

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 FOURTEENTH ORDER EXTENDING THE STAY PERIOD AND FOR
APPROVAL OF PROFESSIONAL FEES
(Sections 9 and 11 *et seq.* of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36 ("CCA"))**

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 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 "**US Court**") for relief under Chapter 11 of the U.S. Bankruptcy Code (the "**Chapter 11 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 Chapter 11 Case (the "**Trustee**");
6. Pursuant to the Initial Order, a stay of proceedings was ordered until and including September 6, 2013 (the "**Stay Period**"). That Stay Period has since been extended by this CCAA Court on thirteen (13) occasions, with the most recent extension having been granted until June 17, 2016 pursuant to an order dated as of November 30, 2015 (the "**Thirteenth Extension Order**"), the whole as appears from the Court record;
7. MMAC's *Amended Plan of Compromise and Arrangement* dated as of June 8, 2015 (the "**Amended Plan**") was unanimously approved by the creditors on June 9, 2015 and was approved by the CCAA Court on July 13, 2015 (as amended on October 9, 2015, the "**Canadian Approval Order**");
8. The Plan of Liquidation filed in the Chapter 11 Case on March 31, 2015 and amended on July 7, 2015 (the "**US Plan**"), which is intended to mirror the effects of the Amended Plan in the United States, has also been approved by the creditors and the US Court;

II. ORDER SOUGHT

9. The Petitioner hereby seeks an extension of the Stay Period until December 15, 2016 for the reasons set out below;
10. The Petitioner also seeks an order approving the fees and disbursements of MMAC's counsel, the Monitor and the Monitor's counsel (the "**Professionals**") for the period of November 1, 2015 to February 29, 2016;

III. EXTENSION OF THE STAY PERIOD

11. Since the issuance of the Thirteenth Extension Order, the Petitioner has acted and continues to act in good faith and with due diligence as set forth hereafter;
 - i) **The Implementation of the Amended Plan**
12. Since the Thirteenth Extension Order, all conditions precedent to the implementation of the Amended Plan have been fulfilled and all contributions to the settlement fund have been paid;
13. The Certificate of the Monitor was filed on December 22, 2015 (the "**Plan Implementation Date**"), thereby confirming implementation of the Amended Plan, the whole as appears from the Court record;

ii) Claims review and status of distributions

14. Since the Plan Implementation Date, the Monitor, with the participation of the Petitioner and the Monitor's counsel, has primarily focused on the review of claims and payment of distributions under the Amended Plan and US Plan (together, the "Plans");
15. The Monitor's Twenty-Second Report provides a complete update in this regard. That update may be summarized as follows:
 - a) Wrongful Death Claims: all funds (totalling \$114 million) have been distributed in accordance with Schedule E to the Amended Plan;
 - b) Bodily Injury and Moral Damage Claims: on February 26, 2016, the Monitor commenced the payment of an interim distribution of approximately \$25 million representing 50% of the amount estimated to be paid to each claimant, as valued in accordance with Schedule F to the Amended Plan. To date, 4,265 distributions have been made and a further 215 interim distributions remain on hold pending the receipt of information to complete an analysis of the creditors claim. 443 contestations have been received and the Monitor is reviewing these contestations and consulting with counsel to the claimants. The Monitor believes that the majority of them are unfounded. A further distribution of 25% of each claimant's estimated distribution (in respect of accepted claims) commenced during the week of April 11 2016;
 - c) Property and Economic Damages Claims: the Monitor is continuing its review of the approximately 1,600 claims filed in these CCAA proceedings or in the Chapter 11 Case and is reviewing its findings with the creditors or their counsel. Depending on the time period required to review all claims and resolve contestations, a distribution to this category is not likely until at least June 2016 and possibly not until next fall;
 - d) Subrogated Insurer Claims: a distribution to these creditors should be made in April 2016;
 - e) Government Claims: a distribution with respect to these claims is expected in April or May 2016;

the whole as more fully appears from a copy of the Monitor's Twenty-Second Report filed in support hereof as **Exhibit R-1**;

iii) The Monitor

16. Since the Thirteenth 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;
17. As outlined in the Monitor's Twenty-Second Report (R-1), substantial resources have been devoted to the ongoing review of claims;
18. Moreover, the Monitor continues to respond to numerous queries from creditors and maintains regular contact with the Trustee and major stakeholders;

iv) Reasonableness of the Extension Sought

19. Given the implementation of the Plans and the ongoing distributions to creditors, the Petitioner is of the view that no creditor will suffer any undue prejudice by the extension of the Stay Period;
20. An extension of the Stay Period to December 15, 2016 is necessary to allow for the ongoing review and adjudication of claims, as well as distributions to creditors, which may very well be completed by that date;
21. The Petitioner is of the view that extending the Stay Period to December 15, 2016 is thus appropriate in the present circumstances;
22. As appears from the above, the Petitioner has acted and continues to act in good faith and with the utmost diligence;
23. The Monitor has indicated to the Petitioner that it supports the present request for an extension of the Stay Period, as appears from its Twenty-Second Report (R-1);

IV. APPROVAL OF PROFESSIONAL FEES

24. The following table, drawn from the Monitor's Twenty-Second Report (R-1), summarizes the fees for which approval is sought:

Montreal, Maine & Atlantic Canada Co. Administration Charge Summary As of February 29, 2016			
	Fees /		Total
	Disbursements	Sales Taxes	
Administration Charge ¹	\$ 12,000,000	\$ 1,797,000	\$ 13,797,000
Payment of Accrued Professional Fees to October 31, 2015	(8,167,000)	(1,199,999)	(9,366,999)
Balance of Administration Charge as of October 31, 2015	3,833,000	597,001	\$ 4,430,001
<u>Accrued Fees and Disbursements (Nov. 1/15 to Feb. 29/16)</u>			
Richter	1,079,485	161,653	1,241,138
Gowlings	198,324	29,693	228,017
Woods	183,275	27,445	210,720
Verrill Dana ²	5,235	-	5,235
	<u>1,466,319</u>	<u>218,791</u>	<u>1,685,110</u>
Balance of Administration Charge to complete the CCAA ³	<u>\$ 2,366,681</u>	<u>\$ 378,210</u>	<u>\$ 2,744,891</u>
¹ As per the Amended Plan of Compromise and Arrangement dated June 8, 2015. ² US counsel for Chapter 15, no sales taxes applicable. ³ In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.			

