

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670

Chapter 11

**LIMITED OBJECTION OF OFFICIAL COMMITTEE
OF VICTIMS TO CHAPTER 11 TRUSTEE'S MOTION FOR AN ORDER
(I) APPROVING PROPOSED DISCLOSURE STATEMENT; (II) ESTABLISHING
NOTICE, SOLICITATION AND VOTING PROCEDURES; (III) SCHEDULING
CONFIRMATION HEARING; AND (IV) ESTABLISHING NOTICE AND OBJECTION
PROCEDURES FOR CONFIRMATION OF THE PLAN**

The Official Committee of Victims (the "Victims' Committee") appointed in the chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), by and through its undersigned counsel, hereby files this limited objection (the "Limited Objection") to the Chapter 11 Trustee's *Motion For an Order (I) Approving Proposed Disclosure Statement; (II) Establishing Notice, Solicitation and Voting Procedures; (III) Scheduling Confirmation Hearing; and (IV) Establishing Notice and Objection Procedures for Confirmation of the Plan*, filed May 18, 2015 [Docket No. 1432] (the "Disclosure Statement Motion"). In support of this Limited Objection, the Victims' Committee respectfully represents as follows:¹

Objection

1. The Disclosure Statement Motion should not be granted unless certain key provisions of the *First Amended Disclosure Statement for the Trustee's Plan of Liquidation Dated July 7, 2015* [Docket No. 1497] (the "Proposed Disclosure Statement") pertaining to the

¹ Capitalized terms used herein shall have the meaning ascribed to them in the Proposed Disclosure Statement.

“typical holders of claims” in Class 12 (“Derailment Wrongful Death Claimants”) are translated into French and described in a plain language executive summary style supplement to be included with the Disclosure Statement and other disclosure and solicitation materials distributed to Derailment Wrongful Death Claimants. Additionally, the Court should direct that this plain language supplement in French be distributed to Derailment Wrongful Death Claimants themselves rather than solely to their counsel.

2. Such a supplement is critical to ensure that the Derailment Wrongful Death Claimants receive adequate information about the *Trustee’s First Amended Plan of Liquidation Dated July 7, 2015* [Docket No. 1495] (the “Proposed Plan”), as required by section 1125(a)(1) of the Bankruptcy Code.²

3. The Victims’ Committee is taking a pragmatic approach with respect to the Proposed Disclosure Statement. Although it could take the position that the approval of the Proposed Disclosure Statement should be conditioned on the entire Proposed Disclosure Statement being translated into French because most of the Derailment Wrongful Death Claimants do not speak English and the “legalese” used in the Proposed Disclosure Statement is completely inappropriate for the target audience – the families of the Victims of the Derailment, the Victims’ Committee is not oblivious to the fact that the Settlement Agreements embodied in the Proposed Plan are, subject to certain collateral issues (discussed herein), in the best interest of the Victims. Therefore, an “all or nothing” approach is not necessary and the Victims’ Committee simply requests that a few topics be addressed in French and in plain language.

² Section 1125(a)(1) provides that “‘adequate information’ means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan” 11 U.S.C. § 1125(a)(1).

These topics are: (1) the plan structure and challenge rights for payment of legal fees from the WD Trust, including Contingency Fees pursuant to Derailment Wrongful Death Client Engagement Letters or otherwise, (2) the tax consequences/implications, if any, for Derailment Wrongful Death Claimants of WD Trust distributions being made from the United States to Canadian residents, and (3) the amount of professional fees expected to be paid to the various professionals in this case under the Proposed Plan.

A. Derailment Wrongful Death Claimants Should Receive French Language Supplement Explaining Certain Key Elements of the Proposed Disclosure Statement

4. The “typical holders of claims” in Class 12 – the Derailment Wrongful Death Claimants – speak French as their native language. Many of them have limited to no fluency in the English language. Indeed, as Judge Kornreich recognized regarding the Derailment Wrongful Death Claimants: **“Most are residents of Quebec; most speak French as their primary language; many are unsophisticated in affairs of this type; and many may lack the resources to hire independent counsel.”** See *Order Authorizing the Appointment of a Victims’ Committee*, filed October 18, 2013 [Docket No. 391] at p. 2-3. The adequacy of the information provided in the Proposed Disclosure Statement with regard to the Derailment Wrongful Death Claimants must be viewed through this lens. *In re Bloomingdale Partners*, 155 B.R. 961, 972 (Bankr. N.D. Ill. 1993) (“Depending on the level of sophistication among ‘typical’ holders in each ‘relevant class,’ the required information for each relevant class may vary.”); *In re El Comandante Mgmt. Co., LLC*, No. 04-10938 (ESL), 2006 WL 3903592, at *4 (Bankr. D.P.R. Mar. 3, 2006) (“Thus, the court will determine the adequacy of the information contained in a disclosure statement on a case-by-case, after taking into consideration the particular needs of each class of creditors.”).

5. In light of the above, the Victims' Committee is at a loss to find how the Proposed Disclosure Statement can possibly accomplish its statutorily prescribed purpose of providing Derailment Wrongful Death Claimants with "adequate information" "of a kind, and in sufficient detail . . . [to] enable a hypothetical reasonable investor **typical of** [Derailment Wrongful Death Claimants] to make an **informed judgment** about the plan." 11 U.S.C. § 1125(a)(1). For a disclosure statement to be effective it "must be clear and **comprehensible.**" *In re Ferretti*, 128 B.R. 16, 19 (Bankr. D.N.H. 1991) (denying disclosure statement motion because proposed disclosure statement lacked "adequate information") (emphasis added). Quite simply, Derailment Wrongful Death Claimants cannot make an informed judgment about the Proposed Plan based on a Proposed Disclosure Statement that they cannot even read. Furthermore, any argument that it would be impracticable for the Trustee to provide a French translation of certain selected portions of the Proposed Disclosure Statement would be erroneous. French is one of the most widely spoken languages in the world and the Trustee should have no trouble finding a translation service capable of translating English to French. Indeed, the Monitor in the CCAA Proceeding has regularly provided documents in connection with the CCAA Proceeding, including the CCAA Plan of Compromise, in both English and French. To be clear, as noted above, the Victims' Committee **does not suggest that the entire Proposed Disclosure Statement should be translated. Rather, in an effort to be practical and in recognition of the exigencies of the case, the Victims' Committee simply proposes that an executive summary style insert be drafted and translated into French and included with the disclosure package sent directly to Derailment Wrongful Death Claimants.**

