

CANADA

PROVINCE OF QUEBEC
DISTRICT OF SAINT-FRANÇOIS

N°: 450-11-000167-134

SUPERIOR COURT
(Commercial Division)

(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)**

Debtor-Petitioner

-and-

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

Monitor

-and-

RAILROAD ACQUISITION HOLDINGS LLC

-and-

**PERSONNAL AND MOVABLE REAL RIGHTS
REGISTRAR**

-and-

**THE LAND REGISTRARS FOR THE LAND
REGISTRY OFFICES FOR THE REGISTRATION
DIVISIONS OF: BROME, CAMPTON,
FRONTENAC, MISSISQUOI, ROUVILLE, ST-
HYACINTHE, ST-JEAN, SHEFFORD,
SHERBROOKE, STANSTEAD**

Mise en cause

**MOTION FOR THE ISSUANCE OF (i) AN ORDER AUTHORIZING THE SALE
OF THE ASSETS OF THE PETITIONER AND OF (ii) A VESTING ORDER
(Sections 11 and 36 of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36 ("CCAA"))**

**TO THE HONOURABLE JUSTICE GAÉTAN DUMAS OF THE SUPERIOR COURT, SITTING
IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF SAINT-FRANÇOIS, THE
PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:**

RELIEF SOUGHT

1. Montreal Maine & Atlantic Canada Co. ("**MM&A**") hereby requests that this honourable Court enter: an order authorizing it to sell its Assets (as defined below) to Railroad Acquisition Holdings LLC (the "**Stalking Horse**") or to such other entity that would have

participated in the bidding process contemplated by the bid procedures filed herewith as **Exhibit R-1 (the "Bid Procedures")** and which would have submitted a higher or better offer for the Assets in accordance with the terms and conditions of the Bid Procedures (the **"Successful Bidder"**) free and clear of all liens, claims, encumbrances and interests;

2. In the event that, at the auction to be held on January 21, 2014 pursuant to the Bid Procedures, a Successful Bidder is selected, Petitioner will amend the present Motion in order to set forth the terms and conditions of the Successful Bid (as these terms are defined in the Bid Procedures) and adjust the conclusions hereof accordingly;

BACKGROUND

3. On August 8, 2013, this Honourable Court issued an order extending the protection of the *Companies' Creditors Arrangement Act* ("**CCA**") to MM&A pursuant to section 11.02 of the CCA (as amended on August 23, 2013, the "**Initial Order**");
4. Pursuant to the Initial Order, Richter Advisory Group Inc. (Richter Groupe Conseil Inc.) was appointed as Monitor of the Petitioner (the "**Monitor**") and a stay of proceedings (the "**Stay of Proceedings**") was ordered until and including September 6, 2013 (the "**Stay Period**");
5. The Stay Period has since been extended by order of this Court to January 28, 2014;
6. In addition to protecting the Petitioner, the Stay of Proceedings also extends to inter alia the members of the Petitioner's corporate group (the Petitioner and the other members of its corporate group collectively referred to as the "**Petitioner's Corporate Group**") listed in Schedule "A" hereto and to the persons listed in Schedule "B" hereto (collectively, the "**Non Petitioner Defendants**"). As appears from Schedules "A" and "B", the members of the Petitioner's Corporate Group and the Non Petitioner Defendants include, inter alia, Montreal, Maine & Atlantic Railway Ltd ("**MM&AR**"), (the Petitioner's parent company), as well as their liability insurer, XL Insurance Company Ltd.;
7. MM&A's filing under the CCA was precipitated by the tragic train derailment in Lac-Mégantic on July 6, 2013 (the "**Derailment**"). The Derailment also precipitated the filing of Chapter 11 bankruptcy proceedings by MM&AR in the United States Bankruptcy Court, District of Maine (the "**Chapter 11 Case**");
8. On August 21, 2013, the United States trustee appointed Robert J. Keach to serve as trustee in the Chapter 11 Case (the "**Chapter 11 Trustee**");
9. On September 4, 2013, the Court entered an order adopting the Cross-Border Insolvency Protocol (the "**Protocol**"). In light of the Protocol, the Petitioner and Monitor have conferred with the Chapter 11 Trustee appointed in the Chapter 11 Case regarding the relief sought in this Motion;
10. MM&A, the Monitor and the Chapter 11 Trustee have determined that a sale of the assets of both MM&A and MM&AR, on a going concern basis is in the best interests of the creditors of both Debtors;

