

CANADA

COUR SUPÉRIEURE  
(Chambre commerciale)

PROVINCE DE QUÉBEC  
DISTRICT DE ST-FRANÇOIS

No: 450-11-000167-134

---

DANS L'AFFAIRE DE LA PROPOSITION  
OU PLAN D'ARRANGEMENT DE :

MONTREAL, MAINE & ATLANTIQUE  
CANADA CIE.,

Débitrice

et

RICHTER GROUPE CONSEIL INC.,

Syndic

et

COMPAGNIE DE CHEMIN DE FER  
CANADIEN PACIFIQUE,

Requérante

---

**REQUÊTE DE LA COMPAGNIE DE CHEMIN DE FER CANADIEN PACIFIQUE EN  
EXCEPTION DÉCLINATOIRE ET EN RÉVISION DE L'ORDONNANCE INITIALE  
RENDUE EN VERTU DE LA LOI SUR LES ARRANGEMENTS AVEC LES  
CRÉANCIERS DES COMPAGNIES.**

(Article 164 C.p.c.; articles 2 et 3 LACC; article 106 et suivants *Loi sur les transports au  
Canada*)

---

**À L'HONORABLE GAÉTAN DUMAS, j.c.s., SIÉGEANT EN CHAMBRE  
COMMERCIALE POUR LE DISTRICT DE ST-FRANÇOIS, LA REQUÉRANTE LA  
COMPAGNIE DE CHEMIN DE FER CANADIEN PACIFIQUE (« CP ») EXPOSE  
RESPECTUEUSEMENT CE QUI SUIT :**

1. Le 6 août 2013, la société Montréal, Maine and Atlantic Canada Cie (ci-après « MMAC ») a déposé auprès de la Cour supérieure une Requête pour l'émission d'une Ordonnance Initiale en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* (« LACC ») tel qu'il appert du dossier de la Cour.
2. La demande de MMAC pour l'émission d'une Ordonnance Initiale a été présentée à la Cour supérieure les 7 et 8 août 2013 tel qu'il appert du dossier de la Cour.

3. Le 8 août 2013, la Cour accueille la demande de MMAC et émet une Ordonnance Initiale tel qu'il appert d'une copie de cette ordonnance jointe aux présentes comme pièce **R-1**.
4. L'Ordonnance Initiale a été rendue sans que le CP n'ait été entendu ou dûment appelé.
5. Le paragraphe 55 de l'Ordonnance Initiale confère à toute personne le droit de demander à cette Cour de réviser ou annuler l'Ordonnance Initiale :

*[55] DECLARES that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Petitioner, to the Petitioner's counsel (Gowling Lafleur Henderson LLP c/o Denis St-Onge, phone: 514-392-9519, fax: 514-876-9519, denis.st-onge@gowlings.com, 3700-1 Place Ville Marie, Montreal, Quebec, H3B 3P4), to the Monitor (Richter Advisory Group Inc., c/o Gilles Robillard, phone: 514-934-3484, fax: 514-934-3504, 1981, McGill College, Montreal, Québec, H3A 0G6), to the Monitor's counsel (Woods LLP c/o Sylvain Vauclair, phone: 514-982-4528, fax: 514-284-2046, svaclair@woods.qc.ca, 2000, avenue McGill College, suite 1700, Montreal, Québec, H3A3H3) and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order, | such application or motion shall be filed during the Stay Period ordered by this Order, unless otherwise ordered by this Court.*

6. Le 21 août 2013, la Cour supérieure prononce les motifs du jugement rendu séance tenante le 8 août 2013 en vertu duquel l'Ordonnance Initiale demandée par MMAC est délivrée, tel qu'il appert d'une copie des motifs jointe aux présentes comme pièce **R-2**.
7. MMAC déclare dans sa Requête pour l'émission d'une Ordonnance Initiale qu'elle est une « compagnie de chemin de fer » au sens de la *Loi sur les transports au Canada* tel qu'il ressort des paragraphes 2 et 11 de la Requête :

*2. The Petitioner provides services as a shortline freight railway carrier operating various rail lines in the province of Québec. It is a subsidiary of Montreal Maine & Atlantic Railway Ltd. ("MM&AR"), a Delaware corporation whose head office is located in the State of Maine and who operates lines inter alia in the States of Maine and Vermont;*

*(...)*

*11. As indicated above, the Petitioner operates as a shortline freight railway carrier within the province of Québec and holds a Certificate of fitness under the Canada Transportation Act, S.C. 1996, c. 10 ("CTA"). MM&AR operates as a railway carrier in the United States;*

8. En vertu de la LACC, une « compagnie de chemin de fer » n'est pas une « compagnie » à laquelle s'applique la loi :

*2. (1) Les définitions qui suivent s'appliquent à la présente loi.*

*(...)*

« compagnie »

*Toute personne morale constituée par une loi fédérale ou provinciale ou sous son régime et toute personne morale qui possède un actif ou exerce des activités au Canada, quel que soit l'endroit où elle a été constituée, ainsi que toute fiducie de revenu. La présente définition exclut les banques, les banques étrangères autorisées, au sens de l'article 2 de la Loi sur les banques, les compagnies de chemin de fer ou de télégraphe, les compagnies d'assurances et les sociétés auxquelles s'applique la Loi sur les sociétés de fiducie et de prêt.*

(notre soulignement)

9. Qui plus est, on retrouve la même exclusion dans la *Loi sur la faillite et l'insolvabilité* :

*2. Les définitions qui suivent s'appliquent à la présente loi.*

(...)

« personne morale »

“corporation”

*« personne morale » Personne morale qui est autorisée à exercer des activités au Canada ou qui y a un établissement ou y possède des biens, ainsi que toute fiducie de revenu. Sont toutefois exclues les banques, banques étrangères autorisées au sens de l'article 2 de la Loi sur les banques, compagnies d'assurance, sociétés de fiducie, sociétés de prêt ou compagnies de chemin de fer constituées en personnes morale*

(notre soulignement)

10. Une compagnie de chemin de fer insolvable est régie par les dispositions du titre « Insolvabilité » de la *Loi sur les transports au Canada*, contenu dans les articles 106 à 110 :

*106. (1) Les administrateurs de la compagnie de chemin de fer qui est insolvable peuvent dresser un projet de concordat entre celle-ci et ses créanciers et le déposer à la Cour fédérale.*

*MISE EN CAUSE DES ACTIONNAIRES ET DU CAPITAL SOCIAL*

*(2) Le projet peut comprendre des stipulations établissant les droits réciproques des actionnaires de la compagnie et visant, au besoin, à augmenter le capital-actions et à obtenir des capitaux d'emprunt supplémentaires.*

*DOCUMENTS À DÉPOSER*

*(3) Sont produits, avec le projet :*

*a) une déclaration écrite, portant que la compagnie est incapable de s'acquitter de ses obligations envers ses créanciers;*

*b) un affidavit du président et des administrateurs de celle-ci, ou d'une majorité d'entre eux, attestant qu'à leur connaissance la déclaration est véridique.*

#### *INTERDICTION PAR LA COUR FÉDÉRALE*

*(4) Après le dépôt du projet, la Cour fédérale peut, sur demande de la compagnie, interdire toute action contre celle-ci, selon les modalités qu'elle juge indiquées.*

#### *RESTRICTION*

*(5) Malgré toute ordonnance de la Cour fédérale ou de toute autres juridictions interdisant une action contre la compagnie, une personne peut exercer tout droit ou recours — notamment la prise de possession — à l'égard du matériel roulant de la compagnie, ou de ses accessoires ou équipements connexes, en sa qualité de créancier au titre d'un accord constatant une hypothèque, un bûillement, un crédit-bail, un dépôt, un bail ou une vente sous condition ou à tempérament, ou au titre d'un accord de garantie, comme fiduciaire ou autrement, sauf :*

*a) si, dans les soixante jours suivant le dépôt du projet ou dans le délai consenti au titre du paragraphe (6), la compagnie accepte d'exécuter toutes ses obligations envers elle;*

*b) s'il a été remédié à tout fait — préalable ou postérieur au dépôt du projet et constituant un défaut — dans les trente jours du défaut ou avant l'expiration du délai mentionné à l'alinéa a), la dernière en date de ces éventualités étant retenue;*

*c) s'il a été remédié, conformément à l'accord, à tout fait qui survient à l'expiration du délai mentionné à l'alinéa a) ou par la suite et qui constitue un défaut au titre de l'accord.*

#### *PROROGATION DU DÉLAI*

*(6) La personne peut, sans préjudice de son droit de prendre possession du matériel roulant ou des accessoires ou équipements connexes, ou de celui d'exercer d'autres droits ou recours à leur égard, consentir à la prorogation du délai de soixante jours.*

#### *RATIFICATION DU CONCORDAT*

*107. (1) Le projet est ratifié lorsque les actionnaires ordinaires de la compagnie de chemin de fer y consentent à une assemblée extraordinaire convoquée à cette fin et que les trois quarts, en valeur, des personnes suivantes y consentent par écrit :*

*a) les créanciers hypothécaires de la compagnie et les détenteurs d'obligations émises par elle;*

*b) les créanciers de la compagnie à l'égard de loyers ou autres paiements pour l'acquisition du chemin de fer d'une autre compagnie;*

*c) les actionnaires garantis ou privilégiés de la compagnie.*

*RATIFICATION PAR LE BAILLEUR*

*(2) Si la compagnie est locataire d'un chemin de fer, le projet est ratifié par le bailleur lorsqu'y consentent :*

*a) les actionnaires ordinaires de celui-ci, à une assemblée extraordinaire convoquée à cette fin;*

*b) par écrit, les trois quarts, en valeur, des créanciers hypothécaires, des débiteurs d'obligations émises par le bailleur, et de chaque catégorie d'actionnaires garantis ou privilégiés de celui-ci.*

*NON-RATIFICATION — CATÉGORIES DÉSINTÉRESSÉES*

*(3) Le projet n'a pas à être ratifié par une catégorie de personnes visées au paragraphe (1) ou par le bailleur visé au paragraphe (2) s'il ne porte préjudice à aucun de leurs droits ou intérêts.*

*DEMANDE D'ENTÉRINEMENT DU PROJET*

*108. (1) Les administrateurs de la compagnie peuvent demander à la Cour fédérale d'entériner le projet s'ils considèrent, au cours des trois mois suivant le dépôt de celui-ci ou de tout délai prorogé par la cour, que le projet est ratifié conformément à l'article 107.*

*(2) [Abrogé, 2007, ch. 19, art. 34]*

*ENTÉRINEMENT PAR LA COUR FÉDÉRALE*

*(3) Après avoir entendu les administrateurs et toute autre personne qu'elle souhaite entendre, la Cour fédérale peut entériner le projet si elle est convaincue qu'il a été ratifié conformément à l'article 107 dans le délai imparti et qu'aucune opposition ne justifie une décision contraire.*

*ENREGISTREMENT*

*(4) Le projet entériné par la Cour fédérale y est enregistré et est dès lors opposable à la compagnie et aux tiers.*

*(5) [Abrogé, 2007, ch. 19, art. 34]*

*RÈGLES DE PRATIQUE*

*109. Les juges de la Cour fédérale peuvent, avec l'agrément du gouverneur en conseil, établir des règles de pratique et de procédure pour l'application des articles 106 à 108.*

*110. La compagnie de chemin de fer est tenue de garder, à son bureau principal ou à son siège social, des exemplaires imprimés du projet ainsi entériné et enregistré et de les fournir au prix coûtant à quiconque veut s'en procurer.*

11. La Cour supérieure reconnaît dans le jugement du 21 août 2013 que, MMAC étant une compagnie de chemin de fer, ne peut se prévaloir de la LACC :

« [12] Ainsi, en raison de cette double exclusion, les compagnies de chemins de fer ne peuvent ni déclarer faillite, aux termes de la LFI, ni proposer un arrangement à leurs créanciers aux termes de la Loi. »

12. Cela dit, selon le jugement du 21 août 2013, le Tribunal estime que la théorie de compétence inhérente de la Cour permettrait à MMAC de se prévaloir des dispositions de la LACC (voir paragraphe 26 du jugement).
13. Le 31 mars 2015, MMAC a signifié et déposé au dossier de cette Cour son Plan d'arrangement avec les créanciers accompagné des Annexes A, D, E, F, G, et H (le « **Plan** ») tel qu'il appert du courriel de signification et d'une copie du Plan jointe aux présentes comme pièce **R-3**.

#### **Absence de la compétence *rationae materiae* de la Cour supérieure vu la compétence exclusive de la Cour fédérale**

14. La Cour supérieure n'a pas et n'avait pas la compétence *rationae materiae* pour entendre la Requête de MMAC pour l'émission d'une Ordonnance Initiale en vertu de la LACC ni pour émettre l'Ordonnance Initiale.
15. En effet, tel qu'il ressort de la LACC, une compagnie de chemin de fer n'est pas assujettie à cette loi.
16. De plus, tel qu'il ressort des articles 106 à 110 la *Loi sur les transports au Canada*, l'insolvabilité d'une compagnie de chemin de fer est un sujet qui est de la compétence exclusive de la Cour fédérale.

#### **Dépôt d'une requête en exception déclinatoire et en révision de l'Ordonnance Initiale en cours d'instance**

17. L'absence de compétence d'attribution peut être soulevée en tout état de cause et peut même être déclarée d'office par le tribunal.
18. De plus, le paragraphe 55 de l'Ordonnance Initiale prévoit justement que « *any interested Person may apply to this Court to vary or rescind the Order or seek other relief...* ».
19. Il n'y a aucun délai prévu au paragraphe 55 de l'Ordonnance Initiale pour exercer le droit de révision conféré par ce paragraphe. Les droits du CP découlant de l'Ordonnance Initiale n'étaient pas susceptibles d'être affectés avant que le Plan ne soit communiqué au CP le 31 mars 2015.
20. Avant le 31 mars 2015, CP n'avait aucun intérêt à présenter une demande de révision suivant le paragraphe 55 de l'Ordonnance Initiale puisqu'avant cette date ses droits n'étaient pas susceptibles d'être affectés.

21. Tel qu'il ressort du Plan et de l'Annexe A, le CP n'est pas parmi les défenderesses qui ont réglé à l'amiable (" Settling Defendants ").
22. Ce n'est qu'à la lecture du Plan que CP constate pour la première fois que ses droits en tant que " Non-Settling Defendant " seront affectés par le Plan.
23. Par ailleurs, puisque ni le Syndic ni les procureurs de MMAC n'ont communiqué l'Annexe B (les Ententes de Règlement) lors de la signification du Plan le 31 mars, le CP n'est toujours pas en mesure d'évaluer de façon précise la pleine mesure de la façon dont ses droits seront affectés par le Plan et réserve tous ses droits à cet égard.
24. Toutefois, le Plan est clair au paragraphe 3.3 (h) qu'il ne « *compromise, release, discharge, cancel, ban or otherwise affect... any liability or obligation of and claim against [CP]... of whatever nature for or in connection with the derailment, including but not limited to the Class Action* » dans laquelle le CP est intimée.
25. De plus, le 16 avril 2015, les procureurs américains du CP ont reçu une lettre des procureurs américains de Irving Oil, les informant que l'entente de règlement prévoit, notamment, la possibilité pour les défendeurs qui règlent de poursuivre CP alors que le Plan prévoit expressément l'interdiction pour cette dernière d'en faire de même, tel qu'il appert d'une copie de cette lettre jointe aux présentes comme pièce **R-4**

**La théorie de compétence inhérente de la Cour ne peut justifier l'application de la LACC à MMAC**

26. La Cour supérieure ne peut se prévaloir de la théorie de la compétence inhérente pour se conférer une compétence sur une matière qu'elle n'a pas et qui a été attribuée par la loi à un autre tribunal, en l'espèce, la Cour fédérale.
27. La Cour supérieure a commis une erreur de principe, en droit et en faits, en décidant le 8 août 2013 que la LACC s'appliquait à MMAC en se fondant sur la théorie de la compétence inhérente de cette cour puisque cette théorie a un champ d'application restreint sur le plan procédural et ne peut permettre au tribunal d'ignorer les dispositions attributives de compétence d'une Loi fédérale.
28. Compte tenu de ce qui précède, cette Cour n'a pas et n'avait pas la compétence *rationae materiae* pour entendre la Requête de MMAC ni pour émettre l'Ordonnance Initiale.
29. De plus, la Cour supérieure n'est pas compétente pour approuver le Plan de MMAC (ou tout autre plan amendé qui pourrait être soumis par MMAC, le Syndic ou un créancier de MMAC) puisque seule la Cour fédérale du Canada peut exercer cette compétence.
30. La présente Requête est bien fondée en fait et en droit.