6. The Trustee may very well argue that because some of the Derailment Wrongful Death Claimants have granted proxies to their U.S. Counsel to vote on their behalf, a translation

is not necessary. *See* Proposed Disclosure Statement § XII(ii) (“In addition, to the extent counsel to the Holder of any Derailment Wrongful Death Claims or Derailment Moral Damages and Personal Injury Claims has been authorized, in writing, to vote such Claim, and counsel submits a Ballot for such Claim in accordance with these procedures, such vote shall be a valid and binding vote as to such Claim.”). However, it is hard to see how proxies obtained prior to the approval of the Proposed Disclosure Statement (when Derailment Wrongful Death Claimants would have had no way of knowing how they would be treated under the Proposed Plan) can possibly be valid and not an improper solicitation of votes prior to approval of a disclosure statement under section 1125(b) of the Bankruptcy Code. Indeed, section 1125(b) was added to the Bankruptcy Code to “discourage the undesirable practice (under the former Bankruptcy Act of 1898, as amended) of soliciting acceptances or reject at a time when creditors . . . were too ill-informed to act capably in their own interests.” *In re Clamp-All Corp.*, 233 B.R. 198, 208 (Bankr. D. Mass. 1999) (internal citations omitted). Indeed, if the Court were to accept this preemptive proxy as valid, it would make it essentially irrelevant what the Proposed Disclosure Statement says. More importantly, however, not every Derailment Wrongful Death Claimant has granted proxies to U.S. Counsel and – at the least – those Derailment Wrongful Death Claimant’s should have the benefit of being provided summaries of key sections of the Proposed Disclosure Statement in a form they can read and understand.

B. Issues To Be Addressed In Supplement

Contingency Fee Arrangements

7. This Court may not be aware of this, and the Canadian CCAA Court was only recently made aware (through counsel to the Victims’ Committee), but a number of estate representatives of Victims who perished, as a result of the Derailment, signed – in the days

following the Derailment – retainers with contingency fee agreements providing for the payment of legal fees from settlement proceeds in percentages ranging between 33% and 40% with a few U.S. lawyers who visited the small devastated town of Lac-Mégantic, Quebec in the days after the Derailment. The Canadian Court expressed shock upon learning of these contingency fee agreements and dismay at the fact that no party in interest had brought this issue to the Court’s attention prior to the Victims’ Committee’s counsel doing so. At the end of a May 5, 2015 hearing before the CCAA Court regarding the *Motion for the Convening of a Creditors’ Meeting* (the “Motion for Creditors’ Meeting”), where this issue was first raised and discussed, Justice Dumas rhetorically asked the assembled counsel whether there are other matters he should know about and had not been told about. Justice Dumas also expressed that he wished to retain jurisdiction over the issue of the contingency fee agreements. To address Justice Dumas’s concern about retaining jurisdiction over these matters, an agreement between the Victims’ Committee, the Trustee, the CCAA Monitor, and other parties in interest was reached after the May 5, 2015 CCAA hearing (and conveyed to the CCAA Court in a letter from counsel to MMA Canada) to modify the proposed order of the CCAA Court approving the Motion for Creditors Meeting to include the following language:

ORDERS that, notwithstanding anything in this Order to the contrary and subject to the entry of the Canadian Approval Order and U.S. Approval Order and such Approval Orders becoming Final Orders, the valuation of claims for voting purposes with respect to the U.S. Plan shall be determined solely in accordance with the U.S. Plan and any orders entered in such case with respect to the U.S. Plan. Distributions with respect to Derailment Wrongful Death Claims (as defined in the U.S. Plan) shall be solely in accordance with the terms of the U.S. Plan, which U.S. Plan shall provide for distribution by the WD Trustee strictly in accordance with Schedule E to the Plan, which is also attached to the U.S. Plan; **provided, however, this paragraph shall be subject to the U.S. Plan, or any subsequent U.S. plan, being amended (and the U.S. Approval Order containing an identical provision) to provide:**

(i) that no payment or distribution of any kind shall be made to any lawyer or counsel allegedly representing the holder of a Derailment Wrongful Death Claim (as defined in the U.S. Plan) unless such lawyer or counsel presents to the WD Trustee an executed engagement letter or similar document that entitles such lawyer or counsel to such fees or distribution, including any contingent fee (a “Derailment Wrongful Death Client Engagement Letter”); and

(ii) that **no such distribution or payment shall be made by the WD Trustee if:**

(a) the Derailment Wrongful Death Client Engagement letter has been held to be invalid or inoperative by a final order or ruling entered in any proceeding (including an administrative proceeding) initiated by a party with standing disputing the rights of such lawyer or counsel to fees **before any court, administrative tribunal or other forum with jurisdiction over such agreements, in the United States or Canada, (collectively a “Proceeding”), in which there was a challenge to the validity or operation of the Derailment Wrongful Death Client Engagement Letter; or**

(b) any Proceeding is pending in which there is a challenge to the validity or operation of the Derailment Wrongful Death Client Engagement Letter, unless and until such Proceeding has been concluded by a final order or ruling in favor of the lawyer or counsel involved, and then the distribution to the lawyer and counsel shall be limited by the terms of any such final order or ruling issued in such Proceeding, to the extent such order or ruling contains any such limitations.

Holders of Derailment Wrongful Death Claims involved in a Proceeding shall receive the portion of their distributions on account of their Derailment Wrongful Death Claim not in dispute in such Proceeding at the same time and in the same manner as the holders of other Derailment Wrongful Death Claims not involved in a Proceeding.

Nothing in this paragraph 38 is intended to limit or can be interpreted as limiting the exercise by the CCAA Court of its jurisdiction in connection with the CCAA Proceeding, including in connection with the approval of the Plan.

CCAA Order (as hereinafter defined) ¶ 34 (emphasis added). Justice Dumas then entered the *Judgment on the Motion for the Convening of a Creditors’ Meeting* (the “CCAA Order”) (a copy of which is attached hereto as Exhibit B), approving this agreed upon language. CCAA Order ¶ 75. Furthermore, Justice Dumas went on to note that “[t]his new language [quoted above]

confirms that the [CCAA] [C]ourt, without deciding on the merits, retains jurisdiction to decide on the validity and enforceability of the fee agreements.” CCAA Order ¶ 35.

8. The CCAA Court’s views with respect to its retained jurisdiction over contingency fee agreements and/or that the families of the Victims have the right to challenge the contingency fee agreements in Canada is nowhere disclosed to the Derailment Wrongful Death Claimants in French and in plain language. This is a glaring omission because nothing could be more material in these cases from the point of view of the Derailment Wrongful Death Claimants themselves than the net distributions they stand to receive under the Proposed Plan. The Derailment Wrongful Death Claimants need to be told – in French – and in plain language that they may have the right to challenge any fee agreements before a Canadian Court.