11. In order to preserve the going concern value of the Debtor's assets, such sale must occur expeditiously;
12. Accordingly, on October 9, 2013, this Honourable Court authorized MM&A to execute the agreement negotiated by MM&A, the Monitor and the Chapter 11 Trustee with an investment banker, namely Gordian Group, whereby the latter, in accordance with the joint instructions of the Monitor, MM&A and the Chapter 11 Trustee, was to manage a sales process of both MM&A's and MM&AR's assets and business as a going concern, including to identify potential bidders, to obtain from them expressions of interest and select a stalking horse bidder;

THE SELECTION OF THE STALKING HORSE

13. The Gordian Group identified and solicited more than 40 potential bidders and 18 of them executed a non-disclosure agreement and conducted verifications with respect to MM&A's and MM&AR's assets and business, through consultation of the information made available to them in a virtual data room or otherwise;
14. Each of these potential bidders were offered the possibility to act as the stalking horse bidder;
15. Although it is expected that some of these interested parties will participate in the auction contemplated under the Bid Procedures, Railroad Acquisition Holdings LLC was the only one willing to act as the Stalking Horse Bidder;
16. In view of the foregoing, Gordian, MMA, the Monitor and the Chapter 11 Trustee concentrated their efforts on the negotiation and conclusion of a satisfactory stalking horse bid with Railroad Acquisition Holdings LLC;
17. These efforts ultimately led to the execution, on December 12, 2013, by and between Petitioner, the Chapter 11 Trustee and the Stalking Horse of the Asset Purchase Agreement filed in support hereof as **Exhibit R-2** (the "**Stalking Horse APA**");
18. In the context of the negotiation of the Stalking Horse APA, Gordian Group, MM&A, the Monitor and the Chapter 11 Trustee satisfied themselves of the Stalking Horse's ability to perform all transactions provided for under the Stalking Horse APA:
 - This Stalking Horse is an affiliate of Fortress Investment Group LLC ("**Fortress**"), incorporated for the purposes of carrying out the acquisition of MM&A and MM&AR's assets;
 - Fortress is a global investment management firm acting on behalf of over 1,500 institutional investors and private clients worldwide;
 - Fortress undertook to confirm, prior to the hearing of this Motion, the irrevocable and sufficient capitalization of the Stalking Horse or, alternatively, that it will guarantee the Stalking Horse's obligations under the Stalking Horse APA or provide a letter of credit to secure said obligations;

19. On December 19, 2013, this honourable Court approved the Stalking Horse APA and the Bidding Process contemplated by the Bid Procedures;

SUMMARY OF THE STALKING HORSE APA

20. The Stalking Horse APA (Exhibit R-2) contains the material terms of the Stalking Horse's proposed purchase and should be consulted as to all of the terms of the proposed sale. Certain material terms of the Stalking Horse APA can be summarized as follows:¹

- i) **Purchased Assets:** All assets of MM&AR and MM&A other than the Excluded Assets (collectively, the "Assets").
- ii) **Assigned Contracts and Leases:** all executory contracts and all unexpired leases (the "Assigned Contracts and Leases"), subject to the addition or removal of certain executory contracts and unexpired leases by the Stalking Horse pursuant to the terms of the Stalking Horse APA, shall be assigned to the Stalking Horse.
- iii) **Excluded Assets:** includes: cash; cash equivalents; accounts; accounts receivable; rights of reimbursement; setoff rights; rights of recoupment and any rights arising out of governmental programs; causes of action other than the Assigned Causes of Action selected by the Stalking Horse pursuant to Section 2.1(a)(xv) and Section 2.1(b)(xv) of the Stalking Horse APA; the Debtors' rights and interests under any insurance policies; any and all claims, causes of action, or liabilities relating to or arising out of the Derailment; deposits; contracts and leases not assigned to the Stalking Horse.
- iv) **Sale Free and Clear:** The transfer of the Assets to the Stalking Horse shall be free and clear of all liens, claims, encumbrances and interests.
- v) **Purchase Price:** The purchase price for the Assets consists of: US Fourteen Million, Two Hundred and Fifty Thousand Dollars (US\$14,250,000.00) (the "Purchase Price").
- vi) **Deposit:** The Stalking Horse will deliver to counsel to the Chapter 11 Trustee, as escrow agent, a deposit of US\$750,000 (the "Deposit") within five (5) Business Days following the execution of the Stalking Horse APA. The Deposit (and any interest accrued thereon) shall be credited as a partial payment of the Purchase Price payable at the Closing.
- vii) **Cure Costs:** The Stalking Horse shall pay any amounts payable under Section 11.3 (4) CCAA and the relevant provision of the *United States Bankruptcy Code* in order to effectuate the assumption of the Assigned Contracts and Leases, provided, however, that such cure costs shall not exceed the Cure Cost Cap set forth in the Stalking Horse APA, namely an amount of U.S.\$1,300,000 in the aggregate (Section 2.3 (a) (iii) of the Stalking Horse APA).