**POUR CES MOTIFS, PLAISE AU TRIBUNAL :**

**ACCUEILLIR** la présente Requête en exception déclinatoire;

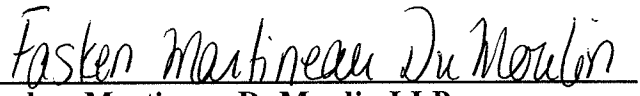
**DÉCLARER** que le Cour supérieure n'avait pas compétence pour émettre l'Ordonnance Initiale de MMAC du 8 août 2013;

**DÉCLARER** que la Cour supérieure n'a pas compétence pour approuver le « Plan of Compromise and Arrangement » de MMAC du 31 mars 2015;

**DÉCLARER** que la Cour fédérale est seule compétente en la matière;

**LE TOUT** avec dépens.

Montréal, le 6 mai 2015

  
**Fasken Martineau DuMoulin LLP**  
Procureurs de la Requérante  
Compagnie de chemin de fer Canadien Pacifique

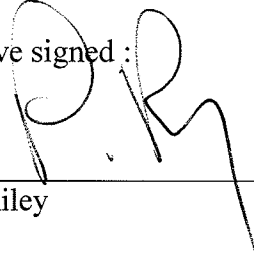


**AFFIDAVIT**

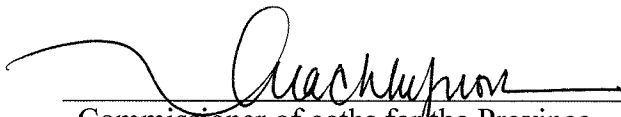
I, undersigned, Patrick Riley, Legal Counsel at Canadian Pacific Railway Company, having a place of business at 7550 Ogden Dale Road SE, Calgary, Alberta, T2C 4X9, hereby certify and attest that:

1. I am a duly authorized representative of the Petitioner Canadian Pacific Railway Company;
2. All the facts alleged in paragraph 25 of the present Motion for Declinatory Exception and to Rescind the Initial Order Issued under the Companies' Creditors Arrangement Act are true.

And I have signed :

  
\_\_\_\_\_  
Patrick Riley

Solemnly sworn before me in the City of  
Calgary, this 6<sup>th</sup> day of May, 2015

  
\_\_\_\_\_  
Commissioner of oaths for the Province  
of Alberta

**CASSANDRA P. QUACH**  
*Barrister and Solicitor*

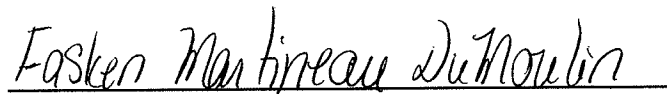
## AVIS DE PRÉSENTATION

À: Liste de signification

**PRENEZ AVIS** que la présente Requête de la Compagnie de chemin de fer Canadien Pacifique en exception déclinatoire et en révision de l'Ordonnance Initiale rendue en vertu de la Loi sur les Arrangements avec les Créanciers des Compagnies sera présentée *pro forma* devant le juge Gaétan Dumas, j.c.s., chambre commerciale, le 11 mai 2015, en salle 1, au Palais de Justice de Sherbrooke situé au 375, rue King Ouest, Sherbrooke, Québec, à 9h30 de l'avant-midi ou aussitôt que conseil pourra être entendu.

**VEUILLEZ AGIR EN CONSÉQUENCE.**

Montréal, le 6 mai 2015



**Fasken Martineau DuMoulin LLP**

Procureurs de la Requérante

Compagnie de chemin de fer Canadien Pacifique

C A N A D A

PROVINCE DE QUÉBEC  
DISTRICT DE ST-FRANÇOIS

No: 450-11-000167-134

COUR SUPÉRIEURE  
(Chambre commerciale)

---

DANS L'AFFAIRE DE LA PROPOSITION  
OU PLAN D'ARRANGEMENT DE :

MONTREAL, MAINE & ATLANTIC  
CANADA CO.,

Débitrice

et

RICHTER GROUPE CONSEIL INC.,

Syndic

et

COMPAGNIE DE CHEMIN DE FER  
CANADIEN PACIFIQUE,


Requérante

---

**LISTE DE PIÈCES**

- PIÈCE R-1 : Copie de l'Ordonnance Initiale du 8 août 2013;
- PIÈCE R-2 : Copie des motifs révisés du Jugement prononcé séance tenante le 8 août 2013;
- PIÈCE R-3 : Copie du courriel de signification et copie du Plan d'arrangement daté du 31 mars 2015;
- PIÈCE R-4 : Copie de la lettre datée du 16 avril 2015 transmis par les procureurs d'Irving Oil aux procureurs américains du CP .

Montréal, le 6 mai 2015

  
**Fasken Martineau DuMoulin LLP**  
Procureurs de la Requérante  
Compagnie de chemin de fer Canadien Pacifique

**R-1**

CANADA

**SUPERIOR COURT**  
(Commercial Division)

---

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

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

N°: 500-11-045094-139

Montreal, August 8, 2013

PRESENT: The Honourable Justice Martin  
Castonguay, J.S.C.

---

IN THE MATTER OF THE PLAN OF  
COMPROMISE OR ARRANGEMENT OF:

**MONTREAL, MAINE & ATLANTIC CANADA CO.**  
**(MONTREAL, MAINE & ATLANTIQUE CANADA**  
**CIE)**, a legal person incorporated under the laws of  
the province of Nova Scotia, having a place of  
business at 1, Place Ville-Marie, 37<sup>th</sup> Floor,  
Montréal, Québec H3B 3P4 (at the offices of its  
attorney ("*fondé de pouvoir*"));

**PETITIONER**

and

**RICHTER ADVISORY GROUP INC. (RICHTER**  
**GROUPE CONSEIL INC.)**, a legal person, having  
a place of business at 1981, McGill College,  
Montréal, Québec, H3A 0G6;

**MONITOR**

---

**INITIAL ORDER**

---

ON READING Petitioner's petition for an initial order pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the "**CCAA**") and the exhibits, the affidavit of Robert C. Grindrod filed in support thereof (the "**Petition**"), the consent of Richter Advisory Group Inc. to act as monitor (the "**Monitor**"), relying upon the submissions of counsel and being advised that the interested parties who are likely to be affected by the charges created herein were given prior notice of the presentation of the Petition;

GIVEN the provisions of the CCAA;

**WHEREFORE, THE COURT:**

- [1] **GRANTS** the Petition.
- [2] **ISSUES** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:
  - a) Service;
  - b) Application of the CCAA;
  - c) Effective Time;
  - d) Plan of Arrangement;
  - e) Stay of Proceedings against the Petitioner and the Property and against Non-Petitioner Defendants;
  - f) Stay of Proceedings against the Directors and Officers;
  - g) Possession of Property and Operations;
  - h) No Exercise of Rights or Remedies;
  - i) No Interference with Rights;
  - j) Continuation of Services;
  - k) Non-Derogation of Rights;
  - l) Directors' and Officers' Indemnification and Charge;
  - m) Restructuring;
  - n) Powers of the Monitor;
  - o) Priorities and General Provisions Relating to CCAA Charges;

p) General.

**Service**

- [3] **DECLARES** that sufficient prior notice of the presentation of this Petition has been given by the Petitioner to interested parties, including the secured creditors who are likely to be affected by the charges created herein.

**Application of the CCAA**

- [4] **DECLARES** that the Petitioner is a debtor company to which the CCAA applies.

**Effective time**

- [5] **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard / Daylight Time on the date of this Order (the "**Effective Time**").

**Plan of Arrangement**

- [6] **DECLARES** that the Petitioner shall have the authority to file with this Court and to submit to its creditors one or more plans of compromise or arrangement (collectively, the "**Plan**") in accordance with the CCAA.

**Stay of Proceedings against the Petitioner and the Property**

- [7] **ORDERS** that, until and including September 6, 2013, or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Petitioner, or affecting the Petitioner's business operations and activities (the "**Business**") or the Property (as defined herein below), including as provided in paragraph 7 herein below except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court, the whole subject to subsection 11.1 CCAA. Without limiting the generality of the foregoing, Proceedings include all proceedings in Canada and in the United States of America or elsewhere taken or that may be taken against, *inter alia*, the Petitioner and/or Montreal Maine & Atlantic Railway Ltd. ("**MM&AR**"), and/or their liability insurer ("**Liability Insurer**") and/or other members of the Petitioner's corporate group (the "**Petitioner's Corporate Group**") and/or against any of the respective directors, officers or employees

of any of the members of the Petitioner's Corporate Group, in connection with the derailment that occurred on July 6, 2013 in Lac-Mégantic, province of Québec, that involved the derailment of the freight train operated by the Petitioner (the "**Derailment**") and include, without limitation, proceedings with respect to the claims set forth at paragraph 25 of the Petition, including the Order issued by the Minister of Environment on July 29, 2013, pursuant to Section 114.1 of the *Environment Quality Act*, R.S.Q., c. Q-2 ("**EQA**") (Exhibit R-4) (the "**Cleanup Order**") with respect to its financial or monetary implications only and any other claim made or that may be made in anyway related to the Derailment (collectively, the "**Train Derailment Claims**"). The members of Petitioner's Corporate Group are listed in Schedule "A" hereto and the members of Petitioner's Corporate Group, and their respective directors, officers or employees and the Liability Insurer, who are defendants to such proceedings are listed in Schedule "B" hereto and are collectively referred to herein as the "**Non-Petitioner Defendants**".

#### **Stay of Proceedings against the Directors and Officers**

- [8] **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Petitioner nor against any person deemed to be a director or an officer of the Petitioner under subsection 11.03(3) CCAA (each, a "**Director**", and collectively the "**Directors**") in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Petitioner where it is alleged that any of the Directors is under any law liable in such capacity for the payment or performance of such obligation or which relate to the Derailment. Notwithstanding the foregoing, the stay ordered pursuant to this paragraph 8 does not apply to any proceeding against the Directors with respect to their statutory obligations under any labour and employment legislation.

#### **Possession of Property and Operations**

- [9] **ORDERS** that the Petitioner shall remain in possession and control of its present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "**Property**"), the whole in accordance with the terms and conditions of this Order including, but not limited, to paragraph [28] hereof.



- [10] **AUTHORIZES** the Petitioner to continue to carry on its business and financial affairs in a manner consistent with past periods and the commercially reasonable preservation thereof;
- [11] **ORDERS** that the Petitioner shall be authorized and empowered to continue to retain and employ the employees, consultants, individuals self-employed contractors, agents, experts, accountants, counsels, and such other persons (collectively, "**Assistants**") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
- [12] **ORDERS** that the Petitioner shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:
- a) all outstanding and future wages, salaries, commissions, vacation pay, current pension contributions and other benefits, reimbursement of expenses (including, without limitation, amounts charged by employees to credit cards) and other amounts payable to former, current or future employees on or after the date of this Order and reimbursements of expenses payable to officers or directors on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
  - b) the fees and disbursements of any Assistants retained or employed by Petitioner in respect of these proceedings, at their standard rates and charges; and
  - c) subject to the prior written approval of the Monitor, outstanding amounts that became due prior to this Order to creditors who have liens or rights of retention on assets held by them for Petitioner or for Petitioner on behalf of its clients;
- [13] **ORDERS** that, except as otherwise provided to the contrary herein, the Petitioner shall be entitled but not required to pay all reasonable expenses incurred by it in carrying on the business in the ordinary course from and after the date of this Order, and in carrying out the provisions of this Order;
- [14] **ORDERS** that, except as otherwise provided to the contrary herein, the Petitioner shall remit, in accordance with legal requirements, or pay:

- a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension plan, and (iv) income taxes;
- b) amounts accruing and payable by the Petitioner in respect of employment insurance, Canada Pension Plan, workers compensation, employer health taxes and similar obligations of any jurisdiction with respect to employees;
- c) all goods and services or other applicable sales taxes (collectively "Sales Taxes") required to be remitted by the Petitioner in connection with the sale of goods and services by the Petitioner but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the business by the Petitioner.

#### **No Exercise of Rights or Remedies**

[15] **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof, including the Cleanup Order with respect to its financial or monetary implications only, are hereby stayed and suspended except with leave of this Court.

- [16] **DECLARES** that the present order rendered by this Court shall not have the effect of staying or otherwise preventing the execution of the work described in the Cleanup Order or any other work that the Minister of Sustainable Development, Environment, Wildlife and Parks or the City of Lac-Mégantic may consider appropriate to undertake in the public interest;
- [17] **DECLARES** that the present order rendered by this Court shall not have the effect of preventing the Minister of Sustainable Development, Environment, Wildlife and Parks from proceeding with the execution of the work described in the Cleanup Order or to have it executed on its behalf by third parties;
- [18] **DECLARES** that proceedings arising from the obligation of the Petitioner to fund or otherwise pay for or reimburse the costs, interests and administrative charges associated with the execution of any work under the Cleanup Order whether by the Minister or third parties are stayed;
- [19] **TAKES ACT** of the undertaking of the Petitioner to continue providing its ongoing collaboration and cooperation with the Quebec Ministry of Sustainable Development, Environment, Wildlife and Parks, the city of Lac-Mégantic or other governmental authorities to the extent of its present capacity and resources in an effort to permit remediation, including granting the access to its property necessary for the execution of the work described in the Cleanup Order or any other work that the Minister of Sustainable Development, Environment, Wildlife and Parks or the City of Lac-Mégantic may consider appropriate to undertake in the public interest;
- [20] **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Petitioner or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioner becomes bankrupt or a receiver as defined in subsection 243(2) of the Bankruptcy and Insolvency Act (Canada) (the "BIA") is appointed in respect of the Petitioner, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioner in determining

the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

**No Interference with Rights**

- [21] **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioner and the Monitor, or with leave of this Court.

**Continuation of Services**

- [22] **ORDERS** that during the Stay Period and subject to paragraph [24] hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioner or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioner, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating such agreements or the supply of such goods or services as may be required by the Petitioner, and that the Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Petitioner, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner, with the consent of the Monitor, or as may be ordered by this Court.

- [23] **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioner on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Petitioner.

- [24] **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21

of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Petitioner with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

#### **Non-Derogation of Rights**

- [25] **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Petitioner shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

#### **Directors' and Officers' Indemnification and Charge**

- [26] **ORDERS** that the Petitioner shall indemnify its Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Petitioner after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, willful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.
- [27] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay

amounts for which the Directors are entitled to be indemnified in accordance with paragraph [26] of this Order.

### **Restructuring**

[28] **DECLARES** that, to facilitate the orderly restructuring of its business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioner shall have the right, subject to approval of the Monitor or further order of the Court, to:

- a) permanently or temporarily cease, downsize or shut down any of its operations or locations as it deems appropriate and make provision for the consequences thereof in the Plan;
- b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
- c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$10,000 or \$50,000 in the aggregate;
- d) terminate the employment of such of its employees or temporarily or permanently lay off such of its employees as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioner and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Petitioner may determine;
- e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of its agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Petitioner and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and

f) subject to section 11.3 CCAA, assign any rights and obligations of Petitioner.

- [29] **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of the Petitioner pursuant to section 32 of the CCAA and subsection [28]e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Petitioner and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Petitioner, provided nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.
- [30] **ORDERS** that the Petitioner shall provide to any relevant landlord notice of the Petitioner's intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Petitioner has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between the Petitioner and the landlord.
- [31] **DECLARES** that, in order to facilitate the Restructuring, the Petitioner may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute and may pursue, with the assistance of the Monitor, the Restructuring, including, subject to Court approval, the settlement or other resolution of the claims related to the Derailment.
- [32] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, the Petitioner is permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in its possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to its advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioner binding them to maintain and protect the

privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioner or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.

### **Powers of the Monitor**

[33] **ORDERS** that Richter Advisory Group Inc. is hereby appointed to monitor the business and financial affairs of the Petitioner as an officer of this Court (the "**Monitor**") and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:

- a) shall, without delay, (i) publish once a week for two (2) consecutive weeks, or as otherwise directed by the Court, in La Presse and the Globe & Mail newspapers and (ii) within five (5) business days after the date of this Order (A) post on the Monitor's website (the "**Website**") a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioner of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;
- b) shall monitor the Petitioner's receipts and disbursements;
- c) shall assist the Petitioner, to the extent required by the Petitioner, in dealing with its creditors and other interested Persons during the Stay Period;
- d) shall assist the Petitioner, to the extent required by the Petitioner, with the preparation of its cash flow projections and any other projections or reports and



the development, negotiation and implementation of the Plan;

- e) shall advise and assist the Petitioner, to the extent required by the Petitioner, to review the Petitioner's business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- f) shall assist the Petitioner, to the extent required by the Petitioner, with the Restructuring and in its negotiations with its creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan, including, without limitation, participating as the Petitioner considers appropriate in any discussion and negotiation with creditors, claimants or others and assisting and facilitating the settlement or other resolution of the claims related to the Derailment.
- g) shall report to the Court on the state of the business and financial affairs of the Petitioner or developments in these proceedings or any related proceedings or the settlement or other resolution of the claims related to the Derailment, and any other matter deemed by the Monitor to be relevant to this proceeding, within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;
- h) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
- k) may assist the Petitioner with respect to any insolvency proceedings commenced

by or with respect to any other member of its corporate group (including MM&AR) in any foreign jurisdiction (collectively, "**Foreign Proceedings**") and report to this Court, as it deems appropriate, on the Foreign Proceedings with respect to matters relating to the Petitioner;

- l) may act as a "foreign representative" of the Petitioner or in any other similar capacity in any insolvency, bankruptcy or reorganization or other proceedings outside of Canada;
- m) may give any consent or approval as may be contemplated by the Order or the CCAA; and
- n) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

[34] **ORDERS** that, unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioner, and that the Monitor is not empowered to take possession of the Property nor to manage or control any of the business and financial affairs of the Petitioner and nothing in this Order shall vest in the Monitor the care, ownership, control, charge, occupation, possession or management (separately and collectively, the "**Possession**"), or require or obligate the Monitor to occupy, to take Possession of any Property or any source of contaminant which may be environmentally contaminated or contain a dangerous or designated substance, or (b) contain a pollutant or contaminant or cause or contribute to a spill, discharge, release or deposit of a substance in respect of which obligations of any sort may be imposed under any legislation enacted for the protection, conservation, enhancement, remediation or rehabilitation of the indoor or outdoor environment, or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Transportation of Dangerous Goods Act*, the *Environment Quality Act* (Québec), the *Act Respecting Occupational Health and Safety* (Québec) or the regulations thereunder, or under any other federal or provincial legislation or rule of law or equity, in any jurisdiction affecting the indoor or outdoor environment or the transportation of dangerous goods (collectively, "**Environmental Laws**"). For greater certainty, the Monitor shall not be deemed, as a result of this Order, to be in Possession within the meaning of any Environmental Laws of any Property or

source of contaminant.

