

CANADA

PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS

NO.: 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 Company-Respondent

and

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

Monitor

and

**YANNICK GAGNÉ, GUY OUELLET, SERGE
JACQUES and LOUIS-SERGES PARENT**

Petitioners

and

**ROBERT J. KEACH, in his capacity as
Chapter 11 Trustee for the Estate of
Montreal Maine & Atlantic Railway, Ltd.**

US Trustee

**CONTESTATION OF PETITIONERS' "MOTION FOR AN ORDER APPOINTING THE
PETITIONERS AS REPRESENTATIVES OF THE CLASS..."**

IN CONTESTATION OF THE "MOTION FOR AN ORDER APPOINTING THE PETITIONERS
AS REPRESENTATIVE OF THE CLASS..." HEREIN (THE "Class Action Representative

Motion) OF PETITIONERS, YANNICK GAGNÉ, GUY OUELLET, SERGE JACQUES AND LOUIS-SERGES PARENT (THE "**Petitioners**"), THE US TRUSTEE RESPECTFULLY SUBMITS THE FOLLOWING:

1. The US Trustee is the Chapter 11 Trustee of the Estate of Montreal Maine & Atlantic Railroad, Ltd. ("**MM&A US**"), having been appointed as such pursuant to the provisions of the *United States Bankruptcy Code* (the "**Bankruptcy Code**").
2. MM&A US's wholly-owned subsidiary, Montreal Maine & Atlantic Canada Co. ("**MM&A Canada**"), has obtained a stay of proceedings order from this Court pursuant to the provisions of the *Companies' Creditors Arrangement Act*, Canada ("**CCAA**") and this Court has appointed Richter Advisory Group Inc. (the "**Monitor**") as monitor in respect of MM&A Canada's CCAA filing.
3. Petitioners are alleged to be some of the victims of the derailment in Lac Mégantic (the "**Derailment**"). As they allege, Petitioners have filed a "Motion to Authorize the Bringing of a Class Action..." (the "**Motion to Authorize**") against MM&A US, MM&A Canada as well as numerous other Respondents (the "**Other Class Action Defendants**"). The Motion to Authorize appears to be in its preliminary stages and, as Petitioners allege, the authorization hearing thereunder will occur only in June, 2014.
4. As a result of MM&A US's Chapter 11 Bankruptcy Code filing and MM&A Canada's CCAA filing, Petitioners' Motion to Authorize as against MM&A US and MM&A Canada has been stayed. Petitioners remain entitled to proceed with their Motion to Authorize against the Other Class Action Defendants.
5. Petitioners and all of the victims of the Lac Mégantic disaster as well as many other persons (including the Town of Lac Mégantic and the Government of the Province of Quebec) are creditors of either or both of MM&A US and MM&A Canada.
6. The US Trustee is appointed by the United States Bankruptcy Court (the "**US Court**") and has a fiduciary obligation to *all* of MM&A US's creditors. The Monitor acts as an officer of this Court and is charged with the duty of supervising MM&A Canada's restructuring process and ensuring fair treatment to *all* of MM&A Canada's creditors.
7. The US Trustee has presented or will imminently present a motion before the US Court (the "**US Trustee's Motion**") and the Company under the Monitor's supervision, has presented or will imminently present motions before this Court seeking to implement and carry out a claims process whereby *all* creditors of MM&A US and MM&A Canada will file proofs of claim in the MM&A US Estate and/or the MM&A Canada Estate asserting their claims (the "**Claims Process**").

