

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

Monitor

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**APPLICATION FOR A THIRTIETH 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"))**

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**TO THE HONOURABLE 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, Québec, 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 Québec Superior Court (the “**CCAA Court**”) granted an initial order in respect of MMAC (the “**Initial Order**”) pursuant to the CCAA and Richter Inc. (formerly 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-nine (29) occasions, with the most recent extension having been granted until December 17, 2024, pursuant to an order of December 15, 2023 (the “**Twenty-Ninth 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, 2025; and
  - 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 1, 2023 to November 30, 2024;
12. The Monitor supports the conclusions sought herein, the whole as appears from a copy of the Monitor’s Fortieth Report filed in support hereof as **Exhibit R-1**;

### III. EXTENSION OF THE STAY PERIOD

#### i) Status of distributions

13. As mentioned in the Monitor's Fortieth Report, the Monitor holds a sum of approximately \$16.5 million, which consists of the balance of the funds not yet distributed (the "**Undistributed Funds**") comprised of interest earned on the funds for distribution, various reserves which were taken in respect of various litigious claims in the Chapter 11 and the Administration Charge for the Professionals;

#### ii) Interest Treatment

14. Approximately \$11.0 million has been earned on the Funds for Distribution since the effective date of the Amended Plan. This amount is up from \$10.2 million in December 2023, when the Twenty-Ninth Extension Order was issued;

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

15. 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;
16. As more fully summarized in the Monitor's Fortieth Report, the Monitor provides the following updates regarding the ongoing proceedings against Canadian Pacific Railway ("**CP**") in the Chapter 11 Case (together, the "**CP Litigation**") which have an impact on the Amended Plan in respect of the timing and distribution of certain funds and the overall administration of the CCAA proceedings:
- a) The Estate Representative's proceedings against CP under the Carmack Amendment ("**Carmack Litigation**"): The Monitor has been advised by the Estate Representative (formerly the Chapter 11 Trustee) that the North Dakota District Court issued an order limiting the scope of damages to the value of the crude oil, and, in January 2024, rendered a judgment in an amount of approximately \$3.9 million USD (the "**Decision**"). Both parties appealed the Decision, including the appeal from the WD Trustee with respect to the decision limiting the damages to the value of the crude oil. CP has raised multiple issues on appeal, including the District Court's determination that CP had not effectively limited its liability under the Carmack Amendment. The Monitor is informed by the Estate Representative that the appeal is fully briefed and that a hearing should take place in early 2025, to be scheduled by the Court of Appeals. The Monitor is also informed that a decision from the Court of Appeals could reasonably be expected six months to a year after argument; and

- b) The Estate Representative's separate litigation against CP in the approximate amount of \$35 million USD: In the Adversary Proceeding MMA's Chapter 11 Case before the US Court, the parties had fully briefed the record for a summary judgment and were awaiting the US Court's ruling when the Quebec Superior Court rendered judgment in the class action proceedings against CP: *Ouellette v. Compagnie de chemin de fer Canadien Pacifique*, 2022 QCCS 4643 (the "**QSC Judgment**"). In the Adversary Proceeding, CP asserted that *Ouellette* has preclusive effect. However, the plaintiffs in *Ouellette* have since filed appeals of the QSC Judgment. These appeals could have an impact on the Adversary Proceeding. Accordingly, the parties requested that the US Court stay the Adversary Proceeding pending resolution of the *Ouellette* appeal. The US Court formally entered a stay, which will remain in effect until the *Ouellette* appeal is resolved. The hearing in the *Ouellette* appeal occurred in October 2024. A written decision is to follow;

17. As noted above, the Monitor currently holds \$16.5 million of Undistributed Funds. The Undistributed Funds will be distributed at the end of the CCAA proceedings, once all other matters have been finalized, in accordance with the Amended Plan;

**iv) The Monitor**

18. Since the Twenty-Ninth Extension Order, the Petitioner, through its counsel, has continued to cooperate and assist the Monitor as required;
19. As outlined in the Monitor's Fortieth Report, the Monitor continues to keep its attention on matters that could potentially allow for additional distributions to creditors;
20. The Monitor continues to respond to queries from creditors and maintains regular contact with the Estate Representative and major stakeholders;
21. Moreover, the Monitor has continued to provide monthly updates (February 2017 to October 2024) to CP's attorneys as well as Class Counsel, the whole pursuant to the CP Document Order (as more fully described in the Twenty-Sixth Report dated June 8, 2017);

**v) Reasonableness of the Extension Sought**

22. Since the issuance of the Twenty-Ninth Extension Order, the Petitioner has acted and continues to act in good faith and with due diligence;
23. Given the implementation of the Amended Plan and the distributions to creditors, no creditor will suffer any prejudice by the extension of the Stay Period;
24. In light of the foregoing, the Petitioner requests a longer extension of the Stay Period to December 17, 2025 in order to allow the necessary time for the Carmack Litigation to conclude and the complete distribution of the Undistributed Funds to claimants;
25. The Petitioner is of the view that extending the Stay Period to December 17, 2025, is appropriate in the present circumstances, while reducing the costs of seeking a further extension in six (6) months;
26. The Monitor has indicated to the Petitioner that it supports the present request for an extension of the Stay Period to December 17, 2025, as appears from its Fortieth Report;

27. In addition, the Monitor, either directly or via the Estate Representative, has communicated with the major stakeholders (the Province, the Class Counsel and the US Legal Representatives, who together represent 99% of all claimants and 93% of the value of the claims) who have all indicated their support and consent to the extension request.