- [35] **ORDERS** that the Petitioner and its Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioner in connection with the Monitor's duties and responsibilities hereunder.
- [36] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Petitioner with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioner's counsel. In the case of information that the Monitor has been advised by the Petitioner is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioner unless otherwise directed by this Court.
- [37] **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioner or continues the employment of the Petitioner's employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
- [38] **DECLARES** that, if the Monitor acts in good faith and takes reasonable care in preparing the reports referred to herein, the Monitor is not liable for loss or damage to any Person resulting from that person's reliance on any such report.
- [39] **DECLARES** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph 30 (i) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
- [40] **ORDERS** that Petitioner shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioner's legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.

[41] **DECLARES** that the Monitor, the Monitor's legal counsel (Woods LLP), the Petitioner's legal counsel (Gowling Lafleur Henderson LLP) and the Monitor and the Petitioner's respective advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order and directly related to these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$500,000 (the "**Administration Charge**"), having the priority established by paragraphs [42] and [43] hereof.

**Priorities and General Provisions Relating to CCAA Charges**

[42] **DECLARES** that the priorities of the Administration Charge and any possible charge in favor of the Directors that may be granted in their favor pursuant to a further order of this Court (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:

- a) first, the Administration Charge;
- b) second, the any charge in favour of the Directors that may be granted in their favour pursuant to a further order of this Court;

[43] **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind or deemed trusts (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances.

[44] **ORDERS** that, except as otherwise expressly provided for herein, the Petitioner shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioner obtains the prior written consent of the Monitor and the prior approval of the Court.

[45] **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioner, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

[46] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be

limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Petitioner (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

- a) the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by the Petitioner of any Third Party Agreement to which it is a party; and
- b) any of the beneficiaries of the CCAA Charges shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.

[47] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Petitioner pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

[48] **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioner and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioner, for all purposes.

#### **General**

[49] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings

against any of the Directors, employees, legal counsel or financial advisers of the Petitioner or of the Monitor in relation to the Business or Property of the Petitioner, without first obtaining leave of this Court, upon five (5) days written notice to the Petitioner's counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.

- [50] **DECLARES** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioner under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [51] **DECLARES** that, except as otherwise specified herein, the Petitioner and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioner and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.
- [52] **DECLARES** that the Petitioner and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Petitioner shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
- [53] **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Petitioner and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings.
- [54] **DECLARES** that the Petitioner or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights

hereunder or in respect of the proper execution of the order on notice only to each other and any other Person directly affected thereby, if any.

- [55] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Petitioner, to the Petitioner's counsel (Gowling Lafleur Henderson LLP c/o Denis St-Onge, phone: 514-392-9519, fax: 514-876-9519, denis.st-onge@gowlings.com, 3700-1 Place Ville Marie, Montreal, Quebec, H3B 3P4), to the Monitor (Richter Advisory Group Inc., c/o Gilles Robillard, phone: 514-934-3484, fax: 514-934-3504, 1981, McGill College, Montreal, Québec, H3A 0G6), to the Monitor's counsel (Woods LLP c/o Sylvain Vauclair, phone: 514-982-4528, fax: 514-284-2046, svauclair@woods.qc.ca, 2000, avenue McGill College, suite 1700, Montreal, Québec, H3A 3H3) and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order, such application or motion shall be filed during the Stay Period ordered by this Order, unless otherwise ordered by this Court.
- [56] **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [57] **DECLARES** that the Monitor, with the prior consent of the Petitioner, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court, for which the Monitor shall be the foreign representative of the Petitioner, including, but without limitation, in respect of proceedings that may be commenced, the Chapter 15 of the U.S. Bankruptcy Code and any ancillary relief in respect thereto. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.
- [58] **REQUESTS** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.

[59] **ORDERS** the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security.

THE WHOLE WITHOUT COSTS.

  
\_\_\_\_\_  
THE HONOURABLE MARTIN CASTONGUAY, J.S.C.



R-2

# COUR SUPÉRIEURE

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

N°: 500-11-045094-139

DATE : LE 21 AOÛT 2013

---

SOUS LA PRÉSIDENTE DE : L'HONORABLE MARTIN CASTONGUAY, J.C.S.

---

DANS L'AFFAIRE DE LA PROPOSITION OU PLAN D'ARRANGEMENT DE :

MONTRÉAL, MAINE & ATLANTIQUE CANADA CO.

Débitrice

c.

RICHTER GROUPE CONSEIL INC.

Syndic

---

## MOTIFS RÉVISÉS DU JUGEMENT PRONONCÉ SÉANCE TENANTE LE 8 AOÛT 2013

---

[1] Montreal Maine et Atlantique Canada Cie (ci-après « MMA »), demande au Tribunal de prononcer une ordonnance initiale en vertu de la *Loi sur les arrangements avec les créanciers des compagnies*<sup>1</sup> (ci-après la « Loi »).

[2] MMA demande, outre les conclusions normalement recherchées en pareilles circonstances, la suspension des recours des créanciers à l'égard de son assureur responsabilité civile, XL Insurance Company Ltd et XL Group PLC (ci-après collectivement « XL »), et ce, suite au sinistre survenu le 6 juillet dernier à Lac-Mégantic.

[3] La preuve offerte au Tribunal est minimaliste en ce qu'elle repose sur des pièces, de même qu'un bref témoignage du contrôleur suggéré par MMA, le tout visant à établir que MMA rencontre les prérequis financiers d'application de la Loi.

[4] D'emblée, MMA suggère au Tribunal que la situation en regard des événements du Lac-Mégantic est de connaissance judiciaire.

### **POSITION DE MMA**

[5] MMA, appuyée par la municipalité de Lac-Mégantic, de même que le gouvernement du Québec, soutient qu'il est dans son intérêt, de même que celui de ses créanciers, de continuer l'exploitation de son entreprise afin de maximiser la valeur de son patrimoine.

[6] Elle affirme également que puisqu'il est clair qu'elle ne sera pas en mesure d'honorer l'ensemble des réclamations qui déferlent et continueront à déferler sur elle, il est dans l'intérêt de tous de canaliser l'ensemble de celles-ci à travers un arrangement qu'elle entend proposer à ses créanciers.

### **ANALYSE**

[7] Avant de rendre l'ordonnance initiale, le Tribunal doit s'assurer que les critères, autres que financier, établis par la Loi sont rencontrés. Pour ce faire, le Tribunal traitera la présente affaire à l'aide des rubriques suivantes :

- a) MMA étant une compagnie de chemins de fer au sens de la *Loi sur les transports du Canada*<sup>2</sup> (ci-après la « Loi sur les transports »), est-elle une compagnie débitrice au sens de la Loi ?
- b) La viabilité plus que douteuse de MMA et son comportement peuvent-elles faire échec à l'application de la Loi ?
- c) Le Tribunal peut-il ordonner la suspension des recours à l'égard de tiers, non parties aux procédures ?

### **A) MMA ÉTANT UNE COMPAGNIE DE CHEMINS DE FER AU SENS DE LA LOI SUR LES TRANSPORTS DU CANADA, EST-ELLE UNE COMPAGNIE DÉBITRICE AU SENS DE LA LOI ?**

[8] La Loi, en son article 2, propose la définition suivante de « compagnie » et « compagnie débitrice » :

« « compagnie »

« compagnie » Toute personne morale constituée par une loi fédérale ou provinciale ou sous son régime et toute personne morale qui possède un actif ou

exerce des activités au Canada, quel que soit l'endroit où elle a été constituée, ainsi que toute fiducie de revenu. La présente définition exclut les banques, les banques étrangères autorisées, au sens de l'article 2 de la Loi sur les banques, les compagnies de chemin de fer ou de télégraphe, les compagnies d'assurances et les sociétés auxquelles s'applique la Loi sur les sociétés de fiducie et de prêt.

« compagnie débitrice »

« compagnie débitrice » Toute compagnie qui, selon le cas :

a) est en faillite ou est insolvable;

b) a commis un acte de faillite au sens de la Loi sur la faillite et l'insolvabilité ou est réputée insolvable au sens de la Loi sur les liquidations et les restructurations, que des procédures relatives à cette compagnie aient été intentées ou non sous le régime de l'une ou l'autre de ces lois;

c) a fait une cession autorisée ou à l'encontre de laquelle une ordonnance de faillite a été rendue en vertu de la Loi sur la faillite et l'insolvabilité;

d) est en voie de liquidation aux termes de la Loi sur les liquidations et les restructurations parce que la compagnie est insolvable. »

[9] Les personnes pouvant se prévaloir des dispositions de la Loi sont indiquées à l'article 3 de la Loi :

« 3. (1) La présente loi ne s'applique à une compagnie débitrice ou aux compagnies débitrices qui appartiennent au même groupe qu'elle que si le montant des réclamations contre elle ou les compagnies appartenant au même groupe, établi conformément à l'article 20, est supérieur à cinq millions de dollars ou à toute autre somme prévue par les règlements.

(...) »

[10] MMA, à ses procédures, admet être une compagnie de chemins de fer au sens de la législation fédérale en matière de transport, mais plaide que l'inclusion « chemin de fer » à l'article 2 de la Loi et qui ferait en sorte qu'elle ne pourrait s'en prévaloir, constitue un anachronisme.

[11] D'ailleurs, les compagnies de chemins de fer sont également exclues de l'application de la Loi sur la faillite et l'insolvabilité<sup>3</sup> (ci-après la « LFI »).

[12] Ainsi, en raison de cette double exclusion, les compagnies de chemins de fer ne peuvent ni déclarer faillite, aux termes de la LFI, ni proposer un arrangement à leurs créanciers aux termes de la Loi.

[13] Il s'agit là d'un vide juridique qui s'explique.

[14] Ainsi, jusqu'à l'entrée en vigueur de la *Loi sur les transports* en 1996, le transport ferroviaire était soumis à la *Loi sur les chemins de fer*<sup>4</sup>.

[15] Cette loi contenait un chapitre traitant de la situation de compagnies de chemins de fer insolubles<sup>5</sup>, et ce, depuis 1901, alors que le législateur adoptait l'*Acte modifiant l'Acte des chemins de fer*<sup>6</sup>.

[16] D'ailleurs, la *Loi sur les chemins de fer* adoptée au Québec en 1964 et s'appliquant aux compagnies de chemins de fer constituées au Québec, contenait également des dispositions<sup>7</sup> visant l'insolvabilité.

[17] Or, la *Loi sur les transports du Canada*, si elle reprend certaines des anciennes dispositions de la *Loi sur les chemins de fer* traitant les cas d'insolvabilité, édicte que seuls les actionnaires et les créanciers garantis peuvent déposer un plan d'arrangement. Par ailleurs, cette loi est muette quant aux droits des créanciers ordinaires, dont les employés<sup>8</sup>.

[18] En présence de ce vide juridique entourant certaines catégories de créanciers, que peut et que doit faire le Tribunal ?

[19] La solution à ce problème passe par l'application de la doctrine dite de la juridiction inhérente des tribunaux.

[20] Voici comment l'auteur Janis Sarra définit cette doctrine<sup>9</sup> :

« Inherent jurisdiction has its origins in the separation of legislative and judicial power, where the courts have taken jurisdiction to deal with matters not otherwise codified by parliaments and legislatures. The notion of equity in the exercise of that jurisdiction dates back to the 12<sup>th</sup> and 13<sup>th</sup> centuries, arising from a notion of conscience, protection of the vulnerable from the more powerful, and enforcement of relations of trust and confidence. In the context of both common law and statutory interpretation, balancing equities and prejudice was part of the move toward purposive legal reasoning that has become today's hallmark or statutory interpretation. The practice of reconciling conflicting doctrines, interests and statutes also dates back to this period. »

(nos soulignés)

[21] Quant à l'application de cette doctrine dans le cadre de la Loi, voici comment elle s'exprime<sup>10</sup> :

« The exercise of the court's inherent jurisdiction is a more sparingly used tool. Inherent jurisdiction is the exercising of the general powers of the court as the superior court of the province or territory. It has been used more generally by the court to control its process, or to fill in the gaps where legislation has not

specified what is to occur in particular circumstances. In the context of its supervisory role under the CCAA, the court has defined inherent jurisdiction as a "residual source of powers, which the court may draw upon as necessary whenever it is just and equitable to do so, in particular, to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them". Inherent jurisdiction cannot be exercised in a manner that conflicts with a statute and, because it is an extraordinary power, should be exercised only sparingly and in a clear case where there is cogent evidence that the benefits to all clearly outweighs the potential prejudice to a particular creditor. »

(nos soulignés)

[22] Dans l'arrêt *Stelco*<sup>11</sup> de la Cour d'appel de l'Ontario, s'exprime comme suit sur la question du vide juridique ou encore « vacuum » :

« [35] In spite of the expansive nature of this power, inherent jurisdiction does not operate where Parliament or the legislature has acted. As Farley J. noted in *Royal Oak Mines, supra*, inherent jurisdiction is "not limitless; if the legislative body has not left a functional gap or vacuum, then inherent jurisdiction should not be brought into play" (para. 4). See also, *Baxter Student Housing Ltd. v. College Housing Co-operative Ltd.* [1976] 2 S.C.R. 475, 57 D.L.R. (3d) 1, at p. 480 S.C.R.; *Richtree Inc. (Re)* (2005), 74 O.R. (3d) 174, [2005] O.J. No. 251 (S.C.J.). »

[23] Ainsi, *a contrario* de cette dernière citation, dans le présent dossier aucune codification n'existe visant les droits de créanciers ordinaires des compagnies de chemins de fer insolubles.

[24] Appliquer la *Loi* de façon aveugle et refuser à MMA le droit de s'en prévaloir équivaudrait à une injustice flagrante des droits des créanciers ordinaires dont les sinistrés de Lac Mégantic ce qui est tout à fait inacceptable dans une société de droit.

[25] De plus, tenter de gérer une situation d'insolvabilité en appliquant une loi pour certains créanciers et une autre loi pour d'autres créanciers risquerait de provoquer une incohérence, sinon, une injustice.

[26] Le Tribunal conclut qu'il est nécessaire de combler le vide juridique créé lors du remaniement des lois canadiennes en matière de transport et permettre à MMA de se prévaloir des dispositions de la *Loi*, et ce, pour l'ensemble de ses créanciers.

**B) LA VIABILITÉ PLUS QUE DOUTEUSE DE MMA ET SON COMPORTEMENT PEUVENT-ELLES FAIRE ÉCHEC À L'APPLICATION DE LA LOI ?**

[27] MMA précise qu'elle ne pourra s'acquitter de ses obligations envers l'ensemble de ses créanciers et que son recours à la *Loi* lui permettra de maximiser la valeur de son patrimoine, et ce, au bénéfice de tous ses créanciers.

[28] Elle prétend également que sans cette protection, il en résultera un chaos judiciaire qui pourrait nuire à un certain nombre de ses créanciers, dont les sinistrés des événements du 6 juillet 2013 à Lac-Mégantic.

[29] L'assureur de MMA, tout en confirmant qu'il honorera son contrat d'assurance, appuie la position de MMA, soulevant également le risque de chaos judiciaire.

[30] L'objectif principal recherché par le législateur en édictant la Loi est la survie des entreprises, et ce, au bénéfice de tous, employés, créanciers et la société en général.

[31] Qu'en est-il, si la preuve offerte au Tribunal démontre clairement une situation d'insolvabilité irrécupérable comme c'est le cas en l'instance.

[32] À quelques reprises, nos tribunaux ont accepté d'appliquer la Loi même si au bout du compte, une liquidation ou un démantèlement de l'entreprise était à prévoir.

[33] Dans la présente affaire, il est trop tôt pour déterminer quelle avenue sera privilégiée par MMA pour maximiser la valeur de son patrimoine. Celle-ci sera-t-elle monnayée par une vente ou encore par son démantèlement.

[34] Permettre à MMA de continuer à opérer pour maximiser la valeur de son patrimoine est à l'avantage de tous ses créanciers.

[35] Ainsi, lorsque l'entreprise annonce clairement qu'elle ne sera pas viable dans sa forme actuelle, quelque soit le plan d'arrangement, le Tribunal doit s'écarter de l'objectif bicéphale de la Loi visant la survie de l'entreprise et la protection de ses créanciers, pour se concentrer sur ce dernier élément.

[36] Le Tribunal devra alors considérer toutes les demandes qui lui sont formulées au stade de l'ordonnance initiale en priorisant les droits des créanciers.

[37] En pareille situation, certaines demandes possibles, en vertu de la Loi, tel un financement temporaire, emportant une charge prioritaire ou encore une charge en faveur des administrateurs, ne saurait être recevable.