8. The Claims Process in this case will be run by the Monitor (with the US Trustee's continuing input) and will include:
 - (a) a set of comprehensive proofs of claim forms (the "**CCAA Forms**") covering all types of creditors of MM&A Canada, including claims arising out of the Derailment ("**Derailment Claims**"). Those forms will also ask the claimant to declare if the claimant is also asserting a claim against MM&A US. If approved by the US Court, the US Trustee's Motion will provide that any proof of claim asserting a Derailment Claim against both MM&A Canada and MM&A US filed in the MM&A Canada CCAA proceedings will be deemed to be filed in the MM&A US Chapter 11 proceedings without the necessity of an additional proof of claim being filed with the US Court;
 - (b) information within these proofs of claim forms specially designed in order to ascertain the allowability of such claims and, additionally, to ascertain which claims (including Petitioners and the class envisaged by the Motion to Authorize) may be entitled to be paid from available insurance; and
 - (c) information sessions in the Town of Lac Mégantic where representatives of the Monitor will explain the Claims Process and the proof of claim forms to potential creditors.
9. The Claims Process will, at all times, remain under the supervision of this Court and the US Court.
10. The Class Action Representative Motion contemplates the filing of class proofs of claim; however the Claims Process expressly does not allow such class proofs of claims under the proposed Claims Process in this case. The reason for not allowing class proofs of claim is that it would interfere with, and indeed sacrifice, the terms providing for deemed filing of Derailment Claims in the US Court. In short, if class proofs of claim are allowed as part of this Claims Process, the US Trustee could not agree to the "deemed filing" of Derailment Claims in the US Court by virtue of claims filed on the CCAA Forms in this case. Class proofs of claims may only be filed in a chapter 11 case under the Bankruptcy Code with the express prior permission of the US Court, and only if certain standards are satisfied by an evidentiary showing to the US Court. In the opinion of the US Trustee, the US Court would be unlikely to allow a class proof of claim on behalf of all holders of Derailment Claims.
11. Effectively, the class action sought by the Motion to Authorize as against MM&A US and MM&A Canada is academic since:
 - (a) all of MM&A US's and MM&A Canada's assets are the object of a sale process being conducted by the US Trustee and MM&A Canada (under the Monitor's

supervision) and will yield proceeds to be paid to all of MM&A US's and MM&A Canada's creditors according to their rank; and


- (b) it is anticipated that insurance will be separately made available, through the Monitor (with the US Trustee's input), to all potential creditors entitled to share therein.
12. Under and as a result of the Claims Process envisaged by the US Trustee's Motion, the Class Action Representative Motion is academic.
13. In light of all of the foregoing, there is no need whatsoever for this Court to issue the Orders sought by Petitioners in the Class Action Representative Motion since:
- (a) the Claims Process to be implemented and carried out by the US Trustee and the Monitor will be the most comprehensive, efficient, cheapest and quickest way to ascertain and deal with claims of **all** creditors including the Derailment Claims;
 - (b) the Claims Process will be implemented and run by the US Trustee and the Monitor, under the supervision of the US Court and this Court;
 - (c) the Class Action Representative Motion seeks to short circuit the certification of the class of victims envisaged by the Motion to Authorize before this Court under the CCAA, which runs against and ignores the rules governing class actions in the Province of Quebec;
 - (d) as detailed above, the filing of a group or class proof of claim as sought by Petitioners might be permitted under the Bankruptcy Code, but only with prior approval of the US Court and then subject to Petitioners (i.e. the class representatives) meeting **all** of the normal requirements for a class action under non-bankruptcy procedural rules in the United States. Petitioners would likely not meet these requirements and have, moreover, not even commenced doing so. Accordingly, one of the key objectives of the Claims Process, namely the deemed filing of proof of claim in the CCAA proceedings as filed in the Chapter 11 proceedings, would be rendered ineffective to the detriment of all potential claims;
 - (e) the filing of a group or class claim in the CCAA proceedings would create a separate and needless claims process within the Claims Process to the detriment of all claimants;
 - (f) the recognition of class representatives and class representative legal counsel sought in the Class Action Representative Motion will result in unnecessary expenses which will be ultimately paid by all creditors, in general, and the class action victims, in particular; and

- (g) the class action representation and class action legal counsel representation sought in the Class Action Representative Motion will give the class action victims a special status which would be unfair to all other creditors.

14. The Class Action Representative Motion is unfounded both in fact and in law.

WHEREFORE, the US Trustee prays that this Honourable Court dismiss Petitioners' Class Action Representative Motion;

**MONTREAL, THIS 17th DAY OF DECEMBER
2013**



KUGLER KANDESTIN, L.L.P.

Attorneys for Robert J. Keach, in his capacity as
Chapter 11 Trustee for the Estate of Montreal
Maine & Atlantic Railway, Ltd.