¹ The summary of the terms of the Stalking Horse APA set forth herein is intended solely to provide a brief overview of certain material terms thereof. This summary is qualified entirely by reference to the Stalking Horse APA, and in the event of any conflict or inconsistency between the provisions of this Motion and the Stalking Horse APA, the Stalking Horse APA shall prevail.

- viii) **Closing Costs:** The Stalking Horse shall pay any recording fees and transfer taxes, except as otherwise provided in the Sale Order or Vesting Order. Other costs associated with the closing of the Stalking Horse APA shall be allocated as provided for in the Stalking Horse APA.
- ix) **Break-Up Fee:** The Stalking Horse APA requires that, in the event that a higher or better offer or offers is approved by the Bankruptcy Court and/or Canadian Court, the Debtors pay to the Stalking Horse a break-up fee in the amount of 3.5% of the Purchase Price (the "**Break-Up Fee**") and a reimbursement of actual expenses incurred by the Stalking Horse (the "**Expense Reimbursement**") in an amount not to exceed US\$500,000.00. The Break-Up Fee and Expense Reimbursement shall constitute administrative expenses under sections 503(b)(1) and 507(a)(1) of the Bankruptcy Code and be secured by a charge on MM&A's assets to be granted by this Court.
- x) **Conditions to Closing:** includes: entry of orders by this Court and the United States Bankruptcy Court for the District of Maine approving Bid Procedures, Sale Motion, and assumption, assignment and cure procedures; and all required governmental approvals and permits.

SECURED CREDITORS OF MM&A ARE THE FOLLOWING :

21. The secured creditors of MM&A are the following:

Secured creditors currently holding registered security against the assets of the Petitioner:

- a) The FRA, to whom Petitioner granted a corporate guarantee with respect to amounts owing by its corporate parent MM&AR (the outstanding balance being approximately \$27,500,000). The FRA holds a security interest in all of the debtors present and future acquired personal property registered in the Personal Property Register of Nova Scotia ("**PPRS**"); and a conventional hypothec without delivery in the amount of \$81,600,000 registered in the Register of Personal and Movable Real Rights ("**RPMRR**") in Québec covering the universality of the movable and immovable property, corporeal and incorporeal, present and future, of the Petitioner. It has further registered an immovable hypothec against the buildings, land and track structure owned by MM&A, with the exception of the rail line segment from Bedford to Sainte Rosalie; and
- b) Right of ownership of Lessor (under a leasing agreement) held by RoyalNat Inc. with respect to certain equipment;

A copy of extracts of the computerized records of the PPRS and the RPMRR are filed en liasse in support hereof as **Exhibit R-3**;

- c) Section 11.8(8) provides a charge with respect to any claim, if any, by Her Majesty in Right of Canada or a province against the Petitioner for any costs they may have expended or may in the future expend, for remedying any environmental condition or environmental damage affecting real property of the Petitioner, the charge to apply on said real property and on any other real

property of Petitioner that is contiguous thereto and that is related to the activities that caused the environmental condition or environmental damage. In that respect, on or about December 19, 2013, the Government of Québec registered in the land registration divisions of Brôme, Shefford, Sherbrooke, Stanstead, Missisquoi, Campton, Frontenac and St-Jean a "Sûreté en vertu de l'article 11.8(8) de la *Loi sur les arrangements avec les créanciers des compagnies*" against the immovable property of MM&A in the minimum amount of \$200,000,000.00, a copy of which is filed in support hereof as **Exhibit R-4**;