[38] Le fait, dans la présente affaire, de canaliser l'ensemble des réclamations dans le cadre d'un arrangement est certes à l'avantage de tous les créanciers, qu'ils soient garantis ou ordinaires. Rappelons que cette dernière catégorie compte les sinistrés des événements du 6 juillet, que le Tribunal identifiera sous le vocable de créanciers « extraordinaires ».

[39] Dans le présent cas, ces créanciers extraordinaires bénéficieront de la couverture d'assurance, mais ils peuvent également bénéficier en surplus, le cas échéant, d'une partie du patrimoine autre que cette couverture d'assurance de MMA.

[40] Dans ce contexte, l'application de la Loi permettant à MMA de continuer ses opérations pour maximiser la valeur de son patrimoine est certes à l'avantage des créanciers de MMA.

[41] Reste maintenant à considérer certaines demandes formulées par MMA et décider si elles sont à l'avantage des créanciers, le tout à travers le prisme de la « bonne foi » tel que prévu à la Loi.<sup>12</sup>

[42] Ainsi, MMA demande, outre la suspension des recours découlant du déraillement, la création d'une charge prioritaire de 150 000 \$ en faveur de ses administrateurs :

« 60. The Petitioner seeks a \$150,000 Directors' Charge, the whole as set forth ore fully at paragraph 22 and following o the conclusions of this Petition. The amount of the Directors' Charge was established by the Petitioner and reviewed by the Monitor, taking into account direct and indirect payroll obligations, commissions, vacation pay, deductions at source and sales taxes remittances; »

[43] Si la suspension des recours découlant du déraillement à l'égard des administrateurs est appropriée en regard du libellé de la police d'assurance, une suspension générale des recours ou encore la création d'une charge au bénéfice des administrateurs n'est pas dans l'intérêt des créanciers en général et plus particulièrement des employés de MMA.

[44] MMA et/ou ses administrateurs ont-ils agi de bonne foi depuis les événements du 6 juillet dernier ?

[45] MMA affirme que l'ensemble des événements post-déraillement est de connaissance judiciaire.

[46] Les auteurs Sopinka, Lederman et Bryant ont fort bien résumé ce que constitue la connaissance d'office aussi connue sous le vocable « connaissance judiciaire » :

« 19.13. Judicial notice is the acceptance by a court or judicial tribunal, in a civil or criminal proceeding, without the requirement of proof, of the truth of a particular fact or state of affairs. Facts which are (a) so notorious as not to be the subject of dispute among reasonable persons; or (b) capable of immediate and accurate demonstration by resorting to readily accessible sources of indisputable accuracy, may be noticed by the court without proof of them by any party. »

[47] Le Tribunal adhère à cette théorie et selon des faits bien connus du public, il n'a aucune hésitation à qualifier de lamentable le comportement de MMA et de ses administrateurs depuis le déraillement.

[48] Que dire du mutisme de M. Edward Burkhardt dans les heures, sinon les jours qui ont suivi la tragédie !



[49] Que dire du fait que M. Burkhardt ne soit sorti de son mutisme que pour blâmer divers intervenants impliqués dans le sinistre, alors que l'enquête n'était même pas amorcée ?

[50] Que dire du fait que MMA, ayant retenu les services de diverses firmes de nettoyage et décontamination, ne les ait pas payés, provoquant un arrêt de travail de ceux-ci ?

[51] Que dire du fait que MMA n'ait pas avisé les autorités compétentes qu'elle n'entendait pas ou encore n'avait pas la capacité de payer les firmes retenues par elle, de façon à ce que ces mêmes autorités compétentes puissent prendre le relais de façon ordonnée ?

[52] Qu'en est-il du témoignage de M. Robert Grindrod, président de MMA, dans le cadre de l'audition de la présente affaire, alors qu'il déclarait que MMA n'avait pas la capacité de payer la paie de vacances des employés récemment mis à pied, alors que les pièces déposées au soutien de la requête, démontrent que sa société mère, Montreal Maine and Atlantic Railway Ltd, qui lui fournit les fonds sur une base régulière, avait les liquidités suffisantes pour effectuer ces paiements ?

[53] Que dire de plus du témoignage de M. Grindrod, président de MMA, lorsqu'il affirme que la date où sera payée cette même paie de vacances sera décidée par le directeur aux finances de la société mère ?

[54] À la lumière de ces faits, le Tribunal conclut que les administrateurs de MMA n'ont pas démontré une bonne foi justifiant de leur accorder une suspension des recours ou encore une charge prioritaire pour les protéger des réclamations de leurs employés.

[55] Cela étant et encore une fois, pour éviter un chaos judiciaire, le Tribunal accordera la suspension des recours à l'égard des administrateurs, seulement quant à la responsabilité découlant du déraillement, et ce, pour l'unique raison qu'ils sont également des assurés au terme de la police d'assurance-responsabilité civile.

### **C) LE TRIBUNAL PEUT-IL ORDONNER LA SUSPENSION DES RECOURS À L'ÉGARD DE TIERS NON PARTIES AUX PROCÉDURES ?**

[56] MMA demande que la suspension des recours soit ordonnée quant à son assureur responsabilité civile, XL.

[57] Cette demande de MMA est appuyée par la municipalité de Lac-Mégantic ainsi que évidemment par XL.

[58] Cette demande est la suite logique du désir de MMA de canaliser les diverses réclamations et/ou créances à travers un arrangement qu'elle proposera à ses créanciers.

[59] Semblable proposition d'arrangement peut comporter diverses catégories de créanciers et même des sous-catégories de créanciers.

[60] S'il est acquis que la couverture d'assurance de XL ne bénéficiera qu'aux seules victimes du déraillement, que ce soit les victimes, les propriétaires fonciers, la municipalité de Lac-Mégantic ou encore le Gouvernement du Québec pour les frais de décontamination, il y a lieu d'éviter le chaos du premier arrivé premier servi.

[61] D'ores et déjà, XL a annoncé qu'elle déposerait le montant de la couverture d'assurance.

[62] Un plan d'arrangement peut sûrement prévoir une proposition de répartition de cette somme entre les victimes, d'où la demande de MMA d'étendre la suspension des procédures à un tiers, en l'occurrence XL.

[63] Dès le début des années 1990, les tribunaux Canadiens ont eu à se pencher sur la possibilité d'étendre la suspension des recours à des tiers. Voici comment s'exprimait le juge Farley de la Cour supérieure de l'Ontario à ce propos dans l'affaire *Lehndorff General Partners Ltd*<sup>13</sup> :

« 14 I am not persuaded that the words of s.11 which are quite specific as relating as to a company can be enlarged to encompass something other than that. However it appears to me that Blair J. was clearly in the right channel in his analysis in *Campeau v. Olympia & York Developments Ltd*, unreported [1992] O.J. No. 1946 9now reported at 14 C.B.R. (3d) 303 (Ont. Gen. Div.) at pp. 4-7 9at pp. 308-310 C.B.R.O.

#### The Power to Stay

The court has always had in inherent jurisdiction ot grant a stay of proceedings whenever it is just and convenient to do so, in order to control its process or prevent an abuse of that process : see *Canada Systems Group (EST) Ltd v. Allendale Mutual Insurance Co.* (1983), 29 C.P.C. 60, 137 D.L.R. (3d) 287 (Ont. H.C.), and cases referred to therein. In the civil context, this general power is also embodied in the very broad terms of s.106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.46, which provides as follows:

106. A court, on its own initiative or on motion by any person, whether or not a party, may stay any proceeding in the court on such terms as are considered just.

Recently, Mr. Justice O'Connell has observed that this discretionary power is "highly dependent on the facts of each particular case" *Arab Monetary Fund v. Hashim* (unreported) [June 25, 1992], Doc. 24127/88 (Ont. Gen. Div.), [1992] O.J. No. 1330.

Apart from this inherent and general jurisdiction to stay proceedings, there are many instances where the court is specifically granted the power to stay in a

particular context, by virtue of statute or under the *Rules of Civil Procedure*. The authority to prevent multiplicity of proceedings in the same court, under r. 6.01(1), is an example of the latter. The power to stay judicial and extra-judicial proceedings under s.11 of the C.C.A.A., is an example of the former. Section 11 of the C.C.A.A. provides as follows. »

[64] Depuis cette affaire, d'autres décisions ont avalisé la possibilité d'étendre la suspension de recours à des tiers.<sup>14</sup>.

[65] Le Tribunal retient de ces décisions, qu'il s'agit de cas d'espèces visant au bout du compte une saine administration de la justice.

[66] En raison des circonstances exceptionnelles de la présente affaire et devant la multiplicité des recours déjà intentés et de ceux qui le seront sous peu, il est dans l'intérêt d'une saine administration de la justice d'accorder cette demande de MMA et d'étendre la suspension des recours à XL.

**POUR CES MOTIFS, LE TRIBUNAL :**

[67] **ACCUEILLE** en partie la Requête suivant le dispositif signé le 8 août 2013.

  
MARTIN CASTONGUAY, J.C.S.

Me Denis St-Onge  
Me Patrice Benoit  
Me Louise Lalonde  
GOWLINGS LAFLEUR HENDERSON  
Avocats pour la requérante

Me Sylvain Vauclair  
WOODS ET ASS.  
Avocat pour le Contrôleur Richter Groupe Conseil inc.

Me Louis Coallier  
DUFRESNE HÉBERT COMEAU  
Avocat de Municipalité de Lac-Mégantic

Me Louise Comtois  
Me Catherine Miron  
BERNARD ROY  
Avocats du Procureur Général du Québec.

Me Dominique Naud  
CLYDE AND CO.  
Avocat de XL Insurance & Group

Me Brendan D. O'Neill  
GOODMANS (TORONTO)  
Avocat de XL Insurance & Group

Me Louis-P. Bélanger  
STIKEMAN ELLIOT  
Avocat de World Fuel Services

Me Roger Simard  
Me Laurent Nahmiash  
DENTONS CANADA  
Avocat de certains administrateurs et officiers de la requérante

Me Jeffrey Orenstein  
ORENSTEIN DROIT INC.  
Avocat dans un recours collectif

Dates d'audience : Les 7 et 8 août 2013

---

<sup>1</sup> L.R.C. (1985), ch. C-36.

<sup>2</sup> L.C. 1996, ch. 10.

<sup>3</sup> L.R.C. (1985) ch.B-3.

<sup>4</sup> L.R.C. (1985) ch. R-3.

<sup>5</sup> Art. 99 à 103.

<sup>6</sup> Acte modifiant l'Acte des Chemins de fer (1901) IE.VIIC.31.

<sup>7</sup> Art. 11 à 16.

<sup>8</sup> Art. 106 à 110.

<sup>9</sup> SARRA, Janis, *Rescue! The Companies' Creditors Arrangement Act*, Thomson Carswell, p. 63.

<sup>10</sup> *Id.*, p. 61-62.

<sup>11</sup> *Re Stelco inc.*, 2005 Carswell Ont. 1188.

<sup>12</sup> Article 11.02(3).

<sup>13</sup> 1993 Carswell Ont. 183.

<sup>14</sup> Voir *Muscletech Research and Development inc.*, 2006 Carswell Ont. 264, Metcalfe and Mansfield Alternative Investments II Corp et al., Cour supérieure de l'Ontario, 17 mars 2008, Court file 08CL7440, *Papiers Gaspesia inc.*, EYB2004-71992.

R-3

---

**De:** Lord, Chantal <Chantal.Lord@gowlings.com> de la part de Benoit, Patrice <Patrice.Benoit@Gowlings.com>

**Envoyé:** 31 mars 2015 18:03

**À:** 'aadessky@richter.ca'; 'adobrota@woods.qc.ca'; 'ahelman@mcm-law.com'; 'alan.lepene@thompsonhine.com'; André Ryan; andrei.pascu@mcmillan.ca; Annie Mathieu; 'antoine.lippe@justice.gc.ca'; 'ariendeau@fasken.com'; 'atardif@mccarthy.ca'; Bernard Amyot; 'bglassberg@gatx.com'; 'boneill@goodmans.ca'; Boris Lavoie Isebaert; Brandon Farber; Bruce Leonard; Carole O'Donnell; Caroline Laverdière; 'Casey.Symington@dot.gov'; 'cathy.murphy@otc-cta.gc.ca'; Chantal Comtois; David Bish; 'Deborah.Thorne@btlaw.com'; 'djohnson@mcm-law.com'; 'dominic.naud@clydeco.ca'; Dominique Ménard; 'eforlini@fasken.com'; Elisabeth Neelin; emeloche@osler.com; emmanuelle.gervais-cadrin@mddefp.gouv.qc.ca; Eric Savard; eric.vallieres@mcmillan.ca; esherkin@millerthomson.com; Ferland, Patrick; 'fpare@stikeman.com'; François Tougas; 'frederic.maheux@justice.gouv.qc.ca'; Geneviève Bertrand; 'gjm@mcm-law.com'; gkandestin@kklex.com; Glevine@kklex.com; 'gmichaud@fasken.com'; GRobillard@richter.ca; Hans Mercier; Howard Borlack; info@daniellarochelle.com; Irwin Liebman; 'jclerk@rsslex.com'; 'jdarche@blg.com'; jfontaine@stikeman.com; 'jgrout@tgf.ca'; jim@jehowardlaw.com; Joel Rochon; John Birch; 'john.dodsworth@cta-otc.gc.ca'; 'jorenstein@clg.org'; 'jperreault@mccarthy.ca'; 'jreynaud@stikeman.com'; Julie.Himo@nortonrosefulbright.com; Kathleen Célestin; 'kathryn.hurd@dot.gov'; 'KPlunkett@tgf.ca'; 'laurent.nahmiash@dentons.com'; 'lbaillargeon@rsslex.com'; 'lbeliveau@fasken.com'; 'lcoallier@dufresnehebert.ca'; 'louise.comtois@justice.gouv.qc.ca'; Luc Despins; Marc-André Morin; Massimo Starnino; 'mbarron@fletcher-sippel.com'; Me Luc Fleurant; melanie.brindamour@mshp.gouv.qc.ca; melanie.jacques@dentons.com; 'melissa.devost@mddefp.gouv.qc.ca'; mfagone@bernsteinshur.com; mhenderson@verrilldana.com; michel.rocheleau@clcw.ca; mlaroche@millerthomson.com; mmeland@ffmp.ca; Monica Maynard; 'nc-wepp\_served-pps\_signiflier-gd@labour-travail.gc.ca'; Nicholas Daudelin; Nicolas Plourde; 'nina.frid@otc-cta.gc.ca'; 'npeden@woods.qc.ca'; pauvinen@millerthomson.com; 'pbelanger@mccarthy.ca'; 'pierre.lecavalier@justice.gc.ca'; 'rclement@verrilldana.com'; rkeach@bernsteinshur.com; Robin D. Walker; 'roger.simard@dentons.com'; Shawn Travitsky; slussier@osler.com; Soazig Bourgine; Stephen Eddy; 'svauclair@woods.qc.ca'; 'tsandler@osler.com'; 'Valerie.Lagace@otc-cta.gc.ca'; 'vjodoïn@blg.com'; Wael Rostom; yetton.raimonda@cleanharbors.com; André Durocher; André Mignault; André Veilleux; Bayus, Alexander; Benoit, Patrice; Caroline Beaudoin; Caroline Plante; Cloutier, Genevieve; Fadi Amine; Francis Rouleau; Frederic Paré; Guillaume-Pierre Michaud; Brown, Henry; Jacques Rossignol; Jean-François Vézina; Jean-Guy Durand; Jean-Michel Boudreau; Jean-Philippe Lincourt; Joseph Grass; Legault, Pierre; Marc Lemaire; Marie-Ève gingras; Marie-Julie Croteau; Martin Pichette; Mason Poplaw; Mélissa Rivest; Michel Gagné; Panagiota Kalantzis; Pascale Caron; Peter Kalichman; Philippe Dumaine; Pierre Paquet; Pierre-Alexandre Fortin; Prachi Shah; Remissa Hirji; Richard Provost; Robert Torralbo; Serge Amar; Stéphane Pitre; St-Onge, Denis; Sylvie Rodrigue; Tay, Derrick; Yves Martineau

**Cc:** Martine Girard

**Objet:** Montreal, Maine & Atlantic Canada Co. (Montreal, Maine & Atlantique Canada Cie) ("MMAC") - 450-11-000167-134

**Pièces jointes:** L134420004-AB-Schedules to the Plan (A-H)-MTL\_LAW-2336122-v1.PDF; Compare-MMAC\_Plan\_of\_Compromise\_and\_Arrangement.pdf; L134420004-AB-MMAC Plan of Compromise and Arrangement-MTL\_LAW-2336251-v1.PDF

Service by e-mail

To the Service List:

Dear Mr. Justice Dumas, Colleagues:

Please find attached MMAC's *Plan of Compromise and Arrangement*, along with its Schedules A, D, E, F, G and H, which will be filed in the Court record without delay. As appears from the Plan, Schedule B (the Settlement Agreements) will be filed under seal. Schedule C (the Canadian Approval Order) will be communicated at a later date. We have also attached a compared version of the Plan, which tracks changes made since a draft was provided to the Service List on January 9, 2015.

Please note that formal notice will soon be issued regarding a hearing to be held at the Sherbrooke Courthouse on April 15, 2015. On that date, MMAC intends to seek an order from the Court regarding the scheduling of a meeting of creditors for the purposes of voting on the Plan and other related matters, as well as an order regarding the claims resolution process.

