

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-THIRD ORDER EXTENDING THE STAY PERIOD, FOR
APPROVAL OF PROFESSIONAL FEES AND FOR AN INCREASE TO THE
ADMINISTRATION CHARGE FOR US 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-two (22) occasions, with the most recent extension having been granted until December 11, 2020 pursuant to an order of June 11, 2020 (the “**Twenty-Second 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 June 18, 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 June 1, 2020 to November 30, 2020; and
 - c) an increase to the Administration Charge in the amount of \$850,000 as it pertains to the U.S. Professionals. For clarity, no increase is sought to the Administration Charge as it pertains to the Canadian Professionals;
12. The Monitor supports the conclusions sought herein, the whole as appears from a copy of the Monitor’s Thirty-Third 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 a letter from the Province issued on December 4, 2020 (annexed to the Monitor's Thirty-Third Report), the Province has decided to redistribute a portion of the distribution due under the Amended Plan;
17. The Province's decision to proceed to this redistribution is subject to certain conditions, namely that no professional fees are levied by the lawyers representing the different groups of victims, the whole as more fully outlined in the Province's letter;

ii) **Interest Treatment**

18. Approximately \$8.6 million has been earned on the Funds for Distribution since the effective date of the Amended Plan. This number is up from \$8.2 million in June 2020, when the Twenty-Second Extension Order was issued;

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

19. 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;
20. As more fully summarized in the Thirty-Third 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 March 2021;
 - b) The Estate Representative's separate litigation against CP in the amount of approximately US\$35 million, which remains in the discovery phase;
21. 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**") recently concluded. The Monitor continued to maintain a \$10 million reserve in connection with these claims, however, following litigation led by the Estate Representative, only \$2.8 million will be required to satisfy them. An additional \$7.2 million will thus be available for distribution to creditors;

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 Twenty-Second 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 Thirty-Third Report, the Monitor continues to keep its attention on matters that could potentially allow for additional distributions to creditors, beyond what was originally expected;
25. 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

26. Since the issuance of the Twenty-Second Extension Order, the Petitioner has acted and continues to act in good faith and with due diligence;
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 June 18, 2021 is necessary to allow for the resolution of the Province's claim, the distribution of the remaining Funds for Distribution, the distribution of interest income and the ongoing litigation that could impact the Amended Plan;
29. The Petitioner is of the view that extending the Stay Period to June 18, 2021 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 Thirty-Third Report;

IV. APPROVAL OF PROFESSIONAL FEES

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

Montreal, Maine & Atlantic Canada Co.			
Administration Charge Summary			
As of November 30, 2020			
	Fees /		
	Disbursements	Sales Taxes	Total
Administration Charge ¹	\$ 14,150,000	\$ 2,096,000	\$ 16,246,000
Accrued Professional Fees as of May 31, 2020	<u>(13,753,737)</u>	<u>(2,035,440)</u>	<u>(15,789,177)</u>
Balance of Administration Charge to implement the Plan	396,264	60,560	456,823
Richter	47,252	7,076	54,328
Woods	17,588	2,634	20,221
Gowling WLG	13,969	2,092	16,060
	<u>78,808</u>	<u>11,801</u>	<u>90,610</u>
Balance of Administration Charge to complete the CCAA ²	<u>\$ 317,455</u>	<u>\$ 48,758</u>	<u>\$ 366,214</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>			

32. As appears from the table, total fees for all Professionals for the six month period in question amount to \$78,808 and, following the payment of those fees, the balance of the Administration Charge, as it pertains to the Canadian Professionals, will be \$317,455;

V. INCREASE TO THE ADMINISTRATION CHARGE FOR U.S. PROFESSIONALS

33. The Amended Plan and Canadian Approval Order provided for an Administration Charge of \$8 million in favour of the U.S. Professionals;
34. According to the Estate Representative, those funds have been nearly entirely exhausted and additional funds are required in order to complete the CP Litigation and fund the cost of the litigation recently concluded in respect of the U.S. Administrative Claims;
35. The Estate Representative has requested an increase of US\$650,000, hence the request for an increase of CAD\$850,000;
36. If successful, the CP Litigation could result in significant additional distributions to creditors. As noted above, the total amount claimed in the CP Litigation is US\$215 million;
37. While the Estate Representative can seek third party litigation funding in order to continue to pursue the CP Litigation, the cost to creditors in the event that the litigation is a success would be significantly higher;

