

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.);**

Petitioner/Monitor

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**MOTION FOR THE 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 PETITIONERS 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 have been 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 "**Bankruptcy Court**") for relief under Chapter 11 of the U.S. Bankruptcy Code (the "**Bankruptcy 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 Bankruptcy Case (the "**Trustee**");
6. By the present Motion, MMAC and the Monitor seek an order approving the fees and disbursements of MMAC's counsel, the Monitor and the Monitor's counsel (the "**Professionals**") including a risk premium;

## II. BACKGROUND

### The sale of MMA and MMAC's assets

7. On January 23, 2014, the CCAA Court authorized the sale of MMAC's assets to Railroad Acquisition Holdings LLC ("**RAH**") following a stalking horse bid process wherein the bid of RAH was declared the successful bid;
8. MMAC, the Professionals and the Trustee worked diligently to reach a consummation of the sale, which was not only aimed at yielding the highest possible sale price but also at maintaining the railroad operations as a going concern, thereby preserving jobs in the area and preserving a service that was essential to the local economy;
9. That sale finally closed on May 15, 2014 in respect of MMA's assets and June 30, 2014 in respect of MMAC's assets, as appears from the Monitor's Certificate filed in the Court record;
10. In total, the sale resulted in a US\$14,250,000 net payment to MMA and MMAC;
11. The RAH sale proceeds were used, among other things, to (i) pay secured creditors; (ii) pay real estate taxes in Quebec, Maine and Vermont; (iii) pay employees of MMA and MMAC on account of severance, vacation and medical claims; and (iv) make a partial payment in respect of the accrued and unpaid fees and disbursements of the Professionals;
12. Prior to the partial payment made from the RAH sale proceeds, the only other payment made to the Professionals was in the aggregate amount of US\$2,470,000 following a settlement reached with the Travelers Property and Casualty Company of America (property insurers of MMA and MMAC). At the time of that payment, the outstanding fees and disbursements of the Professionals exceeded \$4 million;
13. By the time a partial payment was made from the RAH sale proceeds in the amount of \$1,373,156.00, the accrued and unpaid fees and disbursements of the Professionals totalled approximately \$2,000,000 as at July 31, 2014. This unpaid amount included taxes but excluded fees and disbursements incurred after mid-March 2014 in connection with the claims process and related matters;

14. Since these partial payments, and essentially since mid-March 2014, the Professionals have diligently and devotedly worked to advance this matter for the benefit of all stakeholders without any guarantee of payment, the whole as more fully summarized below;

#### **Settlement negotiations**

15. Following CCAA Court's approval of the sale of MMAC's assets in January 2014, the focus of these CCAA proceedings shifted almost entirely to the establishment of a claims process and to negotiations with potentially liable third parties ("**Third Parties**") predicated on constituting a settlement fund with a view to providing compensation to the victims of the Derailment in exchange for releases;
16. By the time MMAC filed for protection under the CCAA, a number of lawsuits had been filed against MMA, MMAC and a variety of Third Parties in both Canada and the United States;
17. Recognizing an opportunity for the global settlement of all claims relating to the Derailment, the Professionals and the Trustee worked collectively from the commencement of these proceedings to engage in settlement discussions with Third Parties;
18. While the Professionals remained optimistic throughout the process, the road to constituting the settlement fund would prove to be far more arduous than even they had anticipated;
19. Circumstances were such that the parties to the various civil suits were reluctant to engage in direct settlement discussions at such an early stage for fear of showing signs of weakness;
20. The Professionals, on the other hand, were not directly involved in the litigation and, because of their role in these CCAA proceedings and the Bankruptcy Case, were uniquely positioned to act as independent and credible intermediaries for settlement;
21. Initial discussions were held under very strict confidentiality as the Professionals and the Trustee approached Third Parties in an attempt to negotiate financial contributions to a settlement fund;
22. Naturally, there was no point in negotiating contributions to a fund if creditors were not in agreement with the contributions;
23. Therefore, in conjunction with the discussions underway with Third Parties, the Professionals and the Trustee approached those creditors that would hold an overwhelming majority of the votes in respect of any plan, namely the Province of Quebec, the Class Representatives and the Wrongful Death Victims (collectively, the "**Major Stakeholders**");
24. Simply put, aside from the Professionals and the Trustee, very few parties, if any, initially believed there was any reasonable chance of concluding a global settlement of claims

relating to the Derailment, let alone one with the level of contributions negotiated and obtained in this matter;