GROUNDS FOR THIS MOTION

22. As noted above, MM&A and the Chapter 11 Trustee, with the assistance of the Gordian Group and the Monitor, extensively marketed the assets of MM&A and MM&AR to numerous potential purchasers and entered into non-disclosure agreements with many potential purchasers to enable such entities to conduct due diligence with respect to the assets. The trustee was unable to secure an offer at this time that provided more consideration to the Debtors' estate than the offer made by the Stalking horse, although such a higher or better offer may occur in connection with the auction contemplated under the Bid Procedures and scheduled for January 21, 2014;
23. The Stalking Horse APA is the product of good faith and arm's length negotiations between the Chapter 11 Trustee, MM&A, the Monitor and the Stalking Horse. Further, the price and form and structure of the offer proposed by the Stalking Horse continued to be tested in the market place pursuant to the Bidding Process set forth in the Bid Procedures;
24. The Bid Procedures, approved by this Honourable Court on December 19, 2014, are fair to all parties and are designed to permit to MM&A and the Chapter 11 Trustee to obtain the best possible price for the assets of the Debtors;
25. Accordingly, MM&A believes that the winning bid(s) that emerge from the Bidding Process will be the highest and best bids obtainable for the Debtors' assets, whether it be the Stalking Horse APA or other Successful Bid(s);
26. The secured creditors of MM&A did not oppose the approval by this Honourable Court on December 19, 2014, of the Stalking Horse APA and, accordingly, MM&A understands that said secured creditors agree with the completion of the transaction contemplated by the Stalking Horse APA;
27. Furthermore, MM&A understands that the Monitor will file a report in connection with the present Motion confirming that, in its opinion, the sale of MM&A's assets pursuant to the Stalking Horse APA would be more beneficial to the creditors and other Stakeholders than a sale or a disposition under a bankruptcy;
28. In addition, at this stage and based upon its existing DIP Financing, MM&A has the financial means sufficient to maintain its operations only through the next few weeks;

29. MM&A, the Monitor and the Chapter 11 Trustee are reviewing various alternative financing/funding options but, as of the date of the present Motion, no additional financing has been secured;
30. Accordingly, in the absence of a sale of MM&A's assets to the Stalking Horse or any other Successful Bidder(s) and of additional financing, MM&A may have to permanently cease its operations and proceed to the liquidation of its assets, the whole to the detriment of its creditors and other Stakeholders;

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

1. **GRANT** this *Motion for the issuance of an order authorizing the sale of the assets of the Petitioner and of a Vesting Order* (the "**Motion**");
2. **ISSUE** an order substantially in the form of the draft order communicated as **Exhibit R-5** in support of the Motion;
3. **THE WHOLE** without costs save and except in case of contestation.

MONTREAL, January 19, 2014


GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

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Mis en cause

NOTICE OF PRESENTATION

TO: **Service list**

TAKE NOTICE that the present *Motion for the issuance of an order authorizing the sale of the assets of the Petitioner and of a Vesting Order* will be presented for adjudication before the Honourable Justice Gaétan Dumas of the Superior Court of Quebec on **January 23, 2014**, in room 1 of the Courthouse located at 375 King St. West in Sherbrooke, at 10:00 am or so soon as counsel may be heard

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, January 19, 2014


GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

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SHERBROOKE, STANSTEAD**

Mis en cause

LIST OF EXHIBITS

- Exhibit R-1: Bid Procedures;
- Exhibit R-2: Assets Purchase Agreement dated December 12, 2013;
- Exhibit R-3: Copy of extracts of the computerized records of the PPRs and the RPMRR;
- Exhibit R-4: Sûreté en vertu de l'article 11.8(8) de la *Loi sur les arrangements avec les créanciers des compagnies*;