38. It is therefore in the interest of all stakeholders that this litigation continue to be funded from the existing Indemnity Fund;
39. In light of the unanticipated interest earned on the Funds for Distribution (\$8.6 million to date), distributions to creditors will not be reduced as a result of the increase sought;
40. As appears from the Monitor's Thirty-Third report, the Monitor, as well as the major stakeholders (including the Province, Class Representatives and U.S. plaintiff counsel) agree with the requested increase;
41. For clarity, in keeping with the Amended Plan, any unused portion of the Administration Charge, and thus any unused portion of the additional funds sent to the Estate Representative as requested herein, shall form part of the Indemnity Fund and will be distributed in accordance with the Amended Plan;

VI. CONCLUSION

42. The Petitioner respectfully requests that this Honourable Court issue an order in keeping with the conclusions set out below;
43. 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-Third Order Extending the Stay Period, for Approval of Professional Fees and an Increase to the Administration Charge for US 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 June 18, 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 and June 11, 2020 shall remain otherwise unchanged;

APPROVAL OF FEES FOR CANADIAN PROFESSIONALS

APPROVE the fees and disbursements (including taxes) of the following professionals as at November 30, 2020, in the following amounts:

- a) \$54,328 to Richter Advisory Group Inc., Monitor;
- b) \$20,221 to the Monitor's counsel, Woods LLP;
- c) \$16,060 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, as it pertains to the Canadian Professionals, in the amount of \$317,455 plus taxes be held by the Monitor to secure the payment of all fees and disbursements to be incurred from December 1, 2020 to the closing of the CCAA Proceeding;

INCREASE TO ADMINISTRATION CHARGE FOR U.S. PROFESSIONALS

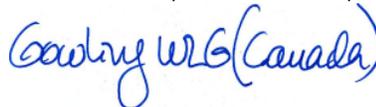
ORDER that the amount of the Administration Charge Reserve and of the Administration Charge, as it pertains to the U.S. Professionals, as contemplated by the Amended Plan and the Canadian Approval Order, is hereby increased from \$8,000,000 plus any applicable taxes to \$8,850,000 plus any applicable taxes;

ORDER the Monitor to pay the amount of \$850,000 to the Estate Representative from the Indemnity Fund;

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, December 4, 2020



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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C. C-36, as amended)

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and

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

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:

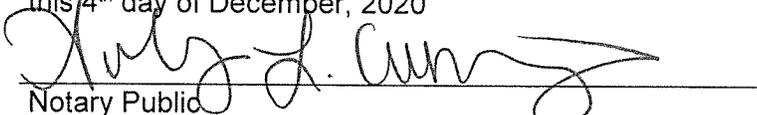
1. I am the Estate Representative to the estate of Montreal, Maine & Atlantic Railway Ltd., the sole shareholder of the Petitioner;
2. All the facts alleged in the present *Application for a Twenty-Third Order Extending the Stay Period, for Approval of Professional Fees and an Increase to the Administration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

AND I HAVE SIGNED:



ROBERT J. KEACH

SWORN TO before me in Portland, Maine,
this 4th day of December, 2020


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
N°: 450-11-000167-134

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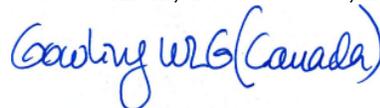
NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present ***Application for a Twenty-Third Order Extending the Stay Period, for Approval of Professional Fees and an Increase to the Administration Charge for US 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 December 10, 2020**, of its intention to contest the Application. In that case, the Application would be heard at a time and date to be determined by the Court and by means deemed appropriate by the Court.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, December 4, 2020



Gowling WLG (Canada) LLP
Attorneys for Petitioner

No. 450-11-000167-134

SUPERIOR COURT
(COMMERCIAL DIVISION)
DISTRICT OF ST-FRANÇOIS

(Sitting as a court designated pursuant to the Companies' Creditors Arrangement Act, R.S.C. C. C 36, as amended)

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CO. (MONTREAL, MAINE & ATLANTIQUE
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**RICHTER ADVISORY GROUP INC.
(RICHTER GROUPE CONSEIL INC.)**

Monitor

BL0052

**APPLICATION FOR A TWENTY-THIRD ORDER
EXTENDING THE STAY PERIOD, FOR
APPROVAL OF PROFESSIONAL FEES AND FOR
AN INCREASE TO THE ADMINISTRATION
CHARGE FOR US 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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