Best regards,

**Patrice Benoit**  
Associé / Partner  
Tél./Tel. 514-392-9550  
patrice.benoit@gowlings.com  


---

**Gowling Lafleur Henderson S.E.N.C.R.L., s.r.l. / LLP**  
**Avocats • Agents de brevets et de marques de commerce**  
**Lawyers • Patent and Trade-mark Agents**  
3700-1 Place Ville Marie  
Montréal (Québec)  
H3B 3P4 Canada  
Tél./Tel. 514-878-9641 Téléc./Fax 514-878-1450  
**gowlings.com**

**AVIS IMPORTANT:** Le présent message n'est destiné qu'à la personne ou à l'entité à qui il est adressé, et peut contenir des renseignements de nature privilégiée et confidentielle qui ne doivent pas être divulgués en vertu des lois applicables. Si le lecteur du présent message n'est pas le destinataire prévu ou encore l'employé ou le mandataire chargé de remettre ce message au destinataire prévu, vous êtes par les présentes avisé que toute diffusion, distribution ou reproduction de cette communication est strictement interdite. Si vous avez reçu cette communication par erreur, veuillez en aviser Gowlings immédiatement par courriel, à l'adresse [postmaster@gowlings.com](mailto:postmaster@gowlings.com).

Merci.

**IMPORTANT NOTICE:** This message is intended only for the use of the individual or entity to which it is addressed. The message may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify Gowlings immediately by email at [postmaster@gowlings.com](mailto:postmaster@gowlings.com).

Thank you.

Court File 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 AND ARRANGEMENT OF:

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

PETITIONER

AND

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

MONITOR

---

**PLAN OF COMPROMISE AND ARRANGEMENT**

pursuant to the *Companies' Creditors Arrangement Act*  
concerning, affecting and involving

**MONTREAL, MAINE & ATLANTIC CANADA CO.**

---

**March 31, 2015**



## TABLE OF CONTENTS

1.1	Defined Terms .....	6
1.2	Certain Rules of Interpretation .....	14
1.3	Currency .....	15
1.4	Successors and Assigns .....	15
1.5	Governing Law.....	15
1.6	Schedules.....	15
2.1	Purpose .....	16
3.1	Class of Creditors .....	16
3.2	Claims Procedure .....	17
3.3	Unaffected Claims.....	17
3.4	Treatment of Creditors .....	18
3.5	Voting Rights for Creditors .....	19
3.6	Interest.....	20
3.7	Duplicate Claims .....	20
4.1	Contributions to the Indemnity Fund.....	20
4.2	Distribution to Creditors.....	20
4.3	Additional Distributions to Creditors .....	22
4.4	Timing of Distributions to Creditors .....	22
4.5	Delivery of Distributions to Creditors .....	23
4.6	Allocation of Distributions.....	24
4.7	Transfer of Claims; Record Date for Distributions .....	24
5.1	Plan Releases and Injunctions.....	25
5.2	Timing of Releases and Injunctions .....	25
5.3	Claims against Third Party Defendants .....	26
6.1	Conditions Precedent to Implementation of Plan.....	26

6.2	Monitor's Certificate .....	27
6.3	Termination of Plan for Failure to Become Effective.....	27
7.1	Administration Charge and Administration Charge Reserve.....	27
8.1	Binding Effect.....	28
8.2	Deeming Provisions .....	28
8.3	Non-Consummation .....	28
8.4	Plan Amendment .....	28
8.5	Severability .....	29
8.6	Paramourncy.....	30
8.7	Responsibilities of the Monitor .....	30
8.8	Unclaimed Distributions .....	30
8.9	Notices.....	31
8.10	Further Assurances.....	32
8.11	No Preference.....	32
8.12	No Admission.....	32

Schedule "A"	List of Released Parties
Schedule "B"	Settlement Agreements
Schedule "C"	Draft Canadian Approval Order
Schedule "D"	List of Existing Agreements
Schedule "E"	Distribution mechanism with respect to the Wrongful Death Claims
Schedule "F"	Distribution mechanism with respect to the Bodily Injury and Moral Damages Claims
Schedule "G"	Distribution mechanism with respect to the property and Economic Damages Claims
Schedule "H"	XL Settlement Agreement

---

**PLAN OF COMPROMISE AND ARRANGEMENT  
(THE CAPITALIZED TERMS USED IN THIS DOCUMENT HAVE THE MEANING  
ASCRIED THERETO IN SECTION 1.1 HEREOF)**

**WHEREAS** on July 6, 2013, a train operated by MMAC derailed in the city of Lac-Mégantic, Quebec, Canada, causing numerous fatalities, bodily injuries, psychological and moral damages to thousands of people, and extensive property and environmental damages;

**WHEREAS** as a result of the numerous claims against MMAC and its parent company, MMA, arising out of the Derailment, along with the ensuing operational and financial impact arising therefrom, MMAC and MMA became insolvent;

**WHEREAS** numerous claims arising out of the Derailment have also been made against other persons and entities, including the Released Parties in both Canada and the United States of America;

**WHEREAS** on August 7, 2013, MMA filed a voluntary petition in the Bankruptcy Court for relief under Chapter 11 of the U.S. Bankruptcy Code;

**WHEREAS** on August 8, 2013, the Honourable Justice Castonguay of the CCAA Court granted an initial order in respect of MMAC (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**");

**WHEREAS** on August 21, 2013, the United States Trustee appointed the Trustee having full rights and power under the Bankruptcy Code to act for and on behalf of MMA;

**WHEREAS** on September 4, 2013, the CCAA Court and the Bankruptcy Court adopted the Cross-Border Insolvency Protocol entered into between MMAC, the Monitor and the Trustee, the purpose of which is, *inter alia*, to facilitate the fair, open and efficient administration of the CCAA Proceeding and of the Bankruptcy Case for the benefit of the Creditors and interested parties;

**WHEREAS** through the concerted and coordinated efforts of MMAC, the Monitor and the Trustee, predicated on constituting an Indemnity Fund with a view to providing compensation for the Derailment Claims filed pursuant to the Claims Procedure Order, a number of Settlement Agreements have been reached with the Released Parties providing for contributions towards the Indemnity Fund;

**WHEREAS** the aforesaid Settlement Agreements are conditional upon obtaining for the Released Parties appropriate releases and the Injunction and Release enforceable both in Canada and the United States of America;

**WHEREAS** the Monitor will seek recognition and enforcement of this Plan and of the Canadian Approval Order from the Bankruptcy Court pursuant to Chapter 15 of the Bankruptcy Code;

**WHEREAS** the Trustee (for and on behalf of MMA) will file in the Bankruptcy Case the U.S. Plan, which will provide, among other things, for distribution of the Funds for Distribution in accordance with this Plan and the entry of the U.S. Approval Order;

**NOW THEREFORE**, MMAC hereby proposes this plan of compromise and arrangement pursuant to the CCAA.

**ARTICLE 1  
INTERPRETATION**

**1.1 Defined Terms**

Administration Charge	has the meaning ascribed thereto in Section 7.1 hereof.
Administration Charge Reserve	has the meaning ascribed thereto in Section 7.1 hereof.
Affected Claims	any and all Claims, other than any Unaffected Claim and any Claim referred to in Section 5.3.
Approval Date	the date on which the Approval Orders become Final Orders. If the Canadian Approval Order, the Class Action Order and the U.S. Approval Order become Final Orders on different dates, the Approval Date is the latest date on which any of the Canadian Approval Order, the Class Action Order or the U.S. Approval Order becomes a Final Order.
Approval Orders	the Canadian Approval Order, the Class Action Order and the U.S. Approval Order, collectively.
Bankruptcy Case	the case styled <i>in re Montreal, Maine &amp; Atlantic Railway Ltd.</i> , Bankr. D. Me. No. 13-10670.
Bankruptcy Code	Title 11 of the United States Code.
Bankruptcy Court	United States Bankruptcy Court for the District of Maine, as presiding over the Bankruptcy Case.
Bodily Injury and Moral Damages Claims	shall have the meaning ascribed thereto in Section 3.5(b) hereof.
Business Day	a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Montreal, Québec, Canada.
Canadian Approval Order	an Order, as set out in Schedule C hereof, entered in the CCAA Proceeding, which Order shall, among other things, (i) approve, sanction and/or confirm the Plan, (ii) approve the Settlement Agreements; (iii) authorize the Parties to undertake the settlement and the transactions contemplated by the Settlement Agreements; and (iv) provide for the Injunction and Release.
Canadian Professionals	the Monitor, Woods LLP, Gowling Lafleur Henderson LLP and the Claims Officer.

CCAA	has the meaning ascribed thereto in the recitals.
CCAA Court	Superior Court, Province of Quebec, as presiding over the CCAA Proceeding.
CCAA Filing Date	August 8, 2013.
CCAA Proceeding	<i>In the Matter of the Plan of Compromise or Arrangement of Montreal Maine &amp; Atlantic Canada Co.</i> , Superior Court, Province of Quebec, No. 500-11-045094-139.
Chubb	Chubb & Son, a division of Federal Insurance Company, together with its parents, subsidiaries, affiliates, officers and directors, but strictly as insurer under the Chubb Policy.
Chubb Policy	That certain insurance policy bearing number 8210 2375 issued by Federal Insurance Company to Rail World, Inc. and Rail World Holdings LLC.
Claim or Claims	means, as the context requires, past, present and future claims, causes of action, obligations, rights, liens suits, judgments, orders, applications of any kind including for judicial review, remedies, interests, actions, liabilities, demands, duties, injuries, compensation, damages, expenses, fees, and/or costs of whatever kind or nature (including attorney's fees and expenses), whether foreseen or unforeseen, known or unknown, asserted or unasserted, contingent or matured, liquidated or unliquidated, whether in tort, contract, extra-contractual responsibility or otherwise, whether statutory, at common law, civil law, public law or in equity, regardless of the legal theory, including but not limited to claims for breach of contract, tort, breach of the implied covenant of good faith and fair dealing, loss of support, loss of consortium, statutory or regulatory violations, for indemnity or contribution, for any damages either moral, material, bodily injury, punitive, exemplary or extra-contractual damages of any type, in any jurisdiction (a) in any way arising out of, based upon, or relating in any way, in whole or in part, directly or indirectly, whether through a claim that was, is, may or could have been asserted in the Canadian Class Action, or a direct claim, cross-claim, third-party claim, warranty claim, recursory claim, subrogation claim, forced intervention, contribution claim, class action or otherwise, to (i) the Derailment, including but not limited to any claims for wrongful death, survival, personal injury, emotional distress, loss of support, loss of consortium, property damage, economic loss, moral damage, material damage and bodily injury, statutory and common law product and manufacturing liability, negligence, or environmental damage, remediation, exposure or any claim that would constitute any right to an equitable remedy for breach of performance even if such breach does not give rise to a right of payment and/or or exposure; (ii) the Policies; (iii) the issuance of the Policies; (iv) insurance coverage under the Policies,

reimbursement or payment under the Policies; (v) any act or omission of an insurer of any type for which a Claimant might seek relief in connection with the Policies; (vi) the Existing Agreements; or (b) that would otherwise constitute a claim as against MMA, MMAC or their Estates (i) provable in bankruptcy under the Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3, had MMAC become bankrupt on August 6, 2013; and/or (ii) within the definition of "claim" set forth in section 101(5) of the Bankruptcy Code; and/or (iii) that are advanced or could have been advanced in the Canadian Class Action.

Claimant	any Person holding or potentially holding any Claim (including any transferee or assignee of a Claim) against (i) MMA, (ii) MMAC, (iii) to the extent applicable, the Estates, and/or (iv) any of the Released Parties.
Claims Bar Date	has the meaning ascribed thereto in the Claims Procedure Order.
Claims Officer	the court officer to be appointed pursuant to the Claims Resolution Order to adjudicate on the validity and quantum of any disputed Claims for the purpose of this Plan.
Claims Procedure	the procedure established for the filing of Claims in the CCAA Proceeding pursuant to the Claims Procedure Order.
Claims Procedure Order	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 MMAC, as such Order may be amended, restated or varied from time to time.
Claims Resolution Order	an order of the CCAA Court establishing the procedure for determining the validity and quantum of any disputed Claims for the purpose of this Plan.
Class Action	the putative class action commenced on or about July 15, 2013, before the Superior Court, Province of Quebec, under court file 450-06-000001-132, including all subsequent amendments and all proceedings in this Court file, whether before or after the action is authorized to proceed as a class action.
Class Action Court	Superior Court, Province of Quebec, as presiding over the Class Action.
Class Action Order	an order, issued in the Class Action (i) confirming and declaring that the Canadian Approval Order and the U.S. Approval Order shall be binding and given full effect against parties designated and part of the Class Action, whether as a class representative, class member, named defendant/respondent or mis-en-cause, (ii) removing the allegations and conclusions against the Released Parties, and (iii) terminating the Class Action against the Released

	Parties without costs.
Class Representatives	has the meaning ascribed to “Class Action Plaintiffs” and to “Class Counsel” by the CCAA Court in the Representation Order.
Cook County Actions	the civil actions transferred pursuant to 28 U.S.C. §157(b)(5) in connection with the Bankruptcy Case to the District Court, originally filed in the Cook County, Illinois state court, and appearing on the docket of the District Court as Civil Action Nos. 00113-00130NT.
Creditors	collectively all Persons having Proven Claims and “Creditor” means any one of them.
D&O Parties	Edward A. Burkhardt, Larry Parsons, Steven J. Lee, Stephen Archer, Robert C. Grindrod, Joseph R. McGonigle, Gaynor Ryan, M Donald Gardner, Jr., Fred Yocum, Yves Bourdon and James Howard, each of whom is or was a director or officer of MMA, MMAC, Montreal, Maine & Atlantic Corporation and/or LMS Acquisition Corporation.
Derailment	July 6, 2013 derailment in Lac-Mégantic, Quebec, including any and all events leading up to and related to such derailment and/or any and all consequences of such derailment, including, without limitation, the explosion, crude oil spill, fire and/or other consequences related to such derailment.
Derailment Claims	the Proof of Claims filed under Schedules 1, 2, 3, 4 and 5 pursuant to the Claims Procedure Order.
Distribution Date	the date or dates from time to time set in accordance with the provisions of the Plan to effect distributions in respect of the Proven Claims.
Effective Time	8:00 a.m. (Montreal time) on the Plan Implementation Date.
Estates	the MMA bankruptcy estate and, to the extent applicable, the MMAC estate.
Existing Agreements	The contracts between MMAC and/or MMA and some of the Released Parties, listed in Schedule D hereto.
Final Order	an order of the CCAA Court, the Class Action Court or the Bankruptcy Court that is no longer subject to further appeals, either because the time to appeal has expired without an appeal being filed, or because it has been affirmed by any and all courts with jurisdiction to consider any appeals therefrom.
Filing Date	August 8, 2013.
Funds for Distribution	the net amount of the Settlement Funds following payment to the Canadian Professionals of their CCAA Court-approved professional



fees and disbursements and of the U.S. Professionals Bankruptcy Court-approved administrative expenses, for each group of professionals respectively up to a maximum amount equal to the amount of their share of the Administration Charge Reserve.

Great American	Great American Insurance Company, together with its parents, subsidiaries, affiliates, officers and directors.
Great American Policy	that certain policy of insurance bearing number DML 9924 836 issued by Great American to MMAC.
Government Claims	has the meaning ascribed thereto in Section 3.5(e) hereof.
Hartford	The Hartford Casualty Insurance Company, together with its parents, subsidiaries, affiliates, officers and directors, but strictly as insurer under the Hartford Policy.
Hartford Policy	that certain policy of insurance bearing number 83 SBA PBO432 SA issued by Hartford to Rail World Inc.
Indemnity Claims	has the meaning ascribed thereto in Section 3.5(f) hereof.
Indemnity Fund	trust accounts into which the Settlement Funds shall be paid.
Indian Harbor	Indian Harbor Insurance Company, but strictly as insurer under the Indian Harbor Policy.
Indian Harbor Policy	insurance policy issued by Indian Harbor to MMA, bearing number RRL003723801.
Injunction and Release	an order by the CCAA Court and the Bankruptcy Court permanently and automatically releasing, enjoining and forbidding the enforcement, prosecution, continuation and/or commencement of any Claim that any Person or Claimant holds or asserts or may in the future hold or assert against any of the Released Parties or that could give rise to a Claim against the Released Parties whether through a cross-claim, third-party claim, warranty claim, recursory claim, subrogation claim, forced intervention or otherwise, arising out of, in connection with and/or in any way related to the Derailment, the Policies, MMA, and/or MMAC. The Injunction and Release order shall provide that any and all Claims against the Released Parties be permanently and automatically compromised, discharged and extinguished, that all Persons and Claimants, whether or not consensually, shall be deemed to have granted full, final, absolute, unconditional, complete and definitive releases of any and all Claims to the Released Parties and shall be permanently and forever barred, estopped, stayed and enjoined from (i) pursuing any Claim, directly or indirectly, against the Released Parties, (ii) continuing or commencing, directly or indirectly, any action or other proceeding with respect to any Claim against the Released Parties, (iii) seeking the enforcement, levy,

attachment, collection, contribution or recovery of or from any judgment, award, decree, or order against the Released Parties or property of the Released Parties with respect to any Claim, (iv) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or the property of the Released Parties with respect to any Claim, (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Approval Orders to the full extent permitted by applicable law, and (vi) asserting any right of setoff, compensation, subrogation, contribution, indemnity, claim or action in warranty or forced intervention, recoupment or avoidance of any kind against any obligations due to the Released Parties with respect to any Claim or asserting any right of assignment of or subrogation against any obligation due by any of the Released Parties. The Injunction and Release order shall provide that it has no effect on the rights and obligations provided by the "*Entente d'assistance financière découlant du sinistre survenu dans la ville de Lac-Mégantic*" signed on February 19, 2014 between Canada and the Province. Notwithstanding the foregoing, the "Injunction and Release" shall not extend to and shall not be construed as extending to Unaffected Claims.