25. At the time, the only funds that would seemingly become available to creditors were the proceeds of the \$25 million XL Insurance policy, which the Professionals have always agreed would not be affected by any charge in their favour;
26. As a result of this skepticism, it would prove to be months following the start of negotiations before MMAC and the Monitor could begin to report to the CCAA Court on the existence of those negotiations, let alone the actual content;
27. MMAC referred to potential settlement discussions with Third Parties for the first time in February 2014, within the scope of its *Motion for a Fourth Order Extending the Stay Period*, which stated that it would be “*Entering into discussions with third parties that are currently subject to various legal actions in an effort to present a global settlement to creditors in exchange for the appropriate releases*”;
28. It was following this announcement, and a request for a “joint status conference” presided by the CCAA Court and Bankruptcy Court in relation to the claims process, that the Honourable Justice Dumas issued a detailed judgment on February 17, 2014 confirming that it would be appropriate in the circumstances for Third Parties to obtain releases, insofar as suitable settlements could be reached with those interested in participating in the process;
29. In that judgment, the CCAA Court acknowledged the overall skepticism regarding the chances of a global settlement but also acknowledged that a plan of arrangement could be possible if something was done quickly :

*[56] (...) les chances qu'un plan d'arrangement soit propose aux créanciers s'avèrent minces si rien n'est fait dans un délai rapide.*

*(...)*

*[110] Plusieurs pourraient être portés à penser qu'il n'y a plus de raison de continuer le présent dossier.*

*[111] Par contre, la seule lecture du service list et la présence des personnes représentées à chaque étape des procédures peuvent laisser penser qu'un arrangement est possible.”*

30. This judgment allowed the Professionals and the Trustee to continue their efforts to negotiate settlements with Third Parties and provided a certain legitimacy to the proposed settlement structure;
31. Intense negotiations between the Professionals and Third Parties, as well as between the Professionals and Major Stakeholders, continued through the Spring and Summer of 2014 but remained so confidential that little more than the existence of discussions could be reported to the CCAA Court, as appears from the *Motions for a Seventh and Eighth Order Extending the Stay Period*, filed in April and June 2014;

32. Within the scope of those complex and intensive negotiations, the Professionals regularly attended meetings within the Province of Quebec and at various venues throughout the Eastern United States;
33. The purpose of these meetings was not only to negotiate settlements with Third Parties but to negotiate with the Major Stakeholders regarding how settlement proceeds would be distributed amongst the different types of creditors, as well as amongst the individual creditors in a given group;
34. On September 19, 2014, MMAC filed its *Motion for a Ninth Extension of the Stay Period*, and was finally in a position to include a Term Sheet in respect of the Plan of Compromise and Arrangement of MMAC (the "**Plan Term Sheet**");
35. At the time, commitments from Third Parties totalled \$16,500,000 in addition to \$25,000,000 from the XL Insurance policy;
36. The purpose of the Plan Term Sheet was to set out the structure of the Plan that MMAC anticipated being in a position to file. Amongst the key terms of the Plan Term Sheet was the inclusion of settlements that may be reached with potentially liable third parties in exchange for releases barring any litigation against them arising from the Derailment;
37. While the \$16,500,000 may have appeared minimal in comparison to what the Professionals hoped to accomplish through their efforts, it reinforced the idea that global settlement was still a possibility and allowed confidential negotiations to continue with numerous Third Parties, as well as the Major Stakeholders;
38. Over the course of the Fall of 2014, more and more negotiations began to bear fruit, which resulted in firm commitments from Third Parties totaling \$207,800,000;
39. This allowed MMAC, on January 9, 2015, to file a draft Plan of Compromise and Arrangement in support of its *Motion for an Eleventh Order Extending the Stay Period*;
40. While agreements had yet to be reached with certain key players, there was no question that MMAC was now in a position to file a plan of arrangement, which it did on March 31, 2015;
41. Even after the plan was filed, the Professionals pursued negotiations with certain Third Parties that had so far refused to contribute to the settlement fund;
42. By the time those negotiations were concluded, agreements had been reached with virtually all known Third Parties with the exception of Canadian Pacific Railway ("**CP**");
43. MMAC was thus in a position to amend the plan on June 8, 2015 (the "**Amended Plan**"), prior to the creditors meeting schedule for the following day;
44. The Amended Plan, with contributions totalling approximately \$430 million at the time, was submitted to creditors at the creditors' meeting held on June 9, 2015, where it was unanimously approved with 3,879 positive votes representing approximately \$694 million of votes. Not a single creditor voted against the Amended Plan;