9. The Trustee may argue that issues related to legal fees between Derailment Wrongful Death Claimants and their individual counsel is not relevant to the Proposed Disclosure Statement, but such issues have a direct and significant impact on the total net recoveries Derailment Wrongful Death Claimants stand to receive on account of the Proposed Plan. Moreover, the Trustee’s argument is not compelling where the Proposed Plan and WD Trust Agreement themselves seek to modify or restrict the rights of the Derailment Wrongful Death Claimants with respect to the contingency fee agreements.

10. The Trustee may also argue that the addition of certain language regarding the mechanics of distributions from the WD Trust (the “Fee Arrangement Language”) to section 5.10 of the Proposed Plan in a recent revision of the Plan (and copied into the Disclosure Statement at section VII(F)(x)) addresses these issues. However, although the addition of the Fee Arrangement Language to the Proposed Plan is a welcome development (subject to the issues described in section C below), the Proposed Disclosure Statement still does not provide

adequate information regarding how the Fee Arrangement Language affects the Derailment Wrongful Death Claimants. To provide adequate disclosure, the Proposed Disclosure Statement must clearly explain how the Fee Arrangement Language affects the Derailment Wrongful Death Claimants' potential distributions and any contingences to the treatment provided for their claims under the Proposed Plan. To do so the Proposed Disclosure Statement must do more than just repeat what the Proposed Plan says, and describe the effect of such provisions on the Derailment Wrongful Death Claimants. *In re Ferretti*, 128 B.R. at 19 (stating in connection with the denial of a disclosure statement for lack of adequate information: "This disclosure statement buries the treatment of creditors in general discussion about what the Bankruptcy Code provides or what the plan provides. A disclosure statement should not repeat these provisions, but should disclose their effect and their meaning in a particular case."). In the instant case, the Proposed Disclosure Statement simply restates – verbatim – the language of the Proposed Plan and the WD Trust on these issues but does not describe the effect this language will have on the Derailment Wrongful Death Claimants. *Compare* Proposed Disclosure Statement § VII(F)(x) with Proposed Plan § 5.10.

11. As noted above, section 1125 of the Bankruptcy Code requires more. In addition to copying the Fee Arrangement Language from the Plan, the Proposed Disclosure Statement should, in the form of a French language supplement, include a discussion of how the Fee Arrangement Language will affect the potential distributions of the Derailment Wrongful Death Claimants and the rights they have in connection with the Fee Arrangement Language, including that the CCAA Court had expressly retained "jurisdiction to decide on the validity and enforceability of the fee agreements that would have been executed in favour of attorneys in the days that followed the rail disaster." CCAA Order ¶ 36. Additionally, the Victims' Committee

respectfully requests that any such supplement include the following statement on behalf of the Victims' Committee:

The Victims' Committee has not and will not represent Derailment Wrongful Death Claimants individually on any issue related to a Contingency Fee or a Derailment Wrongful Death Client Engagement Letter. The Victims' Committee's goal throughout this chapter 11 case has been to ensure that Derailment Wrongful Death Claimants know their rights (whatever they may be) under applicable law with respect to their distributions under the Proposed Plan or other documents implementing the Proposed Plan, such as the WD Trust Agreement and that the court process not be used to modify Derailment Wrongful Death Claimants' rights with respect to any Contingency Fee or Derailment Wrongful Death Client Engagement Letter. **Given the amounts at stake, the Victims' Committee recommends that Derailment Wrongful Death Claimants obtain separate counsel to advise them on their rights in connection with any Contingency Fee and/or Derailment Wrongful Death Client Engagement Letter they are or allegedly are a party to and/or on their rights with regard to their distribution under the WD Trust and any legal fees that may or may not be paid to any lawyer or counsel from such distribution.**

Tax Consequences

12. Derailment Wrongful Death Claimants are also entitled to adequate information regarding how any distributions they are entitled to receive under the Proposed Plan and WD Trust Agreement will be affected by any applicable U.S. taxes on such distributions. As the Court may be aware, all distributions to claimants and victims of the Derailment other than distributions Derailment Wrongful Death Claimants are being made by the CCAA Monitor in Canada. The Proposed Disclosure Statement does not provide any information on any U.S. taxes that Derailment Wrongful Death Claimants may have to pay on account of distributions because, in contrast to all other Claimants, they have to receive from the WD Trust in the United States. Indeed, the CCAA Court expressed concerns regarding this very issue in the CCAA Order: "Are taxes payable on the gross amounts received or on the amount received after payment of professional fees." CCAA Order ¶ 28. Section 1125(a)(1) specifically provides that "adequate information" includes "a discussion of the potential material Federal tax consequences" of the

plan on a “hypothetical investor typical of the holders of claims.” 11 U.S.C. § 1125(a)(1); *see also Hall v. Vance*, 887 F.2d 1041, (10th Cir. 1989) (finding disclosure statement inadequate because, among other reasons, it did not “identify the tax consequences which may arise” as a result of the plan). Thus, a discussion of the U.S. tax implications should be included in the French language supplement because Derailment Wrongful Death Claimants must be informed how what they expect to receive under the Proposed Plan is affected by U.S. Taxes (if at all), and if there are substantial tax consequences, an explanation of why the WD Trust was not set up to make distributions from Canada in Canadian Dollars.

Estate Professional Fees

13. The Proposed Disclosure Statement also provides no information regarding the amount of professional fees expected to be paid to the various professionals in this case under the Proposed Plan. The Proposed Disclosure Statement should at the very least provide “a good faith estimate of administrative expenses, incurred and upcoming,” so that claimants have a general idea of the amount of professional fees that will be paid as administrative expenses under the Proposed Plan. *In re Oxford Homes, Inc.*, 204 B.R. 264, 269 (Bankr. D. Me. 1997) (noting in connection with the lack of disclosure of certain professional fees in connection with a disclosure statement that “[c]reditors deserve to be fairly informed of the transaction costs entailed in the reorganization plan they are being asked to back”).

14. Thus, to remedy the above discussed information deficiencies, the Victims’ Committee respectfully requests that a French language executive summary type supplement be

included with the Proposed Disclosure Statement and other solicitation materials to Derailment Wrongful Death Claimants that provides adequate information on the above discussed issues.³

C. Conflict Between Proposed Disclosure Statement and CCAA Order

15. In light of the CCAA Court's reservation of jurisdiction in the CCAA Order and the express language entered at paragraph 75 of such order, the Victim's Committee respectfully requests that the order approving the Proposed Disclosure Statement expressly state that it is not approving the Fee Arrangement Language included in section VII(F)(x) of the Proposed Disclosure Statement, Section 5.10 Proposed Plan, and the WD Trust Agreement enforceable at this time. Although the conflict between the Fee Arrangement Language in section 5.10 of the Proposed Plan and paragraph 75 of the CCAA Order does not need to be resolved at this stage, the Court should make clear that it is not passing judgment on the language at this juncture. The Victims' Committee believes explicit language in any order approving the Proposed Disclosure Statement is necessary to avoid any conflict with the CCAA Order.