Meeting	a meeting or meetings of the Creditors and Claimants to consider and vote on the Plan held pursuant to the Meeting Order and includes any meeting or meetings resulting from the adjournment thereof.
Meeting Order	an order of the CCAA Court directing the calling and holding of the Meeting.
MMA	Montreal, Maine & Atlantic Railway Ltd.
MMAC	Montreal, Maine & Atlantic Canada Co.
Monitor	Richter Advisory Group Inc. (Richter Groupe Conseil Inc.), in its capacity as Monitor in the CCAA Proceeding.
Non-Derailment Claims	has the meaning ascribed thereto in Section 3.5(g) hereof.
Person	means and includes an individual, a natural person or persons, a group of natural persons acting as individuals, a group of natural persons acting in collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, partnership, limited liability company or limited partnership, a proprietorship, joint venture, trust, legal representative, or any other unincorporated association, business organization or enterprise, any government entity and any successor in interest, heir, executor, administrator, trustee, trustee in bankruptcy, or receiver of any person or entity.

Plan	This plan of compromise and arrangement in the CCAA Proceeding.
Plan Implementation Date	The Business Day on which the Monitor has filed with the CCAA Court the certificate contemplated in Section 6.2 hereof.
Plan Termination Date	January 29, 2016
Policies	the Indian Harbor Policy, the XL Policy, the Chubb Policy and the Hartford Policy
Property and Economic Damages Claims	has the meaning ascribed thereto in Section 3.5(c) hereof.
Proof of Claim	the form of Proof of Claim for Creditors as approved by the Claims Procedure Order.
Proven Claim	a Claim finally determined, settled or accepted for voting and distribution purposes in accordance with the provisions of this Plan or the Claims Resolution Order.
Province	the Attorney General for the Province of Quebec.
Rail World Parties	means (i) Rail World Holdings, LLC; (ii) Rail World, inc.; (iii) Rail World Locomotive Leasing LLC ("RWLL"); (iv) The San Luis Central R.R. Co.; (v) Pea Vine Corporation; (vi) LMS Acquisition Corporation; (vii) Earlston Associates L.P.; (viii) Montreal, Maine & Atlantic Corporation; and (ix) each of the shareholders, directors and officers or members or partners of the foregoing, to the extent they are not D&O Parties. For the avoidance of doubt, Rail World Parties also includes Edward Burkhardt, solely in his capacity as director, officer and shareholder of the Rail World Parties.
Released Parties	the Persons listed in Schedule "A" hereto.
Representation Order	the order rendered on March 28, 2014 in the CCAA Proceeding by the CCAA Court appointing, as representatives of the class members designated in the Class Action and for the purposes of the CCAA Proceeding, the Class Action Plaintiffs and the Class Counsel (as these terms are defined in said order).
Settlement Agreements	collectively, those agreements whereby Third Party Defendants undertake to make acceptable monetary contributions toward the Indemnity Fund in consideration for being included as Released Parties in the Plan. Individually referred to as a "Settlement Agreement".
Settlement Funds	the aggregate monetary contributions payable under the Settlement Agreements, including the XL Indemnity Payment and the XL Additional Payment, before potential recovery on claims assigned to MMAC and the Trustee by certain of the Released Parties, which

monetary contributions are estimated, as of the date hereof, at one hundred eighty-two million three hundred thousand Canadian dollars (CAD\$182,300,000.00) plus eighty-nine million four hundred thousand US dollars (US\$89,400,000.00).

Subrogated Insurer Claims	has the meaning ascribed thereto in Section 3.5(d) hereof.
Third Party Defendants	any Person with a risk of liability arising out of or related to the Derailment, including, without limitation, the defendants to the Class Action and the Cook County Actions.
Trustee	Robert J. Keach, in his capacity as chapter 11 Trustee appointed in the Bankruptcy Case, or such other Person(s) as may be approved by the Bankruptcy Court in the future to serve in such capacity in the Bankruptcy Case.
Unaffected Claims	has the meaning given to that term in Section 3.3 hereof.
U.S. Approval Order	(i) an Order entered in the Bankruptcy Case sanctioning, approving and/or confirming the U.S. Plan or (ii) an order entered in the Bankruptcy Case pursuant to the applicable sections of chapter 15 of the Bankruptcy Code, which order sanctions, recognizes and enforces the terms of the Canadian Approval Order. In either case, a "U.S. Approval Order" must, among other things, (a) approve the Settlement Agreements; (b) authorize the parties to undertake the settlement and the transactions contemplated by the Settlement Agreements; and (c) order the Injunction and Release.
U.S. Plan	the plan of liquidation, to be filed by the Trustee (for and on behalf of MMA) in the Bankruptcy Case, which shall provide, among other things, for the distribution of the Funds for Distribution in accordance with this Plan, the Canadian Approval Order and U.S. Approval Order.
U.S. Professionals	the Trustee, the Trustee's professionals and Paul Hastings LLP as counsel for the Official Committee of Victims as defined in the order authorizing the appointment of a victims' committee entered in the Bankruptcy Case on October 18, 2013.
XL Companies	Indian Harbor and XL Insurance.
XL Additional Payment	USD \$5 million.
XL Indemnity Payment	CAD \$25 million.
XL Insurance	the Canadian Branch of XL Insurance Company SE (formerly XL Insurance Company Limited) but strictly as insurer under the XL Policy.

XL Policy	insurance policy issued by XL Insurance, bearing number RLC003808301.
XL Settlement Agreement	the agreement executed among the XL Companies, MMAC and the Trustee providing for the payment of the XL Indemnity Payment and the XL Additional Payment, which shall constitute a Settlement Agreement within the meaning of Section 1.1.
Website	the website maintained by the Monitor in respect of the CCAA Proceedings pursuant to the Initial Order at the following web address: <a href="http://www.richter.ca/en/insolvency-cases/m/montreal-main-and-atlantic-canada-co">http://www.richter.ca/en/insolvency-cases/m/montreal-main-and-atlantic-canada-co</a> .
Wrongful Death Claims	has the meaning ascribed thereto in Section 3.5(a) hereof.
Wrongful Death Victims	the spouse or common law partner, child, parent, and sibling of the persons deceased as a result of the Derailment.

## 1.2 Certain Rules of Interpretation

For the purposes of this Plan:

- (a) any reference in the Plan to an Order, agreement, contract, instrument, release, exhibit or other document means such Order, agreement, contract, instrument, release, exhibit or other document as it may have been or may be validly amended, modified or supplemented;
- (b) the division of the Plan into "articles" and "sections" and the insertion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of the Plan, nor are the descriptive headings of "articles" and "sections" intended as complete or accurate descriptions of the content thereof;
- (c) unless the context otherwise requires, words importing the singular shall include the plural and *vice versa*, and words importing any gender shall include all genders;
- (d) the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;
- (e) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Montréal, Québec and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (Montréal time) on such Business Day;
- (f) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by

extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;

- (g) unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation; and
- (h) references to a specified "article" or "section" shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specified article or section of the Plan, whereas the terms "the Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to the Plan and not to any particular "article", "section" or other portion of the Plan and include any documents supplemental hereto.

### **1.3 Currency**

Any Claims denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon exchange rate on the Filing Date.

### **1.4 Successors and Assigns**

The Plan shall be binding upon and shall inure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Plan.

### **1.5 Governing Law**

The Plan shall be governed by and construed in accordance with the laws of the Province of Québec and the federal laws of Canada applicable therein. All questions as to the interpretation or application of the Plan and all proceedings taken in connection with the Plan and its provisions shall be subject to the jurisdiction of the CCAA Court.

### **1.6 Schedules**

The following Schedules to the Plan are incorporated by reference into the Plan and form part of the Plan:

Schedule "A"	List of Released Parties
Schedule "B"	Settlement Agreements
Schedule "C"	Draft Canadian Approval Order
Schedule "D"	List of Existing Agreements
Schedule "E"	Distribution mechanism with respect to the Wrongful Death Claims

Schedule "F"	Distribution mechanism with respect to the Bodily Injury and Moral Damages Claims
Schedule "G"	Distribution mechanism with respect to the Property and Economic Damages Claims
Schedule "H"	XL Settlement Agreement

The Settlement Agreements, save and except for the XL Settlement Agreement, shall not be attached to the copy of the Plan served on the interested parties and filed publicly with the CCAA Court or the Bankruptcy Court, and MMAC shall apply to the CCAA Court and Bankruptcy Court to have Schedule "B" filed on a sealed and confidential basis. The Settlement Agreements, save and except for the XL Settlement Agreement, shall not otherwise be made public in order to preserve the confidentiality of the settlements and terms therein.

## **ARTICLE 2 PURPOSE AND EFFECT OF THE PLAN**

### **2.1 Purpose**

The purpose of the Plan is:

- (a) to effect a full, final and irrevocable compromise, release, discharge, cancellation and bar of all Affected Claims against the Released Parties;
- (b) to effect the distribution of the Funds for Distribution and payment of the Proven Claims as set forth in Sections 4.2 and 4.3;

The Plan is put forward in the expectation that the Creditors, when considered as a whole, will derive a greater benefit from the implementation of the Plan than they would in the event of a bankruptcy of MMAC.

## **ARTICLE 3 CLASSIFICATION, VOTING AND RELATED MATTERS**

### **3.1 Class of Creditors**

The Creditors shall constitute a single class for the purposes of considering and voting on this Plan.

### 3.2 Claims Procedure

Creditors shall prove their respective claims, vote in respect of this Plan, and receive the distributions provided for under and pursuant to this Plan in accordance with the Claims Procedure Order, the Claims Resolution Order, the Meeting Order and this Plan. Any Person having a Claim that is not a Proven Claim is bound by such Orders, including that of being precluded from receiving a distribution under this Plan, and is forever barred and estopped from asserting such Claim against the Released Parties.

### 3.3 Unaffected Claims

Notwithstanding anything to the contrary herein, this Plan does not compromise, release, discharge, cancel, bar or otherwise affect:

- (a) the rights or claims of the Canadian Professionals and the U.S. Professionals for fees and disbursements incurred or to be incurred for services rendered in connection with or relating to the CCAA Proceeding or the Bankruptcy Case, including the implementation of this Plan and the U.S. Plan.
- (b) to the extent that there is, or may be, coverage for such Claims under any policy of insurance issued by Great American or any affiliate, including, without limitation, the Great American Policy, and only to the extent such coverage is actually provided, which coverage shall be assigned to the Trustee and MMAC and without any obligation on the part of the Rail World Parties or the D&O Parties to make any payment or contribution to supplement what is actually obtained by the Trustee or MMAC from such insurance policy (i) claims by MMAC or the Trustee (and only the Trustee, MMAC, their designee, or, to the extent applicable, the Estates) against the Rail World Parties and/or the D&O Parties; and (ii) claims by the holders of Wrongful Death Claims against Rail World, Inc., provided further, that any right or recovery by such holders of any right or recovery by such holders of Wrongful Death Claims pursuant to the action authorized by this subparagraph shall be, in all respects, subordinate to the claims of the Trustee and MMAC, and their successors under the Plan, in the above policies and (iii) claims by MMAC or the Trustee against the D&O Parties for any alleged breach of fiduciary duty or any similar claim based upon the D&O parties' authorization for payments to holders of notes and warrants issued pursuant to that certain Note and Warrant Purchase Agreement dated January 8, 2003 between MMA and certain noteholders (as amended from time to time) to the extent such payments arise from the sale of certain assets of MMA to the State of Maine.
- (c) claims by MMAC and the Trustee under applicable bankruptcy and non bankruptcy law to avoid and/or recover transfers from MMA, MMAC or MMA Corporation to the holders of notes and warrants issued pursuant to that certain Note and Warrant Purchase Agreement dated as of January 8, 2003 between MMA and certain noteholders (as amended from time to time) to the extent such payments arise from the distribution of proceeds from the sale of certain assets of MMA to the State of Maine.
- (d) claims or causes of action of any Person, including MMAC, MMA and the Released Parties (subject to the limitations contained in their respective



Settlement Agreements), against third parties other than any of the Released Parties (subject to paragraph 3.3(e)).

- (e) claims or other rights preserved by any one of the Released Parties as set forth in Schedule A.
- (f) MMAC's obligations under the Plan, the Settlement Agreements, and the Approval Orders;
- (g) Claims against MMAC, except any Claims of the Released Parties other than Canada. However, subject to the Approval Orders becoming Final Orders, the Attorney General of Canada (i) has undertaken to irrevocably withdraw the Proof of Claim filed on behalf of Department of Transport Canada and the Proof of Claim filed on behalf of the Department of Public Safety and Emergency Preparedness, (ii) has agreed to the reallocation in favor of the Creditors of any and all dividends payable pursuant to this Plan or the U.S. Plan on the Proof of Claim filed on behalf of Canada Economic Development for Quebec Regions, as set forth in Section 4.3, and (iii) has agreed not to file any additional Proof of Claim under the CCAA Proceeding or the Bankruptcy Case;
- (h) any liability or obligation of and claim against the Third Party Defendants, insofar as they are not Released Parties, of whatever nature for or in connection with the Derailment, including but not limited to the Class Action and the Cook County Actions;
- (i) any Person for fraud or criminal and quasi-criminal charges filed or that may be filed and, for greater certainty, for any fine or penalty arising from any such charges;
- (j) any claims that any of the Rail World Parties and the D&O Parties may have to seek recovery from any of their insurers for any attorneys' fees, expenses and costs they have incurred prior to the Approval Date.
- (k) claims that fall under Section 5.1(2) of the CCAA.

All of the foregoing rights and claims set out in this Section 3.3, inclusive, are collectively referred to as the "**Unaffected Claims**" and any one of them is an "**Unaffected Claim**".

#### **3.4 Treatment of Creditors**

The Creditors shall receive the treatment provided for in this Plan on account of their Claims and, on the Plan Implementation Date, the Affected Claims will be compromised, released and otherwise extinguished against the Released Parties in accordance with the terms of this Plan.

### 3.5 Voting Rights for Creditors

Subject to this Plan, the Claims Procedure Order, the Claims Resolution Order and the Meeting Order, each Creditor shall be entitled to vote and for voting purposes each of such Claims shall be valued at an amount that is equal to the Creditor's Proven Claim, the whole subject to the following:

- (a) the aggregate of the votes of all Wrongful Death Victims having a Proven Claim for damages resulting from the death of a person as a consequence of the Derailment (for greater certainty, those Claims that fall under Schedule 1 of the Proof of Claim and were recognized as such or that were filed in the Bankruptcy Case) (collectively, the "**Wrongful Death Claims**" and, individually, a "**Wrongful Death Claim**") shall represent no more than 22.2% in value of all votes cast by Creditors;
- (b) the aggregate of the votes of all Creditors having a Proven Claim relating to the Derailment for damages resulting from bodily injuries suffered by themselves or another person and, without limitation, all claims for moral damages (for greater certainty, those Claims that fall under Schedules 2 and 3(a) of the Proof of Claim and were recognized as such or determined to be Bodily Injury and Moral Damages Claims or that were filed in the Bankruptcy Case) (collectively, the "**Bodily Injury and Moral Damages Claims**" and, individually, a "**Bodily Injury and Moral Damages Claim**") shall represent no more than 11.1% in value of all votes cast by Creditors;
- (c) the aggregate of the votes of all Creditors having a Proven Claim relating to the Derailment for damages suffered by an individual or a business not resulting from bodily injuries or death of a person (for greater certainty, those Claims that fall under Schedules 3(a) and 3(b) of the Proof of Claim and were recognized as such or that were filed in the Bankruptcy Case) (collectively, the "**Property and Economic Damages Claims**" and, individually, a "**Property and Economic Damages Claim**") shall represent no more than 8.3% in value of all votes cast by Creditors;
- (d) the aggregate of the votes of all Creditors having a Proven Claim in their capacity as subrogated insurers for claims directly resulting from the Derailment (for greater certainty, those Claims that fall under Schedule 4 of the Proof of Claim and were recognized as such) (collectively, the "**Subrogated Insurer Claims**" and, individually, a "**Subrogated Insurer Claim**") shall represent no more than 3.8% in value of all votes cast by Creditors;
- (e) the aggregate of the votes of all government entities or municipalities having a Proven Claim relating to the Derailment (for greater certainty, those claims that fall under Schedule 5 of the Proof of Claim and were recognized as such) (collectively, the "**Government Claims**" and, individually, a "**Government Claim**") shall represent no more than 48.5% in value of all votes cast by Creditors;
- (f) Creditors having a Proven Claim relating to the Derailment for contribution or indemnity (for greater certainty, those claims that fall under Schedule 6 of the Proof of Claim and were recognized as such) (collectively, the "**Indemnity**

**Claims**" and, individually, an **"Indemnity Claim"**) shall represent 0% in value of all votes cast by Creditors.

- (g) Creditors having filed a Proof of Claim for damages unrelated to the Derailment (for greater certainty, those claims that fall under Schedule 7 of the Proof of Claim and were recognized as such) (collectively, the **"Non-Derailment Claims"** and, individually, a **"Non-Derailment Claim"**) shall represent no more than 6.1% in value of all votes cast by Creditors.