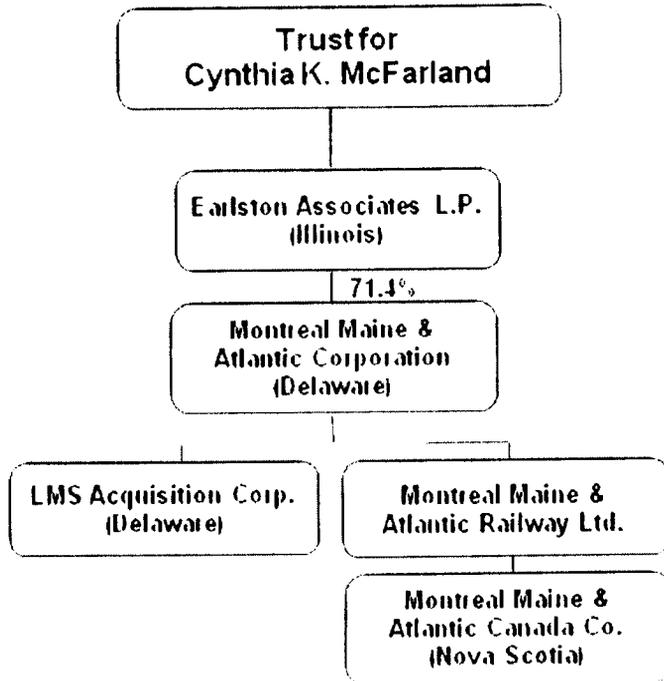
Exhibit R-5: Approval and Vesting Order.

MONTREAL, January 19, 2014


GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

SCHEDULE « A »

MONTREAL, MAINE & ATLANTIC CORPORATE GROUP



SCHEDULE « B »

NON PETITIONNERS DEFENDANTS :

MONTREAL, MAINE & ATLANTIC CORPORATION

MONTREAL, MAINE & ATLANTIC RAILWAY LTD

EARLSTON ASSOCIATES L.P.

EDWARD BURKHARDT

ROBERT GRINDROD

GAYNOR RYAN

DONALD GARNER JR.

JOE McGONIGLE

THOMAS HARDING

XL INSURANCE COMPANY LIMITED

XL GROUP PLC

N° 450-11-000167-134

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als.**

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BL0052

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(Sections 11 and 36 of the *Companies' Creditors
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ORIGINAL

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INIT.: PB/cl

c/o 3511

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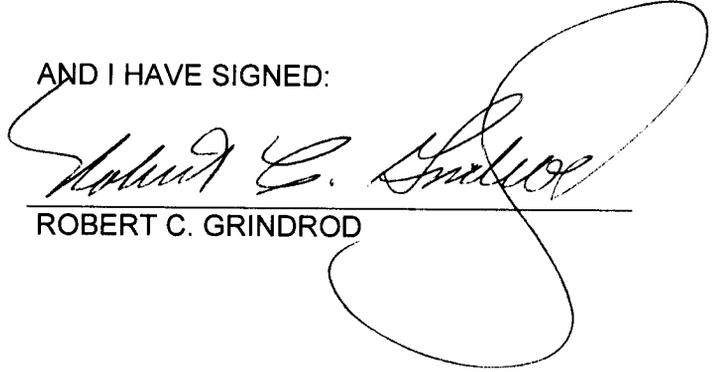
AFFIDAVIT OF ROBERT C. GRINDROD

I, the undersigned, Robert C. Grindrod, businessman, doing business at 15 Iron Road, Hermon, Maine, USA, 04401, solemnly declare as follows:

1. I am the President and Chief Executive Officer of Montreal, Maine and Atlantic Canada Co.;

2. All the facts alleged in the present *Motion for the issuance of an order authorizing the sale of the assets of the Petitioner and of a Vesting Order* are true.

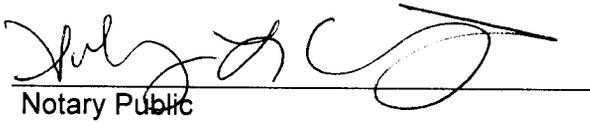
AND I HAVE SIGNED:



Handwritten signature of Robert C. Grindrod in cursive script, written over a horizontal line.

ROBERT C. GRINDROD

SWORN TO before me in Portland, Maine
this 20th day of January 2014



Handwritten signature of Aubrey L. Cummings in cursive script, written over a horizontal line.

Notary Public

AUBREY L. CUMMINGS
Notary Public, Maine
My Commission Expires October 21, 2017

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AFFIDAVIT OF ROBERT GRINDROD
(RE: MOTION FOR THE ISSUANCE OF (i) AN ORDER
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