D. Proxies

16. Section XII(ii) of the Proposed Disclosure Statement provided that "to the extent counsel to the Holder of any Derailment Wrongful Death Claims or Derailment Moral Damages and Personal Injury Claims has been authorized, in writing, to vote such Claim, and counsel submits a Ballot for such Claim in accordance with these procedures, such vote shall be a valid and binding vote as to such Claim." Proposed Disclosure Statement § XII(ii). In light of the addition of this clause (the "Proxy Clause") in the Proposed Disclosure Statement, the Victims' Committee believes that it is **imperative** that any Court order approving the Proposed Disclosure

³ If the Trustee is not willing to provide such a supplement, the Victims' Committee is willing, as is commonly done in large chapter 11 cases, to prepare its own statement to be included with any approved Disclosure Statement as part of the solicitation materials.

Statement directs that counsel referenced in the Proxy Clause actually provide a copy of the Proposed Disclosure Statement containing the Proxy Clause and any Court approved supplement to applicable clients referenced in the Proxy Clause.

Conclusion and Reservation of Right

17. The Victims' Committee believes the Proposed Disclosure Statement does not provide adequate information unless and until a French language executive summary style supplement is drafted and included in the disclosure and solicitation materials. Absent inclusion of such a French language supplement, the Victims' Committee objects to the solicitation of votes on the Proposed Plan based on the current version of the Proposed Disclosure Statement. The Victims' Committee reserves all rights in all respects to object to the Proposed Plan on any grounds at the appropriate time, including the express conflict between the Proposed Plan and the WD Trust Agreement and paragraph 75 of the CCAA Order.

Waiver of Requirements of Local Rule 9013-1(f)

18. In light of the limited nature of this response to the Disclosure Statement Motion, the Victims' Committee respectfully requests that the Court waive the requirements of Local Bankruptcy Rule 9013-1(f) requiring that any response to a motion admit or deny each allegation of the motion.

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WHEREFORE, the Victims' Committee respectfully requests that the Court conditions its approval of the Disclosure Statement Motion and Proposed Disclosure Statement on a French language executive summary insert being included with the disclosure and solicitation materials and grant such other relief as this Court may deem just and proper.

Dated: July 14, 2015

Respectfully submitted,

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Co-counsel to the Official Committee of Victims

EXHIBIT A

CCAA Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670

Chapter 11

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2015, I electronically filed the Limited Objection of Official Committee of Victims To Chapter 11 Trustee's Motion For an Order (I) Approving Proposed Disclosure Statement; (II) Establishing Notice, Solicitation and Voting Procedures; (III) Scheduling Confirmation Hearing; and (IV) Establishing notice and Objection Procedures for Confirmation of the Plan, with the Clerk of Court using the CM/ECF system which will send notification of such filing to the parties of record who have registered as CM/ECF participants.

/s/ Kyle J. Ortiz

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**SUPERIOR COURT
(Commercial Division)**

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS**

No: 450-11-000167-134

DATE: May 5, 2015

PRESENT: THE HONOURABLE GAÉTAN DUMAS, J.S.C.

IN THE MATTER OF THE PLAN OF COMPROMISE OF:

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

Debtor/Petitioner

-and-

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

Monitor

JUDGMENT ON THE MOTION FOR THE CONVENING OF A CREDITORS' MEETING

- [1] The Court is presented with a motion to convene a creditors' meeting following the filing of a plan of arrangement in the present matter.
- [2] It is unnecessary to recite all the facts having led to the filing of the plan of arrangement.
- [3] The judgments previously rendered in this matter by the undersigned fully explain the path that the parties have taken. Suffice to recall that the plan is filed following a rail disaster that occurred in Lac-Mégantic in July 2013.
- [4] The file has always been managed on the basis that a plan of arrangement would be filed whereby third parties that are potentially liable for the derailment, or for the damages caused thereby, would contribute to an indemnity fund in order to obtain releases in exchange for a substantial contribution to the plan of arrangement.

UNOFFICIAL TRANSLATION

- [5] A fund in the amount of over \$300,000,000 has now been created, which has allowed for the filing of a plan that may acceptable to creditors, who will be presented with said plan at a creditors' meeting to be held on June 9, 2015.
- [6] The motion to convene the creditors' meeting was to be a simple formality because all appeared to consent.
- [7] In fact, the orders to be rendered are relatively standard for this type of file.
- [8] However, at the hearing of the motion, Mtre Luc Despins, a U.S. attorney representing the official committee of victims in the Chapter 11 case, drew the court's attention to paragraph 38 of the proposed draft order, which reads as follows:
- [38] ORDERS that, notwithstanding anything in this Order to the contrary, the allowance and valuation of claims for voting purposes with respect to the plan of liquidation filed in the Bankruptcy Case (the "U.S. Plan") shall be determined solely in accordance with the U.S. Plan and any orders entered in such case with respect to the U.S. Plan, and the allowance of (including any objections to) for distributions, and distributions with respect to, Derailment Wrongful Death Claims (as defined in the U.S. Plan) shall be solely in accordance with the terms of the U.S. Plan;
- [9] Mtre Despins advises the court that certain U.S. attorneys have had mandates executed by the representative of the 47 victims who perished during the derailment.
- [10] These mandates, signed in Lac-Mégantic, Québec, appear to state that the U.S. attorneys would receive an amount representing 40% of any amount collected following actions filed in the United States.
- [11] Mtre Despins was concerned about the fact that paragraph 38 of the draft order could deprive the court of jurisdiction in the event that disputes would arise regarding the payment of fees that may appear disproportionate to the services rendered.
- [12] Since the beginning of this file, the court has very openly expressed to counsel that it believes the best way to resolve this matter is with the contributions of third parties in exchange for releases and by the certification of the Canadian class action for settlement purposes. This was, in the opinion of the court, the most efficient way to settle this matter.
- [13] However, the court consistently stated to counsel that their fees would be subject to court approval.
- [14] In fact, in Québec, the attorneys for the class action must have their fees approved by the judge who certifies the class action and renders a judgment on the distribution of the amounts awarded by judgment.
- [15] That said, we learned today that victims who have been attributed a fund in the amount of \$77,205,000 could see that amount slashed by 40%, which would be

payable to U.S. attorneys. This represents an amount of \$30,882,000 in professional fees.