45. In total, the efforts of the Professionals, in conjunction with those of the Trustee and the Major Stakeholders, resulted in settlements being reached with twenty-five (25) distinct entities or groups of affiliated entities, each of which was represented by sophisticated counsel in both Canada and the United States;
46. Individual settlement agreements were negotiated and signed with each group;

#### **The Amended Plan**

47. The Amended Plan (along with the initial version filed on March 31, 2015) is an innovative design that seeks to address a multitude of varied and complex claims in the most fair and efficient way possible in a cross-border situation. The points system and matrices included in the Amended Plan are an essential element of that fairness and efficiency;
48. The filing of the Amended Plan (along with the initial version filed on March 31, 2015) was preceded by lengthy, complex negotiations with the Major Stakeholders, namely in order to balance the rights and claims of each group of creditors to the settlement funds;

#### **The claims process**

49. 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;
50. Presentation of the Claims Motion was initially postponed on numerous occasions, namely as a result of issues surrounding the representation of the various creditor groups and intense negotiations surrounding the claims process and claims package to be distributed to creditors;
51. It was eventually granted on March 31, 2014 and a Claims Procedure Order was issued on April 4, 2014. The claims bar date was set for June 13, 2014 and was later extended to July 14, 2014 solely for wrongful death claimants;
52. While there was certainly no guarantee that there would be funds available beyond the proceeds of the XL Insurance policy, it was important that the nature and scope of claims be estimated as soon as possible so that any eventual efforts towards a plan could take those claims into consideration;
53. In light of the Derailment, it was expected that claims would be extremely numerous and varied. Claims were also expected to extend significantly beyond the trade claims that often make up the majority of unsecured claims in insolvency files;
54. A particularly detailed claims package was prepared by the Professionals in both English and French, which included seven (7) different claim schedules to be completed depending on the nature of the claim;
55. While far lengthier than the average claim forms, they were specifically tailored to simplify the process and guide creditors through the different types of potential

damages. The forms also prompted creditors to provide far more detail than the usual claims forms, the whole in an effort to limit the need for follow-ups and to limit the number of disallowed claims;

56. It was thanks to this rigorous claims process that the Professionals, following extensive negotiations with the Major Stakeholders, were later able to develop a plan of arrangement that specifically addressed the rights of each category of creditors;
57. This involved the development and negotiation of models and matrices that would provide a fair yet practical way of determining certain types of claims, including complex claims for moral damages and wrongful death;

### **CP's opposition**

58. In April 2015, CP announced for the first time that it would be contesting the jurisdiction of the CCAA Court, and that it would be contesting any eventual motion to sanction the plan of arrangement filed on March 31, 2015;
59. This news came as a shock to the Professionals and to the other parties involved because CP had actively participated in the CCAA Proceedings from the very beginning;
60. It had also been aware of the potential plan structure for over a year and had raised no concerns, despite knowing that the CCAA Court and the Professionals had invested significant resources in the sole view of concluding a plan pursuant to that structure;
61. CP fought vigorously to defeat the Amended Plan in Canada and in the United States, where it contested proceedings to have the Amended Plan acknowledged and enforced under Chapter 15 of the U.S. Bankruptcy Code;
62. Moreover, CP also opposed a similar plan filed in the United States within the scope of the Bankruptcy Case;
63. This forced the Professionals and the Trustee to mount an equally vigorous defence to CP's actions on both sides of the border;
64. The Professionals, supported by the Major Stakeholders and the Third Parties with which settlements had been reached, were forced to deploy immense resources at great expense in order to counter CP's offensive. This included significant amounts of legal research, the preparation of complex and detailed plans of arguments and attendance at court hearings on both sides of the border;
65. As is well known to the CCAA Court, CP's oppositions were entirely dismissed in the CCAA proceedings, the Bankruptcy Case and the Chapter 15 proceedings;
66. CP then proceeded to file appeals (or motions for leave to appeal) in both jurisdictions, thereby forcing the Professionals to once again deploy immense resources to counter those appeals;

67. It was only after those resources had been deployed and significant costs had been incurred by the Professionals that an agreement was reached with CP whereby their appeals and oppositions would be withdrawn in exchange for slight amendments to the plans filed in both the CCAA proceedings and the Bankruptcy Case;

