

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 TWENTY-FOURTH ORDER EXTENDING THE STAY PERIOD, FOR
APPROVAL OF PROFESSIONAL FEES AND FOR AN INCREASE TO THE
ADMINISTRATION CHARGE FOR CANADIAN PROFESSIONALS
(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 twenty-three (23) occasions, with the most recent extension having been granted until June 18, 2021, pursuant to an order of December 10, 2020 (the “**Twenty-Third 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 the following:
 - a) an extension of the Stay Period until December 17, 2021;
 - b) an order approving the fees and disbursements of MMAC’s counsel, the Monitor and the Monitor’s counsel (the “**Canadian Professionals**”) for the period of December 1st, 2020 to May 31, 2021; and
 - c) an increase to the Administration Charge in the amount of \$500,000, as it pertains to the Canadian Professionals. For clarity, no increase is sought to the Administration Charge as it pertains to the U.S. Professionals;
12. The Monitor supports the conclusions sought herein, the whole as appears from a copy of the Monitor’s Thirty-Fourth Report filed in support hereof as **Exhibit R-1**;

III. EXTENSION OF THE STAY PERIOD

i) **Government Claims category:**

13. As previously reported to Court, on December 1, 2017, the Province submitted an amended proof of claim in the approximate amount of \$340.7 million which included a provision for future expenses of approximately \$80.0 million;
14. The Province has now assessed its actual damages at approximately \$325 million;
15. The Amended Plan is based on the Province's original claim in the amount of \$409 million;
16. As more fully outlined in the Monitor's Thirty-Third Report, the Province informed the Monitor that it was prepared to redistribute a portion of the distribution due to it under the Amended Plan, subject to certain conditions, namely that no professional fees are levied by the lawyers representing the different groups of victims;
17. As more fully outlined in the Monitor's Thirty-Fourth Report, the Province subsequently advised the Monitor that these conditions were not met and requested the Monitor to remit the balance of the distribution due to the Province, namely an amount of approximately \$98 million ("**Balance of Province Distribution**"), in accordance with the terms of the Amended Plan;
18. On March 19, 2021, the Monitor filed a Motion for Directions (the "**Motion for Directions**") with respect to the treatment of the claim of the Province and the distribution of the Balance of the Province Distribution;
19. The Motion for Directions was heard on April 15, 2021 and, on June 4, 2021, the Honourable Gaétan Dumas, J.S.C. issued an order in connection with the Motion for Directions as more fully detailed in the Monitor's Thirty-Fourth Report;
20. As outlined in the Monitor's Thirty-Fourth Report, Me Hans Mercier informed the Monitor, on June 7, 2021, that he will be appealing the above order;

ii) **Interest Treatment**

21. Approximately \$8.9 million has been earned on the Funds for Distribution since the effective date of the Amended Plan. This number is up from \$8.6 million in December 2020, when the Twenty-Third Extension Order was issued;

iii) **Ongoing Litigation and Possible Further Distribution**

22. 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;
23. As more fully summarized in the Thirty-Fourth Report, the following matters remain ongoing against Canadian Pacific Railway ("**CP**") in the Chapter 11 Case (together, the "**CP Litigation**"):

- a) The WD Trustee's proceedings against CP under the Carmack Amendment for an amount of approximately US\$180 million. This matter is scheduled for trial in Fall 2021;
 - b) The Estate Representative's separate litigation against CP in the amount of approximately US\$35 million, which remains in the discovery phase but is expected to be heard as well in Fall 2021;
24. As appears from the Monitor's Thirty-Third Report, the litigation of certain administrative/secured claims in the Chapter 11 Case (the "**U.S. Administrative Claims**") has been concluded. The Monitor had maintained a \$10 million reserve in connection with these claims but only \$2.8 million will be required to satisfy them. An additional \$7.2 million will thus be available for distribution to creditors;
25. 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

26. Since the Twenty-Third 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;
27. As outlined in the Monitor's Thirty-Fourth Report, the Monitor continues to keep its attention on matters that could potentially allow for additional distributions to creditors, beyond what was originally expected;
28. 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

29. Since the issuance of the Twenty-Third Extension Order, the Petitioner has acted and continues to act in good faith and with due diligence;
30. Given the implementation of the Plans and the distributions to creditors, no creditor will suffer any prejudice by the extension of the Stay Period;
31. An extension of the Stay Period to December 17, 2021 is necessary to allow for the resolution of the Balance of the Province Distribution, the distribution of the remaining Funds for Distribution, the distribution of interest income and the ongoing litigation that could impact the Amended Plan;
32. The Petitioner is of the view that extending the Stay Period to December 17, 2021 is thus appropriate in the present circumstances;
33. The Monitor has indicated to the Petitioner that it supports the present request for an extension of the Stay Period, as appears from its Thirty-Fourth Report;

IV. INCREASE OF THE ADMINISTRATION CHARGE AND APPROVAL OF PROFESSIONAL FEES

34. The following table, drawn from the Monitor's Thirty-Fourth Report, summarizes the fees for which approval is sought:

Montreal, Maine & Atlantic Canada Co. Administration Charge Summary As of May 31, 2021			
	Fees /		
	Disbursements	Sales Taxes	Total
Administration Charge ¹	\$ 14,150,000	\$ 2,096,000	\$ 16,246,000
Accrued Professional Fees as of November 30, 2020	(13,832,545)	(2,047,242)	(15,879,786)
Balance of Administration Charge to implement the Plan	317,455	48,758	366,214
Richter	185,016	27,706	212,722
Woods	100,331	15,025	115,355
Gowling WLG	27,488	4,116	31,604
	<u>312,834</u>	<u>46,847</u>	<u>359,681</u>
Balance of Administration Charge to complete the CCAA ²	<u>\$ 4,621</u>	<u>\$ 1,911</u>	<u>\$ 6,533</u>
<p>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.</p> <p>² In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.</p>			