- [16] Without rendering judgment on the issue and without deciding on the value of the services rendered, the court advised all the parties from the bench that it did not intend to relinquish the inherent power of the Superior Court to ensure that the proposed plan is fair and reasonable.
- [17] At this time, too many questions remain unanswered. Should questions be raised as to the validity of mandates granted in Québec in the days following the rail disaster, which court would have jurisdiction to determine the fees payable?
- [18] Does the percentage payable according to the executed mandate apply to all 48¹ victims or only to a portion of them?
- [19] Are the fees in conformity with the code of ethics applicable in Québec?
- [20] So many questions for which we do not have the answers.
- [21] A cross boarder protocol was approved by the Québec Superior Court and the Bankruptcy Court for the District of Maine. Could this protocol be used to resolve any potential conflicts?
- [22] The court must respect the jurisdiction of the court of Maine. The opposite is true as well. If the court does not have jurisdiction, it does not have the intention to usurp the jurisdiction of another court.
- [23] Moreover, do mandates duly executed with knowledge of the facts deprive the court of its inherent jurisdiction?
- [24] That said, one thing is clear, in order to have full effect, a plan of arrangement that has been duly approved by the creditors must be sanctioned by the court. It is up to the court to grant releases to third parties and only an order of the court can have this effect on those who do not settle the file on an individual basis.
- [25] For the moment, all these questions remain hypothetical. A vote on the plan has yet to be held. If the plan is not approved, the questions will remain unanswered. If the plan is approved and questions are raised, the court will decide.
- [26] Moreover, these questions are not to be answered prior to the meeting. The plan provides for the payment of amounts of money but does not address the payment of fees that may be owing.
- [27] Another question is raised. At the hearing, the attorneys stated that the proceedings filed in the United States have resulted in higher contributions than would have been obtained within the scope of proceedings filed in Québec.
- [28] As such, despite the very high fees, the victims would receive more than if they had simply filed proceedings in Québec. This is possible but the court does not presently

¹ A victim has been added since the onset of the proceedings.

have the information necessary to respond. According to the U.S. plan, the compensation appears to be taxable. Are taxes payable on the gross amount received or on the amount received after payment of professional fees? The victims most certainly already have this information but the court does not.

- [29] Mtre Hans Mercier, who acts as counsel to the U.S. attorneys, stated that the court has had the opportunity to appreciate the work done by counsel in Québec but has not had the chance to appreciate the work done by the U.S. attorneys.
- [30] It is quite likely that the possibility of legal action in the U.S. contributed to increasing the offers. What we do not yet know is the work done in the United States.
- [31] If the simple possibility of proceedings in the U.S. caused the offers to increase, it may be less necessary to know the extent of the work actually carried out.
- [32] As previously mentioned, there are many questions that remain unanswered.
- [33] At the hearing, the court allowed counsels to make any additional comments.
- [34] In keeping with the spirit of collaboration that appears to have been present since the onset of the file, the Chapter 11 trustee, Mr. Robert Keach, as well as the attorney for the official committee of victims in the Chapter 11, Mtre Luc Despins, along with the Monitor, the attorneys for the Government of Québec and those representing Class Members have agreed to modify paragraph 38 of the draft order so that it would read as follows:

ORDERS that, notwithstanding anything in this Order to the contrary and subject to the entry of the Canadian Approval Order and U.S. Approval Order and such Approval Orders becoming Final Orders, the valuation of claims for voting purposes with respect to the U.S. Plan shall be determined solely in accordance with the U.S. Plan and any orders entered in such case with respect to the U.S. Plan. Distributions with respect to Derailment Wrongful Death Claims (as defined in the U.S. Plan) shall be solely in accordance with the terms of the U.S. Plan, which U.S. Plan shall provide for distribution by the WD Trustee strictly in accordance with Schedule E to the Plan, which is also attached to the U.S. Plan; provided, however, this paragraph shall be subject to the U.S. Plan, or any subsequent U.S. plan, being amended (and the U.S. Approval Order containing an identical provision) to provide :

(i) that no payment or distribution of any kind shall be made to any lawyer or counsel allegedly representing the holder of a Derailment Wrongful Death Claim (as defined in the U.S. Plan) unless such lawyer or counsel presents to the WD Trustee an executed engagement letter or similar document that entitles such lawyer or counsel to such fees or distribution, including any contingent fee (a "Derailment Wrongful Death Client Engagement Letter"); and

(ii) that no such distribution or payment shall be made by the WD Trustee if:

(a) the Derailment Wrongful Death Client Engagement letter has been held to be invalid or inoperative by a final order or ruling

entered in any proceeding (including an administrative proceeding) initiated by a party with standing disputing the rights of such lawyer or counsel to fees before any court, administrative tribunal or other forum with jurisdiction over such agreements, in the United States or Canada, (collectively a "Proceeding"), in which there was a challenge to the validity or operation of the Derailment Wrongful Death Client Engagement Letter; or

(b) any Proceeding is pending in which there is a challenge to the validity or operation of the Derailment Wrongful Death Client Engagement Letter, unless and until such Proceeding has been concluded by a final order or ruling in favor of the lawyer or counsel involved, and then the distribution to the lawyer and counsel shall be limited by the terms of any such final order or ruling issued in such Proceeding, to the extent such order or ruling contains any such limitations.

Holders of Derailment Wrongful Death Claims involved in a Proceeding shall receive the portion of their distributions on account of their Derailment Wrongful Death Claim not in dispute in such Proceeding at the same time and in the same manner as the holders of other Derailment Wrongful Death Claims not involved in a Proceeding.

Nothing in this paragraph 38 is intended to limit or can be interpreted as limiting the exercise by the CCAA Court of its jurisdiction in connection with the CCAA Proceeding, including in connection with the approval of the Plan.²

- [35] This new language confirms that the court, without deciding on the merits, retains jurisdiction to decide on the validity and enforceability of the fee agreements.
- [36] As such, the court grants the motion for the convening of a creditors' meeting, all while specifying that it retains jurisdiction to decide on the validity and enforceability of the fee agreements that would have been executed in favour of attorneys in the days that followed the rail disaster.

FOR THESE REASONS, THE COURT:

- [37] **GRANTS** the motion;
- [38] **DECLARES** that the court retains jurisdiction to decide on the validity and enforceability of the fee agreements that would have been executed in favour of attorneys in the days that followed the rail disaster.

Service

- [39] **DECLARES** that the notices given for the presentation of the Motion are proper and sufficient;

² 'Paragraph 38 becomes paragraph 75 of the present order.