### **3.6 Interest**

Interest shall not accrue or be paid on any Claim from and after the Filing Date.

### **3.7 Duplicate Claims**

A Creditor who has a Claim against more than one of MMAC, MMA or the Released Parties or has filed or is deemed to have filed claims both in the Bankruptcy Case and the CCAA Proceeding, in respect of the same debt or obligation, shall only be entitled to assert one Claim in respect of such debt or obligation, and any duplicate Claim filed by such Creditor will be disallowed for voting and distribution purposes under this Plan and the U.S. Plan so that only a single Claim remains under which said Creditors can exercise distribution rights.

## **ARTICLE 4 DISTRIBUTIONS**

### **4.1 Contributions to the Indemnity Fund**

Each of the Released Parties shall deliver to the Monitor the monies necessary to fully fund that amount of the Indemnity Fund which it is obligated to pay pursuant to the Settlement Agreements within such delay as has been agreed to pursuant to the Settlement Agreements and in any event within no more than 30 days after they have received written notice from the Monitor and the Trustee certifying that the Approval Orders become Final Orders, and such monies shall be held by the Monitor in trust in one or more interest bearing accounts and distributed by the Monitor in accordance with the terms of this Plan. Should this Plan be terminated for any reason in accordance with Section 6.3 or 8.3, such monies shall be returned by the Monitor, with any interest earned thereon, forthwith to the respective parties having contributed such monies. For greater certainty, any contributions to the Indemnity Fund received by the Monitor that are in U.S. Dollars shall be held by the Monitor in trust in U.S. Dollars and converted into Canadian Dollars on the Plan Implementation Date (save and except the portion to be remitted to the Trustee pursuant to Section 4.2(a)) and any contributions to the Indemnity Fund received by the Monitor that are in Canadian Dollars shall be held by the Monitor in trust in Canadian Dollars and not converted into U.S. Dollars.

### **4.2 Distribution to Creditors**

The following Creditors having Proven Claims shall be entitled to distribution under this Plan as follows:

- (a) Creditors having Wrongful Death Claims shall, in the aggregate, receive 24.1% of

the Funds for Distribution in full and final satisfaction of their Proven Claims as against the Released Parties. This amount will be remitted by the Monitor to the Trustee to fund a trust dedicated to the distribution to the Creditors having Wrongful Death Claims in accordance with the mechanism set forth in Schedule E hereto.

- (b) Creditors having Bodily Injury and Moral Damages Claims shall, in the aggregate, receive 10.4% of the Funds for Distribution in full and final satisfaction of their Proven Claims as against the Released Parties. This amount will be distributed by the Monitor in accordance with the mechanism set forth in Schedule F hereto.
- (c) Creditors having Property and Economic Damages Claims shall, in the aggregate, receive 9.0% of the Funds for Distribution in full and final satisfaction of their Proven Claims as against the Released Parties. This amount will be distributed by the Monitor in accordance with the mechanism set forth in Schedule G hereto.
- (d) Creditors having Subrogated Insurer Claims shall, in the aggregate, receive 4.1% of the Funds for Distribution in full and final satisfaction of their Proven Claims as against the Released Parties. This amount will be distributed by the Monitor on a *pro rata* basis amongst the Creditors having Subrogated Insurer Claims.
- (e) Creditors having Government Claims shall, in the aggregate, receive 52.4% of the Funds for Distribution in full and final satisfaction of their Proven Claims as against the Released Parties. This amount will be distributed by the Monitor on a *pro rata* basis amongst the Province, the City of Lac-Mégantic, the Attorney General of Canada (on behalf of Canada Economic Development for Quebec Regions) and the Commission de la Santé et de la Sécurité au Travail (CSST). For the purpose of this Plan, the Proven Claims of the Province, the City of Lac-Mégantic, the Federal Government of Canada (Economic Development of Canada, Quebec Regions) and the Commission de la Santé et de la Sécurité au Travail (CSST) are evaluated and established as follows:
  - (i) Province: CAD\$409,313,000 (or 94% of the Government Claims)
  - (ii) The City of Lac-Mégantic: CAD\$5,000,000 (or 1.1% of the Government Claims)
  - (iii) The Attorney General of Canada (on behalf of Canada Economic Development for Quebec Regions): CAD\$21,000,000 (or 4.8% of the Government Claims)
  - (iv) CSST: CAD\$313,775 (or 0.1% of the Government Claims)

For greater certainty, Creditors having Indemnity Claims and Non-Derailment Claims shall not be entitled to distribution under this Plan or the U.S. Plan in relation to the Indemnity Fund and shall have no right to any portion of the Funds for Distribution. However, the Creditors having Non-Derailment Claims against MMAC will be entitled to distribution under the U.S. Plan, in accordance with its terms from any available net proceeds of the liquidation of MMA's assets.

Notwithstanding the foregoing, in the event that, following the review of the Property and Economic Damages Claims pursuant to the Claims Resolution Order, the aggregate value of the Property and Economic Damages Claims is reduced below \$75 million, the difference between the amount of \$75 million and the revised aggregate value of these claims will be allocated on a pro-rata basis to the value of the claims in the other categories described in Sections 4.2 (a) (b) (d) and (e).

#### **4.3 Additional Distributions to Creditors**

With the agreement of the Province and the Federal Government of Canada (Economic Development of Canada, Quebec Region), any and all amounts payable pursuant to this Plan:

- (a) to the Province out of the XL Indemnity Payment (estimated at CAD\$13,735,000);
- (b) to the Attorney General of Canada (on behalf of Canada Economic Development for Quebec Regions) (estimated at CAD\$6,936,000);

(collectively, the “**Reallocated Dividends**”)

will be distributed to the Creditors having Proven Claims in respect of (i) Wrongful Death Claims, (ii) Bodily Injury and Moral Damages Claims and (iii) Property and Economic Damages Claims in accordance with the percentages set forth in subsection 4.2 (a) (b) and (c) hereof, namely:

- (i) 53.3% of the Reallocated Dividends will be distributed to the Creditors having Wrongful Death Claims;
- (ii) 26.7% of the Reallocated Dividends will be distributed to Creditors having Bodily Injury and Moral Damages Claims; and
- (iii) 20.0% of the Reallocated Dividends will be distributed to Creditors having Property and Economic Damages Claims.

#### **4.4 Timing of Distributions to Creditors**

The Monitor shall hold the Settlement Funds in trust pending distribution thereof in accordance with the terms of this Plan and the Settlement Agreements, as applicable. Within 45 calendar days following the Plan Implementation Date, and receipt by the Monitor of any applicable tax ruling or clearance certificate, the Monitor shall make distributions to or on behalf of Creditors (including, without limitation, to the Trustee in accordance with Section 4.2(a) or to the Creditors' Representative Counsel in accordance with Section 4.5, to be held by such Representative Counsel in trust for such Creditors) in accordance with the terms of this Plan.

#### 4.5 Delivery of Distributions to Creditors

Distributions to Creditors shall be made in accordance with the terms of this Plan, as applicable, by the Monitor: (A) at the addresses set forth in the Proofs of Claim filed by such Creditors in accordance with the Claims Procedure Order; (B) if applicable, at the addresses set forth in any written notices of address change delivered to the Monitor after the date on which any corresponding proof of claim was filed, provided such notice is received by the Monitor at least five (5) Business Days prior to the Plan Implementation Date; or (C) if applicable, and to the extent differing from the foregoing, at the address of such Creditors' respective legal representatives (the "**Representative Counsel**"), in trust for such Creditors, subject to the receipt by the Monitor at least five (5) business days prior to the Plan Implementation Date of a written instruction to that effect from said Creditors, it being understood that the class members in the Class Action, to the extent they have not sent an Opt-Out Notice (as these terms are defined in the Representation Order) within the prescribed delay, shall be deemed represented by the Class Counsel (as these terms are defined in the Representation Order) and said Class Counsel shall be considered as Representative Counsel duly authorized to receive the above-mentioned distribution in trust for all such class members. For greater certainty, and without limiting the foregoing:

- (i) With respect to the distributions to be made under this Plan to Representative Counsel, any disputes among the Creditors they represent and Representative Counsel with respect to the timing, allocation, quantum or other terms of the payment of the monies in question by Representative Counsel to and among those Creditors shall have no bearing or effect on the releases set out in the Settlement Agreements or this Plan, including, without limitation, the releases and injunctions in favour of the Released Parties (whether pursuant to the Settlement Agreements, the Plan, the U.S. Plan, the Approval Orders, or otherwise); and
- (ii) this Plan shall be effective and binding as and when set out in Section 6.2, and the fact that one or more of the Representative Counsel may be required or elect to commence or pursue further steps or proceedings or to otherwise resolve additional matters, issues or things subsequent to the Plan Implementation Date in order to be lawfully entitled to make distributions to the Creditors they represent (including, without limitation, obtaining the approval by any Court of the payment of their respective professional fees and disbursements from the distributions in question) shall have no bearing or effect on the Settlement Agreements, this Plan, the U.S. Plan, or the Approval Orders, irrespective of the timing and outcome of such further steps and proceedings.

#### 4.6 Allocation of Distributions

All distributions made to Creditors in respect of Proven Claims pursuant to this Plan shall be applied first in payment of the outstanding principal amount of the Proven Claim and only after the principal portion of any such Proven Claim is satisfied in full, to any portion of such Proven Claim comprising accrued and unpaid interest (but solely to the extent that interest is an allowable portion of such Proven Claim pursuant to this Plan or otherwise). In the event that the principal amount of all Proven Claims has been paid in full, each Creditor shall, at the request of the Monitor, be responsible for providing a representation and warranty with respect to its residency for purposes of the *Income Tax Act* (Canada). If any Creditor fails to provide satisfactory evidence that it is a resident of Canada for purposes of the *Income Tax Act* (Canada), then the Monitor shall have the right to:

- (i) assume and otherwise consider such Creditor to be a non-resident of Canada for the purposes of the *Income Tax Act* (Canada); and
- (ii) withhold any non-resident withholding tax that would be imposed under the *Income Tax Act* (Canada) based on such assumption from any amounts payable to such Creditor under this Plan,

until such time as such Creditor provides satisfactory evidence to the contrary to the Monitor, unless the non-resident withholding tax has already been remitted to the Canada Revenue Agency. For greater certainty, the distributions to be made pursuant to this Plan to Creditors having Proven Claims do not include, and are not intended to include, any amounts on account of interest on such Claims.

#### 4.7 Transfer of Claims; Record Date for Distributions

Claims may be sold, transferred or assigned at any time by the holder thereof, whether prior or subsequent to the Plan Implementation Date, provided that:

- (i) Neither MMAC nor the Monitor shall be obligated to deal with or to recognize the purchaser, transferee or assignee of the Claim as the Creditor in respect thereof unless and until written notice of the sale, transfer or assignment is provided to the Monitor, such notice to be in form and substance satisfactory to the Monitor, acting reasonably within five (5) Business Days prior to the Plan Implementation Date
- (ii) only holders of record of Claims as at the date of the Meeting Order shall be entitled to attend, vote or otherwise participate at such meeting of Creditors; provided, however, that: (A) for the purposes of determining whether this Plan has been approved by a majority in number of the Creditors only the vote of the transferor or the transferee, whichever holds the highest dollar value of such Claims will be counted, and, if such value shall be equal, only the vote of the transferee will be counted; and (B) if a Claim has been transferred to more than one transferee, for purposes of determining whether this Plan has been approved by a majority in number of the Creditors, only the vote of the transferee with the highest value of such Claim will be counted; and

- (iii) only holders of record of Claims as at five (5) Business Days prior to the Plan Implementation Date shall have the right to participate in the corresponding distribution provided for under Section 4.2 of this Plan.

## **ARTICLE 5 RELEASES AND INJUNCTIONS**

### **5.1 Plan Releases and Injunctions**

All Affected Claims shall be fully, finally, absolutely, unconditionally, completely, irrevocably and forever compromised, remised, released, discharged, cancelled and barred on the Plan Implementation Date as against the Released Parties.

All Persons (regardless of whether or not such Persons are Creditors or Claimants) shall be permanently and forever barred, estopped, stayed and enjoined from (i) pursuing any Claim, directly or indirectly, against the Released Parties, (ii) continuing or commencing, directly or indirectly, any action or other proceeding with respect to any Claim against the Released Parties, or with respect to any claim that could give rise to a Claim against the Released Parties whether through a cross-claim, third-party claim, warranty claim, recursory claim, subrogation claim, forced intervention or otherwise, (iii) seeking the enforcement, levy, attachment, collection, contribution or recovery of or from any judgment, award, decree, or order against the Released Parties or property of the Released Parties with respect to any Claim, (iv) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or the property of the Released Parties with respect to any Claim, (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Approval Orders to the full extent permitted by applicable law, (vi) asserting any right of setoff, compensation, subrogation, contribution, indemnity, claim or action in warranty or forced intervention, recoupment or avoidance of any kind against any obligations due to the Released Parties with respect to any Claim or asserting any right of assignment of or subrogation against any obligation due by any of the Released Parties with respect to any Claim, and (vii) taking any actions to interfere with the Implementation or consummation of this Plan; provided, however, that the foregoing shall not apply to the enforcement of any obligations under the Plan.

Notwithstanding the foregoing, the Plan Releases and Injunctions as provided in this Section 5.1 (i) shall have no effect on the rights and obligations provided by the "*Entente d'assistance financière découlant du sinistre survenu dans la ville de Lac-Mégantic*" signed on February 19, 2014 between Canada and the Province, (ii) shall not extend to and shall not be construed as extending to any Unaffected Claims.

### **5.2 Timing of Releases and Injunctions**

All releases and injunctions set forth in this Article 5 shall become effective on the Plan Implementation Date at the Effective Time.



### **5.3 Claims against Third Party Defendants**

Any Claim of any Person, including MMAC and MMA, against the Third Party Defendants that are not also Released Parties: (a) is unaffected by this Plan; (b) is not discharged, released, cancelled or barred pursuant to this Plan; (c) shall be permitted to continue as against said Third Party Defendants; (d) shall not be limited or restricted by this Plan in any manner as to quantum to the extent that there is no double recovery as a result of the indemnification received by the Creditors or Claimants pursuant to this Plan; and (e) does not constitute an Affected Claim under this Plan. For greater certainty, and notwithstanding anything else contained herein, in the event that a Claim is asserted by any Person, including MMAC and MMA, against any Third Party Defendants that are not also Released Parties any and all right(s) of such Third Party Defendants to claim over, claim against or otherwise assert or pursue any rights or any Claim against any of the Released Parties at any time, shall be released and discharged and forever barred pursuant to the terms of this Plan and the Approval Orders.

## **ARTICLE 6 CONDITIONS PRECEDENT AND IMPLEMENTATION**

### **6.1 Conditions Precedent to Implementation of Plan**

The implementation of this Plan shall be conditional upon the fulfillment, or waiver (strictly with respect to Sections 6.1(e) and (f)), of the following conditions on or before the Plan Implementation Date:

(a) Entry of the Canadian Approval Order

The Canadian Approval shall have been granted by the CCAA Court, including the granting by the CCAA Court of its approval of the compromises, releases and injunctions contained in and effected by this Plan.

(b) Confirmation by the Trustee of the entry of the U.S. Approval Order

The Trustee shall have confirmed in writing to the Monitor that the U.S. Approval Order has been granted by the Bankruptcy Court, including the granting by the Bankruptcy Court of its approval of the compromises, releases and injunctions contained in and effected by this Plan.

(c) Entry of the Class Action Order

The Class Action Order shall have been granted by the Superior Court, Province of Quebec.

(d) Expiry of Appeal Periods

The Canadian Approval Order and the Class Action Order shall have become Final Orders and the Trustee shall have confirmed in writing to the Monitor that the U.S. Approval Order has become a Final Order.

(e) Contributions

Each of the Released Parties shall have paid to the Monitor the amounts payable by it pursuant to its Settlement Agreement, in accordance with the terms of the Settlement Agreements.

(f) Completion of Necessary Documentation

MMAC, the Monitor and the Trustee, as applicable, shall have obtained the execution and delivery by all relevant Persons of all agreements, settlements, resolutions, indentures, releases, documents and other instruments that are necessary to be executed and delivered to implement and give effect to all material terms and provisions of this Plan and the Settlement Agreements.

**6.2 Monitor's Certificate**

Upon the satisfaction of the conditions set out in Section 6.1 hereof, the Monitor shall file with the CCAA Court in the CCAA Proceeding and with the Trustee a certificate that states that all conditions precedent set out in Section 6.1 of this Plan have been satisfied and that the Plan Implementation Date has occurred.

**6.3 Termination of Plan for Failure to Become Effective**

If the Plan Implementation Date shall not have occurred on or before the Plan Termination Date, then, subject to further Order of the CCAA Court and the Bankruptcy Court, as applicable, this Plan shall automatically terminate and be of no further force or effect; provided that this Plan shall not automatically terminate pursuant to this section if the sole basis for the non-occurrence of the Plan Implementation Date is the pendency of any appeal or application for leave to appeal with respect to the Approval Orders.

