *Motion to increase the amount of the administration charge* are true.

AND I HAVE SIGNED:

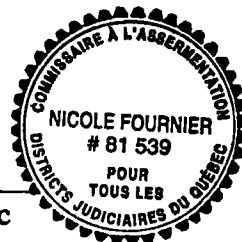


ANDREW ADESSKY

SWORN TO before me in Montreal, Quebec,
this 10th day of March 2014



Commissioner of oaths for the province of Quebec



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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 1** of the Sherbrooke Courthouse, located at 375 King Street West in Sherbrooke, on **March 12, 2014, at 10:00 a.m.** or so soon as counsel may be heard.


DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, March 10, 2014



GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

MONTREAL, March 10, 2014



WOODS LLP
Attorneys for the Monitor

CANADA

SUPERIOR COURT
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CIE)

PETITIONER

and

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

MONITOR

SERVICE LIST

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No : 450-11-000167-134

SUPERIOR COURT
DISTRICT OF ST-FRANÇOIS
PROVINCE OF QUÉBEC

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)

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)

ORIGINAL

Mtre. Sylvain Vauclair
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