Definitions

[40] **ORDERS** that capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Plan and that the following terms in this Order shall have the following meanings ascribed thereto:

“**Chair**” has the meaning ascribed to it in paragraph 19 hereof;

“**Claims Bar Date**” means 5:00 p.m. (Montréal time) on July 14, 2014 with respect to Wrongful Death Claims and 5:00 p.m. (Montréal Time) on June 13, 2014 with respect to all the other Creditors;

“**Claims Procedure Order**” means the Amended Claims Procedure Order rendered on June 13, 2014, in the CCAA Proceeding by the CCAA Court, establishing, among other things, a claims procedure in respect of Petitioner, as such Order may be amended, restated or varied from time to time;

“**Creditors**” means collectively all Persons having filed a Proof of Claim and “**Creditor**” means any one of them;

“**Creditors’ Meeting**” means the meeting of Creditors to be held on the Meeting Date for the purposes of considering and voting on the Plan;

“**Determination Date**” means August 8, 2013;

“**Designated Newspapers**” means La Presse, L’Écho de Frontenac, La Tribune, The Sherbrooke Record and the Montreal Gazette;

“**Meeting Date**” means June 9, 2015 subject to any adjournment, postponement or other rescheduling or further order of this Court;

“**Meeting Materials**” shall have the meaning ascribed to such term in paragraph 62;

“**Monitor’s Website**” means <http://www.richter.ca/en/insolvency-cases/m/montreal-maine-and-atlantic-canada-co>;

“**Motion**” has the meaning ascribed to it in the preamble of this Creditor’s Meeting Order;

“**Notice to Creditors**” means a notice of this Order and of the Creditors Meetings setting out the Meeting Date, substantially in the form attached hereto as Schedule A;

“**Plan**” means the plan of compromise and arrangement filed on March 31, 2015 pursuant to the provisions of the CCAA, as it may be amended, varied or supplemented from time to time in accordance with its terms;

“**Proofs of Claim**” means the form of proofs of claim filed by Creditors before the Claims Bar Date in accordance with the Claims Procedure Order or otherwise

accepted for filing pursuant to further order of this Court. Individually, each is a "Proof of Claim";

"Protective Proof of Claim" means the Proof of Claim filed by the Class Representatives on behalf of the holders of Wrongful Death Claims in accordance with paragraph 6 of the Claims Procedure Order;

"Proxy" means a proxy substantially in the form of Schedule B hereto;

"Publication Date" means the date on which the publication of the newspaper notice in all of the Designated Newspapers has been completed;

"Representation Order" means the Representation Order issued by this Court on April 4, 2014;

"Sanction Hearing" has the meaning ascribed to it in paragraph 70 hereof;

"Service List" means the service list posted on the Monitor's Website;

"Voting Claim(s)" means the Claims listed in paragraph 44 hereof;

"Voting Claim Categories" are the Wrongful Death Claims, Bodily Injury and Moral Damages Claims, Property and Economic Damages Claims, Subrogated Insurer Claims, Government Claims, and Non-Derailment Claims. Individually, each is a "Voting Claim Category";

"Voting Creditor" means a Creditor that holds a Voting Claim;

Interpretation

[41] DECLARES that where the context requires, a word or words importing the singular shall include the plural and vice versa;

CCAA Plan

[42] **ORDERS** that:

the Plan is hereby accepted for filing; and

Petitioner shall seek approval of the Plan in the manner set forth herein;

[43] **ORDERS** that Petitioner, in consultation with the Monitor, is hereby authorized to file any modification of, or amendment, variation or supplement to, the Plan (each a "Plan Modification") prior to the Meeting Date or at or before any Creditors' Meeting, in which case any such Plan Modification shall, for all purposes, be and be deemed to form part of and be incorporated into the Plan. Petitioner shall give notice of any such Plan Modification at the Creditors' Meeting prior to the vote being taken to approve the Plan. Petitioner may give notice of any such Plan Modification at or before the Creditors' Meeting by notice which shall be sufficient if, in the case of notice at the Creditors' Meeting, given to those Voting Creditors present at such meeting in person or by Proxy. The Monitor shall post on the Monitor's Website, as soon as possible,

any such Plan Modification, with notice of such posting forthwith provided to the Service List;

Value of Claims for Voting Purposes

[44] **ORDERS** that each Voting Creditor shall be entitled to vote and, for voting purposes:

Wrongful Death Claims shall, in the aggregate, represent no more than 22.2% (\$200,000,000.00) in value of all votes cast by Creditors;

Bodily Injury and Moral Damages Claims shall, in the aggregate, represent no more than 11.1% (\$100,000,000.00) in value of all votes cast by Creditors;

Property and Economic Damages Claims shall, in the aggregate, represent no more than 8.3% in value of all votes cast by Creditors (\$75,000,000.00);

Subrogated Insurer Claims shall, in the aggregate, represent no more than 3.8% (\$33,701,330.00) in value of all votes cast by Creditors;

Government Claims shall, in the aggregate, represent no more than 48.5% (\$435,626,775.00) in value of all votes cast by Creditors;

Non-Derailment Claims shall, in the aggregate, represent no more than 6.1% (\$55,046,528.00) in value of all votes cast by Creditors;

[45] **ORDERS** that each vote within its given Voting Claim Category, subject to the maximum total value attributed to such Voting Claim Category under the Plan and as set forth in paragraph 44 hereof, will be valued at an amount that is proportional to the face value of the corresponding Proof of Claim versus the face value of all Proofs of Claim filed in a given Voting Claim Category, the whole in accordance with the following formula:

$$\frac{\text{Face value of the Creditor's Proof of Claim}}{\text{Aggregate face value of all Proofs of Claim in the relevant Voting Claim Category}} \times \text{Maximum total value attributed to relevant Voting Claim Category as set forth in paragraph 7 hereof} = \text{Value of the Creditor's Voting Claim}$$

Creditors' Meeting

[46] **DECLARES** that the Monitor is hereby authorized to call, hold and conduct the Creditors' Meeting at the Centre Sportif Mégantic in the City of Lac-Mégantic, Québec, for the purpose of considering and, if appropriate, approving the Plan, unless the Creditors decide by resolution carried by the majority of votes (one vote for every Voting Claim, to be valued in accordance with paragraphs 44 and 45 hereof) to adjourn the Creditors' Meeting to a later date;

[47] **DECLARES** that the only Persons entitled to attend and speak at the Creditors' Meeting are Voting Creditors, their legal representatives and their proxy holders,

representatives of the Petitioner, representatives of the Monitor, the Chair (as defined below) and their respective legal and financial advisors. Any other Person may be admitted to the Creditors' Meeting on invitation of the Chair;

