

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

**APPLICATION FOR A TWENTIETH 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 ("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 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 were 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 (now referred to as the "**Estate Representative**");
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 nineteen (19) occasions, with the most recent extension having been granted until June 19, 2019 pursuant to an order of November 21, 2018 (the "**Nineteenth 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;
9. As appears from the court record, the Certificate of the Monitor was filed on December 22, 2015 (the "**Plan Implementation Date**"), thereby confirming implementation of the Amended Plan;
10. Capitalized terms not otherwise defined in this Application have the meaning ascribed thereto in the Amended Plan;

II. ORDER SOUGHT

11. The Petitioner hereby seeks an extension of the Stay Period until December 12, 2019 for the reasons set out below;
12. 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, 2018 to May 31, 2019;

III. EXTENSION OF THE STAY PERIOD

13. Since the issuance of the Nineteenth Extension Order, the Petitioner has acted and continues to act in good faith and with due diligence as set forth hereafter;
 - i) **Claims review and status of distributions**
14. Since the Plan Implementation Date, the Monitor, with the participation of its counsel and the Petitioner'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. As appears from the Monitor's Thirtieth Report, the claims review process is essentially complete, the whole as more fully appears from a copy of the Monitor's Thirtieth Report filed in support hereof as **Exhibit R-1**;
16. The following table, drawn from the Thirtieth Report, demonstrates that essentially all distributions have been made, save and except for a portion of the distribution payable under the Government Claims category:

| Montreal, Maine & Atlantic Canada Co. | | | |
|--|-----------------------|-------------------------|----------------------|
| Summary of Distributions | | | |
| As of May 31, 2019 | | | |
| | Distribution Paid | Distribution Pending | Total |
| Wrongful Death Claims | \$ 121,561,892 | \$ - | \$121,561,892 |
| Bodily Injury and Moral Damage Claims | 51,137,401 | - | 51,137,401 |
| Property and Economic Damages Claims | 25,634,715 | - | 25,634,715 |
| Government Claims | 103,460,319 | 98,060,399 | 201,520,718 |
| Subrogated Insurer Claims | 17,641,913 | - | 17,641,913 |
| | <u>\$ 319,436,240</u> | <u>\$98,060,399</u> | <u>\$417,496,639</u> |

17. With respect to the Government Claims category:
- a) As previously reported to the Court by the Monitor and by the Petitioner, the only unfinalized claim in this category is the claim of the Province of Quebec;
 - b) On December 1, 2017, the Province submitted its final proof of claim in the approximate amount of \$340.7 million (versus an initial claim of \$409 million) which included a provision for future expenses of approximately \$80.0 million;
 - c) The Amended Plan was based on the Province's initial claim amount and did not foresee the possibility that the actual costs of the Province would be lower;
 - d) As more fully appears from the Thirtieth Report, the Province is working on updating its actual expenses but may not be in a position to update its provision until September 2019;
 - e) A full review of the Province's claim will only be performed once the claim amount is finalized;
 - f) The Monitor, with its counsel and the Petitioner's counsel, will continue to have discussions with the Province regarding the implications of this lower claim and are also considering next steps should an agreed upon solution not be reached;

ii) Interest Treatment

18. Approximately \$5.9 million has been earned on the Funds for Distribution since the effective date of the Amended Plan. This number is up from \$4.8 million in November 2018, when the Nineteenth Extension Order was issued;
19. As set out in its Thirtieth Report, the Monitor estimates that it will need to issue tax slips to at least 3,200 individuals and corporations, which can only happen after all claims have been finally determined;

iii) Ongoing Litigation and Possible Further Distribution

20. As outlined in previous Monitor's reports, a number of matters remain ongoing in the Chapter 11 Case that could have an impact on the Amended Plan, both in terms of distribution and in respect of the overall administration;
21. As more fully summarized in the Thirtieth Report, the following matters remain ongoing in the Chapter 11 Case and, absent a settlement, will not be resolved prior to the expiry of the extension period sought herein:
 - a) The WD Trustee's proceedings against Canadian Pacific Railway ("CP") under the Carmack Amendment for an amount of approximately USD \$180 million;
 - b) The Estate Representative's separate litigation against CP in the amount of approximately USD \$35 million;
 - c) Potential administrative/secured claims by Irving Railroads and Wheeling, which are contested by the Estate Representative. The Monitor continues to maintain a \$10 million reserve in connection with these claims;
22. Civil proceedings also remain ongoing against CP in the Province of Quebec, including class proceedings and those instituted by the Province. While the Petitioner's role in the daily administration of those matters is minimal, these CCAA proceedings and the framework of the Amended Plan could prove useful in the event of settlement discussions;

iv) The Monitor

23. Since the Nineteenth Extension Order, the Petitioner, through its counsel, 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;
24. As outlined in the Monitor's Thirtieth Report, with the review and adjudication of claims nearing completion, the Monitor continues to keep its attention on matters that could potentially allow for additional distributions to creditors, beyond what was originally expected;
25. Among the activities outlined in the Thirtieth Report, the Monitor has been in contact with representatives of the Federal revenue agency in connection with the treatment of interest owed to claimants and has successfully recovered approximately \$900K of taxes paid to the Federal revenue agency on behalf of the claimants;

26. Moreover, the Monitor continues to respond to queries from creditors and maintains regular contact with the Estate Representative and major stakeholders;

v) Reasonableness of the Extension Sought

27. Given the implementation of the Plans and the distributions to creditors, no creditor will suffer any prejudice by the extension of the Stay Period;
28. An extension of the Stay Period to December 12, 2019 is necessary to allow for the resolution of the Province's claim, distribution of interest income and monitoring of ongoing litigation that could impact the Amended Plan;
29. The Petitioner is of the view that extending the Stay Period to December 12, 2019 is thus appropriate in the present circumstances;
30. The Monitor has indicated to the Petitioner that it supports the present request for an extension of the Stay Period, as appears from its Thirtieth Report;