25. Pursuant to section 7.1 of the Amended Plan, the Professionals benefit from an Administration Charge in the amount of \$12 million plus taxes;
26. The balance of the Administration Charge, following previous approval of the Professionals' fees for the period ending October 31, 2015, is \$3,833,000;
27. The present request covers the period of November 1, 2015 to February 29, 2016, with fees and disbursements totalling \$1,466,319 plus taxes;
28. Should this motion be granted, there would remain approximately \$2.7 million tax included (plus the Monitor's pre-filing retainer of \$150,000) to cover the remaining work to be performed by the Professionals (including the Claims Officer) to complete the claims process and the administration of the CCAA proceedings;
29. As alluded to above and as more fully set out in the Monitor's Twenty-Second Report (R-1), a substantial amount of work remains to be completed with respect to the review and adjudication of claims, namely in view of the over 400 contestations received by the Monitor to date;
30. Discussions with major stakeholders and creditor groups remain ongoing in an effort to consensually resolve disputed claims;
31. Disputes that cannot be resolved will be submitted to the Claims Officer pursuant to the Claims Resolution Order of April 15, 2015, or to the CCAA Court if necessary and appropriate;

V. CONCLUSION

32. The Petitioner respectfully requests that this Honourable Court extend the Stay Period to December 15, 2016 and approve the Professionals' fees pursuant to the conclusions set out below;
33. The Petitioner respectfully submits that the notices given of the presentation of the present Motion are proper and sufficient;

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

GRANT the present *Motion for a Fourteenth Order Extending the Stay Period and for Approval of Professional Fees* (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 December 15, 2016, the whole subject to all the other terms of the Initial Order;

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**")

DECLARE that the Initial Order, as amended on August 23, 2013, September 4, 2013, October 9, 2013, January 23, 2014, February 11, 2014, February 25, 2014, March 12, 2014, April 29, 2014, June 30, 2014, September 24, 2014, November 24, 2014, April 15, 2015 and November 30, 2015 shall remain otherwise unchanged;

APPROVE the fees and disbursements of the following professionals (the "**Professionals**") as at February 29, 2016 in the following amounts:

- a) \$1,079,485 to Richter Advisory Group Inc., Monitor;
- b) \$183,275 to the Monitor's counsel, Woods LLP;
- c) \$5,235 (US\$3,490) to the Monitor's U.S. counsel, Verrill Dana LLP;
- d) \$198,324 to Petitioner's counsel, Gowling WLG (Canada) LLP;


ORDER the Monitor to pay those fees and disbursements, plus applicable sales taxes, 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 March 1, 2016 to the closing of the CCAA Proceeding;

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, April 18, 2016



Gowling WLG (Canada) LLP
Attorneys for Petitioner

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(COMMERCIAL DIVISION)**

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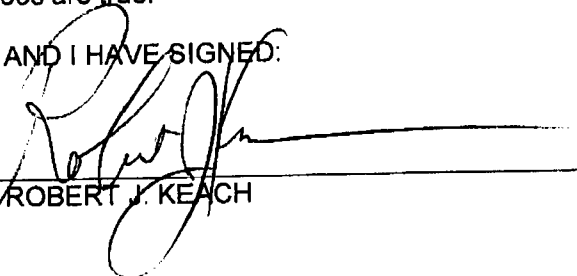
Monitor

AFFIDAVIT OF ROBERT J. KEACH

I, the undersigned, Robert J. Keach, Shareholder of Bernstein Shur, doing business at 100 Middle Street, West Tower, Portland, Maine, USA, 04101, solemnly declare as follows:

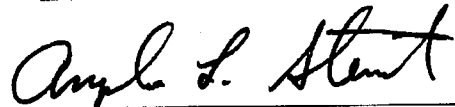
1. I am the Estate Representative to the estate of Montreal, Maine & Atlantic Railway Ltd., the sole shareholder of the Petitioner;
2. All the facts alleged in the present *Motion for a Fourteenth Order Extending the Stay Period and for Approval of Professional Fees* are true.

AND I HAVE SIGNED:



ROBERT J. KEACH

SWORN TO before me in Portland, Maine,
this 18 day of April, 2016



Notary Public

ANGELA L. STEWART
Notary Public, Maine
My Commission Expires March 9, 2021

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NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present *Motion for a Fourteenth Order Extending the Stay Period and for Approval of Professional Fees* will be presented for adjudication before the honourable Gaétan Dumas, J.S.C., of the District of Saint-François, in chambers and without a hearing, save and except in the event that any interested party advises the Service List, by no later than **4 :00 p.m. on April 29, 2016**, of its intention to make representations in respect of the Motion. In that case, the Motion will be heard at the Sherbrooke Courthouse located at 375 King Street West in a room and at a time and date to be determined, or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, April 18, 2016



Gowling WLG (Canada) LLP
Attorneys for Petitioner