

CANADA

**SUPERIOR COURT**  
(Commercial Division)

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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**

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**MOTION TO REQUEST A SUPPLEMENTAL ADMINISTRATION CHARGE**  
(Section 11.52 of the *Companies' Creditors Arrangement Act* and paragraph 54 of the *Initial Order*)

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**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 its petition for the Initial Order, MMA requested the creation of an administration charge (the "**Administration Charge**") 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;

3. On March 10, 2014 the Petitioners requested an increase of the amount of the Administration Charge and on March 14, 2014, this Honourable Court increased the Administration Charge to an amount of \$4,000,000;
4. As appears from the Petitioners' "*Motion to increase the amount of the Administration Charge*" dated March 10, 2014 ("**Motion**") the purpose of the increase of the charge to \$4,000,000 was to allow MMA's CCAA process to be pursued in order i) to preserve the rights of MMA and its creditors in the Travelers Settlement amount, ii) conclude the sale of MMA's assets and iii) to reach an agreement with various stakeholders with respect to the funding of the remaining steps of this CCAA case, including without limitation the following:
  - 4.1 Ensure 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;
  - 4.2 Ensure the proper distribution of the sale proceeds;
  - 4.3 Extend as required the stay period under the Initial Order;
  - 4.4 Respond to the Wheeling & Lake Erie Railway Company contestation of the allocation amount between MMA Canada and MMA USA of the amount of the Travelers Settlement Payment;
  - 4.5 Negotiate 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;
  - 4.6 Determine which creditors are entitled to the XL insurance coverage;
  - 4.7 Launch a claims process and assisting creditors with the filing of claims;
  - 4.8 Negotiate with third parties potentially liable for the damages suffered as a result of the Derailment ("Potentially Liable Third Parties") for contributions to a distribution fund in exchange for full and final releases;
  - 4.9 Review the claims filed through the claims process;
  - 4.10 Determine the scheme of distribution of the XL 25 million dollars and the third party contributions;
  - 4.11 File a plan of arrangement, hold a creditors' meeting to vote on the plan and submit the plan for Court approval;
  - 4.12 Distribute the XL 25 million dollars and the third party contributions;
5. As appears from the Motion, the Administration Charge is insufficient to secure the payment of the Restructuring Fees which would be incurred to complete the steps mentioned above;

6. Over the course of the past month, discussions with various stakeholders have led to an agreement in principle that the further funding of MMA's CCAA process should be secured on assets other than the Travelers Settlement Payment and the proceeds of the sale of MMA's assets;
7. Those stakeholders have agreed in principle that the Restructuring Fees in excess of the first \$4,000,000 shall be, with the authorization of this Honourable Court, secured by a charge on any amount to be paid i) by XL, but excluding the amount of 25 million dollars of insurance coverage under its insurance policy, ii) by any other insurers, iii) by the insureds under the XL insurance policy or any other insurance policies, as well as iv) by Potentially Liable Third Parties, in each case as consideration for full and final releases to be granted through the present CCAA proceedings;
8. The Petitioners therefore request an amendment to the Initial Order and the creation of a supplemental charge in the amount of \$1,800,000 to secure the Restructuring Fees in excess of \$4,000,000 which will be incurred to pursue the CCAA process, it being understood that an increase of this supplemental charge will be discussed with the various stakeholders at a later date, and that an order of this Honourable Court will be sought at that time to increase that charge, in light of the developments to occur in this case;
9. Any capitalized terms not defined herein shall have the meaning ascribed thereto in the Monitor's 8<sup>th</sup> Report which will be filed in the court record.

**WHEREFORE, MAY IT PLEASE THE COURT TO:**

**GRANT** the present Motion to request a Supplemental Administration Charge;

**ORDER** that the Initial Order be re-amended and that the following paragraph be added thereto:

*41.1 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 , in excess of the amount of the Administration Charge, be entitled to the benefit of and are hereby granted a supplemental charge and security in the Supplemental Property to the extent of the aggregate amount of \$3,000,000 (the "Supplemental Administration Charge"), having the priority established by paragraphs [42] and [43] hereof and that the Supplemental Property for the purposes of the Supplemental Administration Charge means any amount to be paid i) by XL, but excluding the amount of 25 million dollars of insurance coverage under its insurance policy, ii) by any other insurers, iii) by the insureds under the XL insurance policy or any other insurance policies, as well as iv) by Potentially Liable Third Parties, in each case as consideration for full and final releases to be granted through the present CCAA proceedings;*

**ORDER** that paragraph 42 of the Initial Order be amended as follow:

**42. DECLARES** that the priorities of the Administration Charge, the Supplemental Administration Charge and any possible charge in favor of the Directors that may be granted in their favor pursuant to a further order of this Court (collectively, the "CCAA Charges"), as between them with respect to any Property to which they apply, shall be as follows:

- a) first, the Administration Charge;
- b) second, the Supplemental Administration Charge;
- c) Third, any charge in favour of the Directors that may be granted in their favour pursuant to a further order of this Court;

**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 26, 2014

MONTREAL, March 26, 2014

*Gowling Lafleur Henderson LLP*  
**GOWLING LAFLEUR HENDERSON LLP**  
Attorneys for Petitioner

*Woods LLP*  
**WOODS LLP**  
Attorneys for the Monitor

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**Monitor**

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**NOTICE OF PRESENTATION**

**TO: SERVICE LIST (see attached)**

**TAKE NOTICE** that the present *Motion to request a Supplemental Administration Charge* will be presented for adjudication before the Honourable Gaétan 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 28, 2014, at 10:00 a.m.** or so soon as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

MONTREAL, March 26, 2014

MONTREAL, March 26, 2014

*Gowling Lafleur Henderson LLP*  
**GOWLING LAFLEUR HENDERSON LLP**  
Attorneys for Petitioner

*WOODS LLP*  
**WOODS LLP**  
Attorneys for the Monitor

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**AFFIDAVIT OF ANDREW ADESSKY**

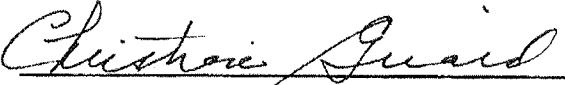
I, the undersigned, Andrew Adessky, partner at Richter Advisory Group Inc., doing business at 1981 McGill College, 11<sup>th</sup> Floor, Montreal, Québec, H3A 0G6, solemnly declare as follows:

1. I am an authorized representative of the Monitor;
2. All the facts alleged in the *Motion to request a Supplemental Administration Charge* are true.

AND I HAVE SIGNED:

  
\_\_\_\_\_  
ANDREW ADESSKY

SWORN TO before me in Montreal, Quebec,  
this 26<sup>th</sup> day of March 2014

  
\_\_\_\_\_  
Commissioner of oaths for the province of Quebec



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(Commercial Division)

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PROVINCE OF QUÉBEC  
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**PETITIONER**

and

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**MONITOR**

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**SERVICE LIST**

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(MONTREAL, MAINE & ATLANTIQUE CANADA CIE)

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**SUPERIOR COURT**  
(Commercial Division)  
DISTRICT OF SAINT-FRANÇOIS  
PROVINCE OF QUÉBEC

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(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*

and

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

*MONITOR- PETITIONER*

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**MOTION TO REQUEST A SUPPLEMENTAL  
ADMINISTRATION CHARGE**

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**ORIGINAL**

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*Mtre. Sylvain Vaclair*

File no.: 5430-3

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