- [48] **ORDERS** that any proxy which any Creditor wishes to submit in respect of the Creditors' Meeting (or any adjournment thereof) must be substantially in the form attached hereto as Schedule B (or in such other form acceptable to the Monitor or the Chair) and be received by the Monitor before the beginning of the Creditors' Meeting;
- [49] **DECLARES** that the quorum required at the Creditors' Meeting shall be one Creditor present at such meeting in person or by proxy. If the requisite quorum is not present at the Creditors' Meeting, then the Creditors' Meeting shall be adjourned by the Chair to such time and place as the Chair deems necessary or desirable;
- [50] **DECLARES** that the only Persons entitled to vote at the Creditors' Meeting shall be:
- (a) Subject to subparagraph (b), Voting Creditors and their proxy holders;
 - (b) Class Representatives on behalf of Class Members (as defined in the Representation Order) who qualify as Voting Creditors, except for those Class Members having opted out of class representation pursuant to the Representation Order within the prescribed delay;
- [51] **ORDERS** that Creditors eligible to file Bodily Injury and Moral Damages Claims, as well as Property and Economic Damages Claims, in the CCAA Proceeding but that opted to only file their proofs of claim in the Bankruptcy Case shall be deemed, for voting and distribution purposes only, to have filed said proofs of claim in the CCAA Proceeding (the "**Deemed Filing**");
- [52] **ORDERS** that, should any Deemed Filing proof of claim be subject to dispute, such dispute would be resolved within the scope of the Bankruptcy Case, where the holders of such Deemed Filing proofs of claim opted to file same;
- [53] **ORDERS** that the Protective Proof of Claim shall be admitted for voting purposes, subject to paragraphs 44 and 45 hereof, and the votes of Creditors benefiting therefrom shall be cast by the Class Representatives, except for those Creditors having opted out of class representation pursuant to the Representation Order within the prescribed delay. Said creditors may vote individually or by proxy based on the value attributed to their claim in the Protective Proof of Claim, the whole subject to paragraphs 44 and 45 hereof;
- [54] **DECLARES** that a Voting Claim shall not include fractional numbers and Voting Claims shall be rounded down to the nearest whole Canadian dollar amount;
- [55] **ORDERS** that the results of any and all votes conducted at the Creditors' Meeting shall be binding on all Creditors, whether or not any such Creditor is present or voting at the Creditors' Meeting;
- [56] **ORDERS** that the Monitor shall preside as the chair of the Creditors' Meeting (the "Chair") and, subject to any further order of this Court, shall decide all matters relating to the conduct of the Creditors' Meeting. Petitioner and any Creditor may appeal from

any decision of the Chair to the Court, within five (5) Business Days of any such decision;

- [57] **DECLARES** that, at the Creditors' Meeting, the Chair is authorized to direct a vote with respect to the Plan and any amendments, variations or supplements thereto as the Petitioner may consider appropriate;
- [58] **ORDERS** that the Monitor may appoint scrutineers for the supervision and tabulation of the attendance, quorum and votes cast at the Creditors' Meeting. A Person designated by the Monitor shall act as secretary at the Creditors' Meeting;
- [59] **ORDERS** that in the absence of instruction to vote for or against the approval of the Plan in a duly signed and returned Proxy, the Proxy shall be deemed to include instructions to vote for the approval of the Plan;
- [60] **ORDERS** that any resolution to be voted on at the Creditors' Meeting to approve, amend, vary or supplement the Plan, will be decided by the majority of votes representing two-thirds (2/3) in value (one vote for every Voting Claim, to be valued in accordance with paragraphs 44 and 45 hereof) on a vote by ballot, and that any other matter submitted for a vote at the Creditors' Meeting shall be decided by a majority of votes cast on a vote by a show of hands, unless the Chair decides, in his or her sole and absolute discretion, to hold such vote by way of ballot;

Notification Procedure

- [61] **ORDERS** that the Notice to Creditors, which is hereby approved, shall be published twice by the Monitor in the Designated Newspapers as soon as possible following the issuance of this Order, but in any event no later than May 23, 2015;
- [62] **ORDERS** that, on or before 5:00 p.m. Montréal time on May 15, 2015, the Monitor shall publish on the Monitor's Website and send to the Service List the following documents (collectively, the "Meeting Materials"):
- (a) the Notice to Creditors (in English and French);
 - (b) the Plan (in English and French);
 - (c) a copy of the form of voting letter and Proxy (in English and French) for Creditors not represented by the Class Representatives, substantially in the form attached hereto as Schedule B; and
 - (d) the Monitor's report on the Plan (in English and French);
 - (e) the Chapter 11 Plan of Liquidation and Disclosure Statement filed in the Bankruptcy Case (the "U.S. Plan");
 - (f) a copy of the present Order (in French and English);
- [63] **ORDERS** that Petitioner is hereby authorized to make such modifications, amendments or supplements ("Additional Information") to the Meeting Materials (other than the Plan which may be modified, amended or supplemented solely in

accordance with paragraph 43 hereof) as Petitioner may determine, and Petitioner shall distribute or make available such Additional Information by one or more of the following methods determined in its discretion in consultation with the Monitor: (i) posting on the Monitor's Website; (ii) news release; (iii) newspaper advertisement; (iv) pre-paid regular mail, email, fax or delivery (in person or by courier); (v) except for Proxies, distribution at the Creditors' Meetings; or (vi) such other reasonably practicable method in the circumstances.

[64] **ORDERS** that, in addition to the publications referred to in paragraphs 61 and 62 hereof, the Monitor shall send the following to all known Creditors, by prepaid regular mail, courier, fax or email, at the address appearing on a Creditor's Proof of Claim by no later than 5:00 p.m. (Montréal time) on or about May 21, 2015:

- (a) a copy of the Notice to Creditors (in English and French);
- (b) the Plan (in English and French);
- (c) a copy of the form of voting letter and Proxy (in English and French) for Creditors not represented by the Class Representatives, substantially in the form attached hereto as Schedule B;
- (d) the Monitor's report on the Plan (in English and French)
- (e) a copy of the present Order (in English and French);
- (f) a letter advising that a copy of the U.S. Plan may be obtained from the Monitor's Website;

[65] **ORDERS** that publication of a copy of the Notice to Creditors in the manner set out in paragraph 61, and publication of the Meeting Materials in accordance with paragraph 62 hereof, shall constitute good and sufficient service of the Meeting Materials on all Persons who may be entitled to receive notice thereof, or of these proceedings, or who may wish to be present in person or by proxy at the Creditors' Meeting, or who may wish to appear in these proceedings, and no other form of notice or service need be made on such Persons, and no other document or material need be served on such Persons in respect of these proceedings;

[66] **ORDERS** that if the holder of a Claim or any subsequent holder of the whole of a Claim who has been acknowledged by the Monitor as the Creditor in respect of such Claim, transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person or Persons, such transfer or assignment shall not create a separate Claim or Claims and such Claim shall continue to constitute and be dealt with as a single Claim notwithstanding such transfer or assignment, and the Monitor and the Petitioner shall in each such case not be bound to recognize or acknowledge any such transfer or assignment and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last holding such Claim in whole as the Creditor in respect of such Claim, provided such Creditor may by notice in writing to the Monitor direct that subsequent dealings in respect of such Claim, but only as a whole, shall be with a specified Person and in such event, such Creditor, such transferee or assignee of the Claim as

a whole shall be bound by any notices given or steps taken in respect of such Claim with such Person in accordance with this Order;