IV. APPROVAL OF PROFESSIONAL FEES

31. The following table, drawn from the Monitor's Thirtieth Report, summarizes the fees for which approval is sought:

| Montreal, Maine & Atlantic Canada Co. | | | |
|---|----------------------|--------------------|---------------------|
| Administration Charge Summary | | | |
| As of May 31, 2019 | | | |
| | Fees / | | |
| | Disbursements | Sales Taxes | Total |
| Administration Charge ¹ | \$ 14,150,000 | \$ 2,096,000 | \$ 16,246,000 |
| Accrued Professional Fees as of October 31, 2018 | <u>(13,624,638)</u> | <u>(2,016,108)</u> | <u>(15,640,746)</u> |
| Balance of Administration Charge to implement the Plan | 525,362 | 79,892 | 605,254 |
| Richter | 37,326 | 5,590 | 42,915 |
| Woods | 3,460 | 518 | 3,978 |
| Gowling WLG | 11,321 | 1,695 | 13,015 |
| | <u>52,106</u> | <u>7,802</u> | <u>59,909</u> |
| Balance of Administration Charge to complete the CCAA ² | <u>473,256</u> | <u>72,089</u> | <u>545,345</u> |
| ¹ As per the Amended Plan of Compromise and Arrangement dated June 8, 2015, the Order dated March 3, 2017 and the Order dated November 21, 2018. | | | |
| ² In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices. | | | |

32. As appears from the table, total fees for all Professionals for the seven month period in question amount to \$52,106 and, following the payment of those fees, the balance of the Administration Charge will be \$473,256;

V. CONCLUSION

33. The Petitioner respectfully requests that this Honourable Court (i) extend the Stay Period to December 12, 2019, and (ii) approve the Professionals' fees pursuant to the conclusions set out below;
34. The Petitioner respectfully submits that the notices given of the presentation of the present Application are proper and sufficient;

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

GRANT the present *Application for a Twentieth Order Extending the Stay Period and for Approval of Professional Fees* (the "**Application**");

DECLARE that the notices given of the presentation of the Application 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 12, 2019, 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, November 30, 2015, May 30, 2016, October 20, 2016, June 16, 2017, December 20, 2017, June 18, 2018 and November 21, 2018 shall remain otherwise unchanged;

APPROVE the fees and disbursements (including taxes) of the following professionals as at May 31, 2019, in the following amounts:

- a) \$42,915.13 to Richter Advisory Group Inc., Monitor;
- b) \$3,978.35 to the Monitor's counsel, Woods LLP;
- c) \$13,015.11 to Petitioner's counsel, Gowling WLG (Canada) LLP;

ORDER the Monitor to pay those fees and disbursements, which include applicable sales taxes, from the Indemnity Fund;

ORDER that the balance of the Administration Charge in the amount of \$473,256 plus taxes be held by the Monitor to secure the payment of all fees and disbursements to be incurred from June 1, 2019 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, June 4, 2019

Gowling WLG (Canada)

Gowling WLG (Canada) LLP
Attorneys for Petitioner

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

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

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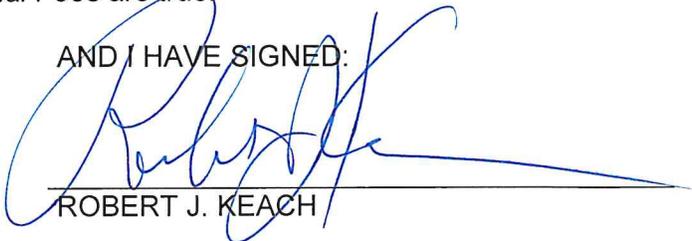
Monitor

SWORN DECLARATION 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:

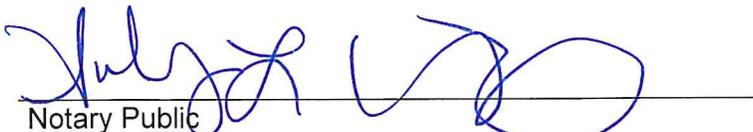
1. I am the Estate Representative to the estate of Montreal, Maine & Atlantic Railway Ltd., the sole shareholder of the Petitioner;
2. All the facts alleged in the present *Application for a Twentieth Order Extending the Stay Period and for Approval of Professional Fees* are true.

AND I HAVE SIGNED:



ROBERT J. KEACH

SWORN TO before me in Portland, Maine,
this 4th day of June, 2019



Notary Public

AUBREY L. CUMMINGS
NOTARY PUBLIC
State of Maine
My Commission Expires
October 21, 2024

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

PROVINCE OF QUÉBEC
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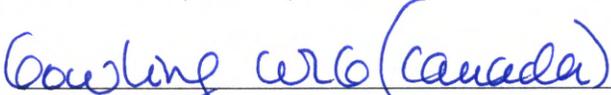
NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the present ***Application for a Twentieth 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 June 13, 2019**, of its intention to contest the Application. In that case, the Application will be heard at the Sherbrooke Courthouse located at 375 King Street West **on June 17, 2019 in a room and at a time to be determined.**

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, June 4, 2019



Gowling WLG (Canada) LLP
Attorneys for Petitioner

No. 450-11-000167-134

SUPERIOR COURT
(COMMERCIAL DIVISION)
DISTRICT OF ST-FRANÇOIS

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CO. (MONTREAL, MAINE & ATLANTIQUE
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Petitioner

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

Monitor

BL0052

**APPLICATION FOR A TWENTIETH 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 ("CCAA"))

ORIGINAL

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