35. Pursuant to section 7.1 of the Amended Plan and pursuant to an order of this Court dated March 3, 2017, the payment of the fees of the Professionals is secured by the Administration Charge;

36. As appears from the table, total fees for all Professionals for the six month period ending on May 31, 2021 amount to \$312,834 plus taxes;

Following the payment of those fees, the balance of the Administration Charge, as it pertains to the Canadian Professionals, will not be sufficient to cover the fees and disbursements of the Professionals to complete the administration of the CCAA proceedings such that there is a need to seek a further increase to cover costs for ongoing work to complete the administration of the CCAA proceedings;

37. While it is difficult to precisely estimate the costs to complete these proceedings, the Monitor and the Petitioner believe that an increase to the Administration Charge as it pertains to the Canadian Professionals in the amount of \$500,000 is reasonable under the circumstances;

V. CONCLUSION

38. The Petitioner respectfully requests that this Honourable Court issue an order in keeping with the conclusions set out below;
39. 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 Twenty-Fourth Order Extending the Stay Period, for Approval of Professional Fees and an Increase to the Administration Charge for Canadian Professionals* (the “**Application**”);

DECLARE that the notices given of the presentation of the Application are adequate and sufficient;

EXTENSION OF THE STAY PERIOD

ORDER that the Stay Period, as defined in the Initial Order, is extended up to and including December 17, 2021, 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, November 21, 2018, June 17, 2019, November 29, 2019, June 11, 2020 and December 10, 2020 shall remain otherwise unchanged;

APPROVAL OF FEES FOR CANADIAN PROFESSIONALS

APPROVE the fees and disbursements (including taxes) of the following professionals as at May 31, 2021, in the following amounts:

- a) \$212,722 to Richter Advisory Group Inc., Monitor;
- b) \$115,355 to the Monitor’s counsel, Woods LLP;
- c) \$31,604 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;

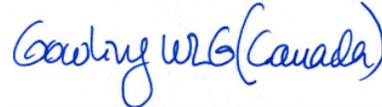
ORDER that the amount of the Administration Charge, as it pertains to the Canadian Professionals, as contemplated by the Amended Plan and the Canadian Approval Order, is hereby increased from \$14,150,000 plus any applicable taxes to \$14,650,000 plus any applicable taxes;

ORDER that the balance of the Administration Charge, as it pertains to the Canadian Professionals, in the amount of \$504,621 plus taxes be held by the Monitor to secure the payment of all fees and disbursements to be incurred from June 1, 2021 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 8, 2021



Gowling WLG (Canada) LLP
Attorneys for Petitioner

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

PROVINCE OF QUÉBEC
DISTRICT OF SAINT-FRANÇOIS

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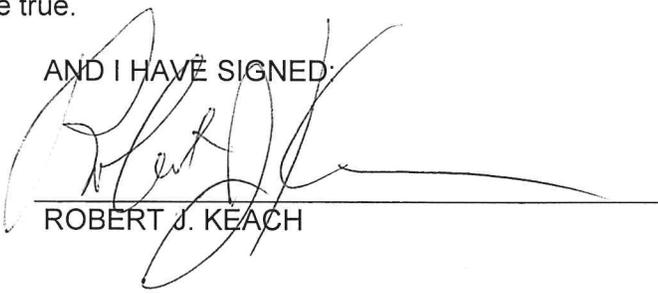
Monitor

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:

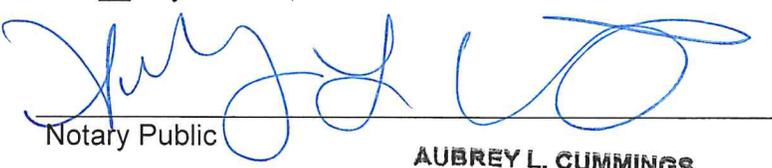
1. I am the Estate Representative to the estate of Montreal, Maine & Atlantic Railway Ltd., the sole shareholder of the Petitioner;
2. All the facts alleged in the present *Application for a Twenty-Forth Order Extending the Stay Period, for Approval of Professional Fees and an Increase to the Administration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

AND I HAVE SIGNED:



ROBERT J. KEACH

SWORN TO before me in Portland, Maine,
this 8th day of June, 2021



Notary Public

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

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

PROVINCE OF QUÉBEC
DISTRICT OF SAINT-FRANÇOIS
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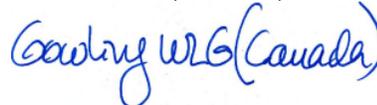
NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present ***Application for a Twenty-Fourth Order Extending the Stay Period, for Approval of Professional Fees and an Increase to the Administration Charge for Canadian Professionals*** 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 **2:00 p.m. on June 14, 2021**, of its intention to contest the Application. In that case, the Application will be heard on June 17, 2021 at 9:00 by Teams.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, June 8, 2021



Gowling WLG (Canada) LLP
Attorneys for Petitioner

No. 450-11-000167-134

SUPERIOR COURT
(COMMERCIAL DIVISION)
DISTRICT OF ST-FRANÇOIS

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Monitor

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APPLICATION FOR A TWENTY-FOURTH ORDER EXTENDING THE STAY PERIOD, FOR APPROVAL OF PROFESSIONAL FEES AND FOR AN INCREASE TO THE ADMINISTRATION CHARGE FOR CANADIAN PROFESSIONALS (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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