Notices and Communications

[67] **ORDERS** that any notice or other communication to be given under this Order by a Creditor to the Monitor or the Petitioner shall be in writing in substantially the form provided for in this Order and will be sufficiently given only if given by mail, telecopier, courier or email addressed to:

If to the Petitioner

Montreal Maine & Atlantic Canada Co.
C/o Gowling Lafleur Henderson LLP
3700 – 1 Place Ville Marie
Montréal, Québec H3B 3P4

Attention: Me Patrice Benoit (patrice.benoit@gowlings.com)
Attention : Me Pierre Legault (pierre.legault@gowlings.com)
Fax : 514-876-9550

If to the Monitor:

Richter Advisory Group
1981 McGill College Avenue, 11th Floor
Montréal, Québec H3A 0G6
Attention: Mr. Gilles Robillard (grobillard@richter.ca)
Attention: Mr. Andrew Adessky (aadessky@richter.ca)
Fax: 514-934-3504

with a copy by email or fax (which shall not be deemed notice) to:

Attention: Me Sylvain Vauclair (svauclair@woods.qc.ca)
Fax: 514-284-2046

[68] **ORDERS** that any document sent by the Monitor pursuant to this Order may be sent by e-mail, ordinary mail, registered mail, courier or facsimile transmission. A Creditor shall be deemed to have received any document sent pursuant to this Order two (2) Business Days after the document is sent by mail and one (1) Business Day after the document is sent by courier, e-mail or facsimile transmission. Documents shall not be sent by ordinary or registered mail during a postal strike or work stoppage of general application;

Sanction Hearing

[69] **ORDERS** that the Monitor shall report to this Court no later than two (2) Business Days after the Creditors' Meeting with respect to:

- (a) the results of the voting to approve the Plan;
- (b) any other matter which the Monitor considers relevant in view of the Sanction Hearing;

- [70] **ORDERS** that, subject to further order of this Court, if the Plan has been accepted in accordance with the terms of this Order, the Petitioner shall bring a motion presentable before this Court on June 17, 2015 (the "Sanction Hearing"), seeking an order approving and sanctioning the Plan (the "Canadian Approval Order");
- [71] **ORDERS** that a copy of the motion seeking the Canadian Approval Order be published on the Monitor's Website as soon as it is filed with this Court;
- [72] **ORDERS** that the Petitioner shall serve the motion seeking the Canadian Approval Order on the Service List no later than two (2) Business Days after the Creditors' Meeting and that such service should constitute good and sufficient service for the purpose of the Sanction Hearing upon all Persons entitled to receive such service;
- [73] **ORDERS** that any Person intending to object to the motion seeking the Canadian Approval Order shall file with this Court a written notice containing a description of its proposed grounds of contestation and shall effect service of same upon counsel to the Petitioner and the Monitor, and upon those Persons listed on the Service List, the whole no later than 4:30 p.m. (Montréal Time) two (2) Business Days after the service of the motion seeking the Canadian Approval Order;
- [74] **ORDERS** that in the event that the Sanction Hearing is adjourned, postponed or otherwise rescheduled, only those Persons listed on the Service List are required to be served with notice of the adjourned, postponed or otherwise rescheduled date;
- [75] **ORDERS** that, notwithstanding anything in this Order to the contrary and subject to the entry of the Canadian Approval Order and U.S. Approval Order and such Approval Orders becoming Final Orders, the valuation of claims for voting purposes with respect to the U.S. Plan shall be determined solely in accordance with the U.S. Plan and any orders entered in such case with respect to the U.S. Plan. Distributions with respect to Derailment Wrongful Death Claims (as defined in the U.S. Plan) shall be solely in accordance with the terms of the U.S. Plan, which U.S. Plan provides for distribution by the WD Trustee strictly in accordance with Schedule E to the Plan, which is also attached to the U.S. Plan; provided, however, this paragraph shall be subject to the U.S. Plan, or any subsequent U.S. plan, being amended (and the U.S. Approval Order containing an identical provision) to provide :

(i) that no payment or distribution of any kind shall be made to any lawyer or counsel allegedly representing the holder of a Derailment Wrongful Death Claim (as defined in the U.S. Plan) unless such lawyer or counsel presents to the WD Trustee an executed engagement letter or similar document that entitles such lawyer or counsel to such fees or distribution, including any contingent fee (a "Derailment Wrongful Death Client Engagement Letter"); and

(ii) that no such distribution or payment shall be made by the WD Trustee if:

(a) the Derailment Wrongful Death Client Engagement letter has been held to be invalid or inoperative by a final order or ruling entered in any proceeding (including an administrative proceeding) initiated by a party with standing disputing the rights of such lawyer or counsel to fees before any court, administrative tribunal or other

forum with jurisdiction over such agreements, in the United States or Canada, (collectively a "Proceeding"), in which there was a challenge to the validity or operation of the Derailment Wrongful Death Client Engagement Letter; or

(b) any Proceeding is pending in which there is a challenge to the validity or operation of the Derailment Wrongful Death Client Engagement Letter, unless and until such Proceeding has been concluded by a final order or ruling in favor of the lawyer or counsel involved, and then the distribution to the lawyer and counsel shall be limited by the terms of any such final order or ruling issued in such Proceeding, to the extent such order or ruling contains any such limitations.

Holders of Derailment Wrongful Death Claims involved in a Proceeding shall receive the portion of their distributions on account of their Derailment Wrongful Death Claim not in dispute in such Proceeding at the same time and in the same manner as the holders of other Derailment Wrongful Death Claims not involved in a Proceeding.

Nothing in this paragraph 75 is intended to limit or can be interpreted as limiting the exercise by the CCAA Court of its jurisdiction in connection with the CCAA Proceeding, including in connection with the approval of the Plan.

Aid and Assistance of Other Courts

[76] **REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Order;

General Provisions

[77] **ORDERS** that for the purposes of this Order, all Claims that are denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging currency to Canadian dollars on the Determination Date;

[78] **ORDERS** that the Monitor shall use reasonable discretion as to the adequacy of completion and execution of any document completed and executed pursuant to this Order and, where the Monitor is satisfied that any matter to be proven under this Order has been adequately proven, the Monitor may waive strict compliance with the requirements of this Order as to the completion and execution of documents;

[79] **DECLARES** that the Monitor may apply to this Court for advice and direction in connection with the discharge or variation of its powers and duties under this Order;

[80] **ORDERS** the provisional execution of this Order notwithstanding appeal;

[81] **THE WHOLE** without costs.

Sherbrooke, _____

Honourable Gaétan Dumas, J.S.C.

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