#### **Late claims**

68. As a result of various motions filed by the Class Representatives and a series of insurers, the Professionals were forced to address requests for leave to file late claims;
69. In addition to legal research, the preparation of written arguments and court attendances, the late claims motions required that the Professionals prepare and analyse additional reports and calculations, namely with respect to the dilutive value of different late claim scenarios;
70. Late claims remain an ongoing issue that continues to draw on the Professionals' resources;

#### **The Bankruptcy Case and other United States proceedings**

71. The cross-border coordination of efforts entailed huge challenges but the plan would have been impossible without that level of coordination;
72. Because of the ties between the CCAA proceedings and the Bankruptcy Case, including but not limited to the links between the plans, the Professionals regularly attended meetings and court hearings in the United States throughout this matter;
73. In addition, the Monitor, with the involvement of MMAC's counsel, filed its own proceedings in the United States in order to have the Amended Plan acknowledged and enforced under Chapter 15 of the U.S. Bankruptcy Code, thereby further guaranteeing the application and enforcement of the Amended Plan;

#### **Review and adjudication of claims**

74. Despite the air of uncertainty that prevailed as a result of the CP oppositions, the Professionals, and particularly the Monitor and its counsel, undertook the significant task of reviewing the more than 5,000 claims filed;
75. Significant efforts have been made in hopes of being in a position to proceed with a partial distribution of the settlement funds to creditors as soon as possible and the are now able to foresee an interim distribution in early 2016;
76. The review and adjudication of claims will continue for many more months and will most likely require the involvement of a Claims Officer (as defined in the Claims Resolution Order of April 15, 2015). In fact, MMAC will be seeking the appointment of a Claims Officer in a separate motion;



77. The fees and disbursements of the Claims Officer will be secured by the same Administration Charge that secures the Professionals' fees and disbursements (section 7.1 of the Amended Plan);

### III. CONCLUSION

78. As of November 23, 2015, the settlement funds total approximately \$452 million. As a result of fluctuations in currency values and a concerted effort on the part of the Professionals to secure as many settlements as possible in U.S. dollars, the above amount accounts for \$22 million more than the approximately \$430 million presented to creditors when they approved the Amended Plan on June 9, 2015;
79. Since the partial payment of their fees and disbursements made in July 2014 using a portion of the RAH sale proceeds, the Professionals' fees and disbursements have remained unpaid and have not been guaranteed in any fashion;
80. In short, since the Spring of 2014, the Professionals have worked with virtually no assurance that they would be paid and at the risk of not being paid at all. In fact, had the Professionals' vision not come to fruition and the Amended Plan not have been approved and funded, they would have lost millions of dollars;
81. To the Petitioners' knowledge, it is unprecedented in such complex and lengthy CCAA proceedings for the professionals to incur such risk;
82. In files requiring this level of expertise and involvement, professional fees are generally paid in a timely manner and the administration charge serves to guarantee any limited outstanding amounts in the event of a sudden termination of the proceedings;
83. As of October 31, 2015, the Professionals' fees and disbursements are as follows for a total of \$9,367,113 taxes included (the "**Current Balance**"):
  - a) \$4,238,303 to Richter Advisory Group Inc., Monitor;
  - b) \$1,168,619 to the Monitor's counsel, Woods LLP;
  - c) US\$117,059 to the Monitor's U.S. counsel, Verrill Dana LLP;
  - d) \$3,802,161 to Petitioner's counsel, Gowling Lafleur Henderson LLP;
84. The Professionals currently benefit from an Administration Charge in the amount of \$12 million plus taxes (section 7.1 of the Amended Plan);
85. By the present Motion, the Professionals seek approval for the payment of fees and disbursements in the amount of \$20,864,613, representing the outstanding fees and disbursements as at October 31, 2015 taxes included as well as an additional amount of \$10 million (the "**Risk Premium**") taxes included as consideration for the risk that has been incurred by the Professionals throughout these proceedings;