**IV. APPROVAL OF CANADIAN PROFESSIONALS' FEES**

28. The following table, drawn from the Monitor's Thirty-Ninth Report, summarizes the Canadian Professional Fees incurred for the period of December 1, 2023 to November 30, 2024, for which approval is sought:

<b>Montreal, Maine &amp; Atlantic Canada Co.</b>			
<b>Administration Charge Summary</b>			
<b>As of November 30, 2024</b>			
	<b>Fees /</b>		<b>Total</b>
	<b>Disbursements</b>	<b>Sales Taxes</b>	
Administration Charge <sup>1</sup>	\$ 14,650,000	\$ 2,170,000	\$ 16,820,000
Accrued Professional Fees as of November 30, 2023	<u>(14,556,471)</u>	<u>(2,155,608)</u>	<u>(16,712,079)</u>
Balance of Administration Charge to implement the Plan	93,529	14,392	107,921
Richter	24,026	3,598	27,624
Woods	10,548	1,577	12,124
Gowling WLG	8,412	1,260	9,672
	<u>42,986</u>	<u>6,434</u>	<u>49,420</u>
Balance of Administration Charge to complete the CCAA <sup>2</sup>	<u>\$ 50,543</u>	<u>\$ 7,958</u>	<u>\$ 58,501</u>
<sup>1</sup> As per the Amended Plan of Compromise and Arrangement dated June 8, 2015, the Order dated March 3, 2017, the Order dated November 21, 2018 and the Order dated June 16, 2021.			
<sup>2</sup> In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.			

29. As appears from the table, total fees for all Professionals for the six-month period ending on November 30, 2024, amount to \$42,986, plus the applicable taxes;

**V. CONCLUSION**

30. The Petitioner respectfully requests that this Honourable Court issue an order in keeping with the conclusions set out below;
31. 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 Thirtieth 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;

**EXTENSION OF THE STAY PERIOD**

**ORDER** that the Stay Period, as defined in the Initial Order, is extended up to and including December 17, 2025, 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, December 10, 2020, June 16, 2021, December 17, 2021, June 14, 2022, December 12, 2022, June 14, 2023 and December 15, 2023, 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, 2024, in the following amounts:

- a) \$27,624 to Richter Inc. (formerly Richter Advisory Group Inc. /Richter Groupe Conseil Inc.), Monitor;
- b) \$12,124 to the Monitor’s counsel, Woods LLP;
- c) \$9,672 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 \$50,543, plus taxes, be held by the Monitor to secure the payment of all fees and disbursements to be incurred from December 1, 2024, 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, December 6, 2024

*Gowling WLG (Canada)*

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**GOWLING WLG (CANADA) LLP**  
Attorneys for Petitioner

CANADA

SUPERIOR COURT  
(COMMERCIAL DIVISION)

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

(Sitting as a court designated pursuant to the  
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CIE)**

Petitioner

and

**RICHTER INC. (FOMERLY 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:

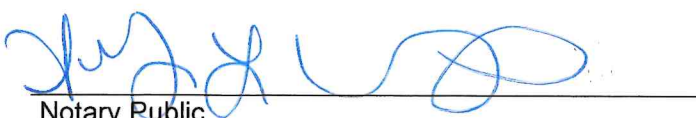
1. I am the Estate Representative to the estate of Montreal, Maine & Atlantic Railway Ltd., the sole shareholder of the Petitioner;
2. All the facts alleged in the present *Application for a Thirtieth Order Extending the Stay Period and for Approval of Professional Fees* are true.

AND I HAVE SIGNED:



ROBERT J. KEACH

SWORN TO before me in Portland, Maine,  
this 9<sup>th</sup> day of December 2024



Notary Public

**AUBREY L. CUMMINGS**  
NOTARY PUBLIC  
State of Maine  
My Commission Expires  
October 21, 2031



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  
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CO. (MONTREAL, MAINE & ATLANTIQUE  
CANADA CIE)**

Petitioner

and

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

Monitor

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**NOTICE OF PRESENTATION**

TO: **SERVICE LIST**

**TAKE NOTICE** that the present ***Application for a Thirtieth Order Extending the Stay Period and for Approval of Professional Fees*** will be presented for adjudication before the Honourable Justice 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 11, 2024**, of its intention to contest the Application. In that case, the Application will be heard on **December 12, 2024**, at **9:00 a.m.** by Teams.

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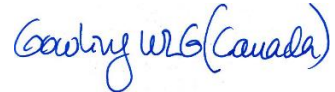
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MONTREAL, December 6, 2024



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**GOWLING WLG (CANADA) LLP**

Attorneys for Petitioner

N°: 450-11-000167-134

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Monitor

*BL0052*

**APPLICATION FOR A THIRTIETH ORDER  
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(SECTIONS 9 AND 11 *ET SEQ.* OF THE  
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**ORIGINAL**

Me Geneviève Cloutier (AN3718)  
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N° file : **L134420004**

INIT. : GC/II

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