86. The balance of the amount of the Administrative Charge, namely an amount of \$4,429,887 taxes included will be used as a final payment to cover all fees and disbursements from November 1, 2015 to the closing of the CCAA proceedings and any shortfall would be paid with the Risk Premium being sought by this motion;
87. The Professionals estimate that the cost of completing the CCAA proceedings, including the review, adjudication and payment of claims, may exceed the balance of the Administration Charge but if any part of the Administrative Charge has not been used upon closing of the CCAA proceedings it shall be distributed to the creditors in accordance with the terms of the Amended Plan;
88. Assuming the full use of the amount guaranteed by the Administration Charge, this would bring the Professionals' total compensation in connection with the Amended Plan to the aggregate amount of \$22 million, which represents 5.2% of the settlement funds generated through their joint efforts;
89. In light of the risk incurred by the Professionals in connection with this matter, the complexity of the issues, the resources deployed in order to achieve a result that most thought was unachievable, and the fact that said result is the largest settlement of its kind in Canada, the Professionals respectfully submit that the Risk Premium is fair and reasonable;
90. At the outset, MMAC's creditors had a claim to a \$25 million insurance policy, assets with a saleable value of less than US\$15 million and estimated claims exceeding \$1 billion;
91. Other than perhaps the Professionals themselves, very few ever imagined a settlement fund in the amount of \$452 million. The level of success attained in this matter is thus far beyond any prospects for success that existed at the time the Initial Order was issued;
92. That success is directly attributable to the efforts of the Professionals;
93. The amount sought by the Professionals falls well below that which is generally awarded to class counsel within the scope of class action proceedings, as well as that which is generally payable under any other form of contingent fee arrangement in complex litigation;
94. Moreover, it is all the more reasonable when taking into consideration the loss the Professionals would have incurred had they not been successful;
95. The Professionals' fees and disbursements have been highly contingent for the most labour intensive period in this matter. This entire case has involved short deadlines and a continuous element of crisis-management;
96. While nothing can reverse the unspeakable tragedy that occurred in Lac Mégantic, the settlement fund will allow the community to rebuild and prosper. Perhaps more importantly, the sheer magnitude of the fund stands as a symbol for justice and may allow victims to take at least some comfort in the fact that their loss has been acknowledged;

97. 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 the approval of professional fees* (the "**Motion**");

**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**")

**APPROVE** the fees and disbursements of the following professionals (the "**Professionals**") as at October 31, 2015 in the following amounts:

- a) \$4,238,303 to Richter Advisory Group Inc., Monitor;
- b) \$1,168,619 to the Monitor's counsel, Woods LLP;
- c) US\$117,059 to the Monitor's U.S. counsel, Verrill Dana LLP;
- d) \$3,802,161 to Petitioner's counsel, Gowling Lafleur Henderson LLP;

**ORDER** the Monitor to pay those fees and disbursements upon the occurrence of the Plan Implementation Date from the Indemnity Fund;

**ORDER** that the balance of the Administration Charge be held by the Monitor to secure the payment of all fees and disbursements to be incurred from November 1, 2015 to the closing of the CCAA Proceeding;

**DECLARE** that any further payment of fees and disbursements of the Professionals from November 1, 2015 to the closing of the CCAA Proceeding shall be limited to the balance of the Administration Charge;

**ORDER** that any part of the Administration Charge that has not been used upon closing of the CCAA Proceeding to pay fees and disbursements incurred for the period of November 1, 2015 to the closing of the CCAA Proceeding shall be distributed to the Creditors in accordance with the terms of the Amended Plan;

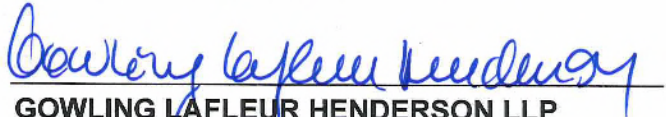
**ORDER** that upon the occurrence of the Plan Implementation Date the Monitor shall distribute an additional amount of \$10,000,000 to the Professionals as further consideration for the services rendered in the CCAA Proceeding :

**GRANT** such further relief as this Honourable Court may deem appropriate;

**ORDER** the provisional execution of the Order notwithstanding any appeal, without the necessity of furnishing any security;

**THE WHOLE** without costs, except if contested.

MONTREAL, November 25, 2015

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

SUPERIOR COURT  
(COMMERCIAL DIVISION)

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PROVINCE OF QUÉBEC  
DISTRICT OF SAINT-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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**NOTICE OF PRESENTATION**

TO: **SERVICE LIST**

**TAKE NOTICE** that the present *Motion for the approval of professional fees* will be presented for adjudication before the honourable Gaétan Dumas, j.s.c., of the district of Saint-François, on **November 26, 2015**, in **room 1** of the Sherbrooke Courthouse, located at 375 West King Street, at 10:00 a.m. or so soon as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

MONTREAL, November 25, 2015

  
**GOWLING LAFLEUR HENDERSON LLP**  
Attorneys for Petitioner