**ARTICLE 7  
ADMINISTRATION CHARGE**

**7.1 Administration Charge and Administration Charge Reserve**

The Settlement Funds, to the exclusion of the XL Indemnity Payment, up to a maximum of CAD\$20 million, plus any applicable sales taxes for the Canadian Professionals (the "**Administration Charge Reserve**"), shall upon the Effective Time on the Plan Implementation Date be subject to an administration charge in favour of the Canadian Professionals and shall constitute a carveout in favour of the U.S. Professionals in order to secure the payment of the fees, disbursements and entitlements owed or to be owed to them for the services rendered by them in connection with or relating to the CCAA Proceeding and the Bankruptcy Case (the "**Administration Charge**"). 60% of the Administration Charge Reserve shall be for the benefit of the Canadian Professionals and 40% shall be for the benefit of the U.S. Professionals. These funds shall be distributed to the Canadian Professionals pursuant to an order of the CCAA Court and to the U.S. Professionals pursuant to an order of the Bankruptcy Court. The Administration Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances, security or rights of whatever nature or kind or deemed trusts affecting the Settlement Funds, if any. The Administration Charge and the Administration Charge Reserve are established on the basis of incurred fees and

disbursements as well as on an estimate of fees, disbursements and entitlements for which the Canadian Professionals and the U.S. Professionals could seek Court approval and are based on the Settlement Funds as presently constituted. The balance of the Administration Charge Reserve, if any, after payment of all fees, disbursements and entitlements of the Canadian Professionals and U.S. Professionals, shall form part of the Indemnity Fund, for distribution in accordance with the Plan.

## **ARTICLE 8 GENERAL**

### **8.1 Binding Effect**

On the Plan Implementation Date:

- (a) the Plan will become effective at the Effective Time;
- (b) the Plan shall be final and binding in accordance with its terms for all purposes on all Persons named or referred to in, or subject to the Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns; and
- (c) each Person named or referred to in, or subject to, the Plan will be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety and shall be deemed to have executed and delivered all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

### **8.2 Deeming Provisions**

In the Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

### **8.3 Non-Consummation**

If the Approval Orders are not issued or if the Plan Implementation Date does not occur before the Plan Termination Date, (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan or any Settlement Agreement, including the fixing or limiting to an amount certain any Claim, and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan, shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against the Released Parties or any other Person; (ii) prejudice in any manner the rights of the Released Parties or any other Person in any further proceedings involving MMAC and/or the Derailment; or (iii) constitute an admission of any sort by the Released Parties or any other Person.

### **8.4 Plan Amendment**

MMAC reserves the right, at any time prior to the Plan Implementation Date, to amend, modify and/or supplement this Plan, provided that:

- (i) any amendment, modification or supplement to Articles 5 and 6 (including any defined terms contained therein) as well as any amendment, modification or supplement made to any other Article which affects the rights of Released Parties under their respective Settlement Agreement(s), may be made only with the written consent of the Released Parties or the affected Released Party, as the case may be, which can be provided at their sole discretion.
- (ii) any such amendment, modification or supplement must be contained in a written document that is filed with the CCAA Court, and must be discussed in advance with, and not objected to by the Released Parties and, if made following the Meeting, communicated to such of the Creditors and in such manner, if any, as may be ordered by the CCAA Court;
- (iii) any amendment, modification or supplement may be made unilaterally by MMAC following the Approval Orders, provided that it concerns a matter which, in the opinion of MMAC and the Monitor, acting reasonably, is of an administrative nature required to better give effect to the implementation of this Plan and to the Approval Orders and is not adverse to the financial or economic interests of the Creditors or the Released Parties; and
- (iv) any supplementary plan or plans of compromise or arrangement filed with the CCAA Court by MMAC and, if required by this Section 8.4, approved by the CCAA Court shall, for all purposes, be and be deemed to be a part of and incorporated in this Plan.

## **8.5 Severability**

In the event that any provision in this Plan (other than Articles 5 and 6 and all defined terms contained therein or any other provision herein that would materially adversely affect the rights of any of the Released Parties under their respective Settlement Agreement(s), or requires any Released Party to pay more than the sum set forth in their respective Settlement Agreement(s)) is held by the CCAA Court to be invalid, void or unenforceable, the CCAA Court shall, following due notice to the parties in interest and a hearing on the issue, have the power to alter and interpret such term or provision to make it valid and enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered and interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Canadian Approval Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms, as same may be recognized, enforced and given effect by the U.S. Approval Order.

## **8.6 Paramourncy**

From and after the Plan Implementation Date, any conflict between: (A) this Plan; and (B) any information summary in respect of this Plan, or the covenants, warranties, representations; terms, conditions, provisions or obligations, express or implied, of any contract, mortgage, security agreement, indenture, loan agreement, commitment letter, document or agreement, written or oral, and any and all amendments and supplements thereto existing between MMAC and any Creditor, Released Party or other Person as at the Plan Implementation Date will be deemed to be governed by the terms, conditions and provisions of this Plan and the Approval Orders, which shall take precedence and priority. Notwithstanding the foregoing, the rights and duties of the parties under the Settlement Agreements are set forth in and shall be governed by the Settlement Agreements. More particularly, the Plan Releases and Injunctions shall be in addition to and are intended to supplement any releases included in the Settlement Agreements as between the parties to such Settlement Agreements. In the event of any inconsistency between this Plan or the Approval Orders and the Settlement Agreements, the terms of the Settlement Agreements will apply with respect to the parties thereto.

## **8.7 Responsibilities of the Monitor**

The Monitor is acting in its capacity as Monitor in the CCAA Proceeding, and the Monitor will not be responsible or liable for any obligations of MMAC hereunder. The Monitor will have only those powers granted to it by this Plan, by the CCAA and by any Order of the CCAA Court in the CCAA Proceeding, including the Initial Order.

## **8.8 Unclaimed Distributions**

If any Person entitled to a cash distribution pursuant to this Plan cannot be located on the Plan Implementation Date or at any time thereafter or otherwise fails to claim his/her/its distribution hereunder, then such cash or cash equivalent instruments shall be set aside and held in a segregated, non-interest-bearing account to be maintained by the Monitor on behalf of such Person. If such Person is located within six (6) months of the Plan Implementation Date, such cash (less the allocable portion of taxes (including withholding taxes), if any, paid by MMAC on account of such Person) and proceeds thereof, shall be paid or distributed to such Person. If such Person cannot be located within six (6) months of the Plan Implementation Date, any such cash, and interest and proceeds thereon, shall be remitted by the Monitor to a charitable association of its choice (if possible, in the Monitor's sole appreciation, dedicated to providing assistance to the victims of the Derailment), and such Person shall be deemed to have released its claim to such monies; provided, however, that nothing contained in this Plan shall require MMAC or the Monitor to attempt to locate such Person. Any distribution cheques that have not been negotiated within three (3) months of issuance shall be cancelled by the Monitor, and any right or entitlement to such distribution shall be treated as an unclaimed cash or distribution pursuant to this Section 8.8.

## 8.9 Notices

Any notice or other communication to be delivered hereunder must be in writing and reference the Plan and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail or by facsimile or email addressed to the respective parties as follows:

(a) If to MMAC

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

(b) If to the Monitor:

Richter Advisory Group  
1981 McGill College Avenue, 11<sup>th</sup> 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

(c) If to the Trustee:

Robert J. Keach, Esq. (rkeach@bernsteinshur.com)  
Bernstein Shur Sawyer & Nelson  
100 Middle Street  
P.O. Box 9729  
Portland, ME 04104-5029  
Fax: 207-774-1127

or to such other address as any party may from time to time notify the others in accordance with this section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of faxing or emailing, provided that such day in either event is a Business Day and the communication is so delivered, faxed or emailed before 5:00 p.m. (Montréal time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

#### **8.10 Further Assurances**

MMAC and any other Person named or referred to in the Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of the Plan and to give effect to the transactions contemplated herein.

#### **8.11 No Preference**

Sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 shall not apply to this Plan, save and except insofar as they may allow for the preservation or enforcement of (i) any claim brought or that could be brought in the future by the Trustee or MMAC (and only the Trustee, MMAC, their designee, or, to the extent applicable, the Estates) against the Rail World Parties and/or the D&O Parties but only to the extent that there is, or may be, insurance coverage for such claims under any policy of insurance issued by Great American, including, without limitation, the Great American Policy, and (ii) claims by the Trustee or MMAC (and only the Trustee, MMAC, their designee, or, to the extent applicable, the Estates) under applicable bankruptcy and non-bankruptcy law to avoid and/or recover transfers from MMA, MMAC or Montreal, Maine & Atlantic Corporation to the holders of notes and warrants issued pursuant to that certain Note and Warrant Purchase Agreement dated as of January 8, 2003 between MMA and certain noteholders (as amended from time to time) to the extent any such transfers arise from the distribution of proceeds from the sale of certain assets of MMA to the State of Maine, including any claims by or on behalf of the Trustee or the Estates against any of the D&O Parties for any alleged breach of fiduciary duty or any similar claim based upon the D&O Parties' authorization for payment of such notes, but any such breach of fiduciary duty or any similar claim shall be limited to recovery from the insurer under any policy of insurance issued by Great American, including, without limitation, the Great American Policy.

#### **8.12 No Admission**

Notwithstanding anything herein to the contrary, nothing contained in this Plan shall be deemed as an admission by the Released Parties with respect to any matter set forth herein including, without limitation, liability on any Claim.

DATED as of the 31<sup>st</sup> day of March, 2015





**Schedule "A" List of Released Parties**

PLAN OF COMPROMISE AND ARRANGEMENT

concerning, affecting and involving

MONTREAL, MAINE & ATLANTIC CANADA CO.

**SCHEDULE A TO THE PLAN OF COMPROMISE AND ARRANGEMENT OF  
MONTREAL, MAINE & ATLANTIC CANADA CO.  
List of Released Parties**

The list below consists of the parties who have executed settlement agreements with Montreal Maine & Atlantic Canada Co. (“MMAC”) and Robert J. Keach in his capacity as Chapter 11 Trustee of Montreal, Maine & Atlantic Railway Ltd. (the “Trustee”); Nothing in this list shall supersede, effect, modify or amend any such settlement agreement and to the extent of any conflict between the descriptions in this list and any such settlement agreement, the settlement agreement shall govern. All such settlement agreements are subject to court approval and other conditions, and the inclusion of any person or entity on this list does not create or imply the release of such person or entity from any claim; in all respects, the settlement agreements, and the court orders pertaining to the settlement agreements, shall govern. The term “Affiliate” used in this Schedule “A” means with respect to any entity, all other entities directly or indirectly controlling, controlled by, or under direct or indirect common control with such entity. The other capitalized terms used herein have the meaning ascribed to them in the Plan. The Released Parties are as follows:

1. **Devlar Energy Marketing LLC together with their parents Lario Oil & Gas Company and Devo Trading & Consulting Company (collectively “Devlar”)**, as well as their subsidiaries, Affiliates and each of their former and current respective employees, officers and directors, successors and permitted assignees, attorneys and insurers, (including St. Paul Fire and Marine Insurance Company and its direct and indirect parents, subsidiaries and Affiliates), but only to the extent of coverage afforded to Devlar by such insurers in relation to the Derailment.
2. **Oasis Petroleum Inc. and Oasis Petroleum LLC (jointly, “Oasis”)**, together with their parents, subsidiaries, Affiliates and each of their former and current respective employees, officers and directors, successors and permitted assignees, attorneys and insurers (including St. Paul Fire and Marine Insurance Company and its direct and indirect parents, subsidiaries and affiliates) but only to the extent of coverage afforded to Oasis by such insurers in relation to the Derailment, as well as the entities identified in

Schedule 2 hereto but strictly as non-operating working interest owners or joint venturers in the specific Oasis-operated wells that produced oil that was provided and supplied by Oasis that was transported in the train involved in the Derailment.

3. **Inland Oil & Gas Corporation, Whiting Petroleum Corporation, Enerplus Resources (USA) Corporation, Halcón Resources Corporation, Tracker Resources, Kodiak Oil & Gas Corp. (now known as Whiting Canadian Holding Company, ULC) and Golden Eye Resources LLC**, together with each of their respective parents, subsidiaries, Affiliates, and each of their former and current respective employees, officers, directors, successors and permitted assignees and attorneys, but strictly as non-operating working interest owners or joint venturers in any wells that produced oil that was provided, supplied and transported in the train involved in the Derailment.
4. **Arrow Midstream Holdings CCC. (“Arrow”)** together with its parents, subsidiaries, Affiliates, successors, officers, directors, principals, employees, attorneys, accountants, representatives, and insurers. For the avoidance of doubt, Arrow shall include its current parent Crestwood Midstream Partners LP; and insurers mean only those insurers who have issued liability insurance policies to or in favor of Arrow actually or potentially providing insurance for Claims against Arrow arising from or relating to the Derailment, including without limitation, Commerce and Industry Insurance Company under policy no. 3023278 and National Union Fire Insurance Company of Pittsburg, Pa. under policy no. 41131539.
5. **Marathon Oil Company (“Marathon”)**, together with its parent, subsidiaries, successors and assigns, Affiliates, officers, directors, principals, employees, attorneys, accountants, representatives, insurers (to the extent strictly limited to coverage afforded to Marathon in relation to the Derailment), as well as the entities identified in schedule 5 attached hereto, but strictly as non-operating working interest owners or joint venturers in the specific Marathon-operated wells that produced and supplied oil that was transported on the train involved in the Derailment. For the avoidance of doubt, insurers, as used in this definition, shall include all insurers that issued liability policies to or for the benefit of Marathon and that actually or potentially provided coverage for Claims relating to or

arising from the Derailment, including, but not limited to, Yorktown Assurance Corporation policy number XSL-7-2013 and Old Maine Assurance Ltd. (reinsurance Agreement).

6. **QEP Resources, Inc. (“QEP”)**, together with its parents, subsidiaries, Affiliates, successors and assigns, officers, directors, principals, employees, attorneys, accountants, representatives, insurers (to the extent strictly limited to coverage afforded to QEP in relation to the Derailment), as well as those entities identified in schedule 6 attached hereto, but strictly as non-operating working interest owners or joint venturers in the specific QEP-operated wells that produced and supplied oil that was transported on the train involved in the Derailment. For the avoidance of doubt, insurers, as used in this definition, shall include all insurers that issued liability policies to or for the benefit of QEP and that actually or potentially provided coverage for Claims relating to or arising from the Derailment, including, but not be limited to, National Union Fire Insurance Company of Pittsburgh, Pa. (policy number 194-99-62); American Guarantee & Liability Insurance Company (policy number UMB6692611-02).
7. **Slawson Exploration Company, Inc. (“Slawson”)**, together with its parents, subsidiaries, Affiliates, successors and assigns, officers, directors, principals, employees, attorneys, accountants, representatives, insurers (to the extent strictly limited to coverage afforded to Slawson in relation to the Derailment), as well as those entities identified on schedule 7 attached hereto, but strictly as non-operating working interest owners in the specific Slawson-operated wells that produced oil that was transported on the train involved in the Derailment. For the avoidance of doubt, insurers, as used in this definition, shall include all insurers that issued liability policies to or for the benefit of Slawson and that actually or potentially provided coverage for Claims relating to or arising from the Derailment, including, but not be limited to, Federal Insurance Company (policy 3579 09 19 and 7981 72 74), Arch Specialty Insurance Company (policy EE00039761 03), and AIG (policy BE031941993).
8. **Indian Harbor Insurance Company, XL Insurance, XL Group plc and their Affiliates** (strictly as insurers of MMA and MMAC).

9. **Edward A. Burkhardt, Larry Parsons, Steven J. Lee, Stephen Archer, Robert C. Grindrod, Joseph C. McGonigle, Gaynor Ryan, Donald Gardner, Jr., Fred Yocum, Yves Bourdon and James Howard, in their capacity as directors and officers of MMA and MMAC, Montreal, Maine & Atlantic Corporation and/or LMS Acquisition Corporation (the “D&O Parties”).**
10. **Hartford Casualty Insurance Company, together with its parents, subsidiaries, Affiliates, officers and directors (strictly as insurer of Rail World, Inc.).**
11. **Chubb & Son, a division of Federal Insurance Company (strictly as insurers of Rail World, Inc. and Rail World Holdings, LLC).**
12. **Rail World Holdings LLC; Rail World, Inc.; Rail World Locomotive Leasing LLC; The San Luis Central R.R. Co.; Pea Vine Corporation; LMS Acquisition Corporation; MMA Corporation; Earlston Associates L.P., and each of the shareholders, directors, officers or members or partners of the foregoing, to the extent they are not D&O Parties (the “Rail World Parties”).** For the avoidance of doubt, (i) Rail World Parties also includes Edward A. Burkhardt, solely in his capacity as director, officer and/shareholder of certain of the Rail World Parties; and (ii) the inclusion of the above entities within the definition of “Rail World Parties”, except for the purpose of the settlement agreement executed with MMAC and the Trustee, shall not be construed to create or acknowledge an affiliation between or among any of the Rail World Parties.
13. **General Electric Railcar Services Corporation, General Electric Company** and each of its and their respective parents, Affiliates, subsidiaries, limited liability companies, special purpose vehicles, partnerships, joint ventures, and other related business entities, and each of its and their respective current or former parents, Affiliates, subsidiaries, limited liability companies, special purpose vehicles, partnerships, joint ventures, other related business entities, principals, partners, shareholders, officers, directors, managers, partners, employees, agents, insurers, attorneys, accountants, financial advisors, investment bankers, consultants, any other professionals, any other representatives or advisors, and any and all persons who control any of these, as well as any predecessors-in-interest of, or any assignors or vendors of any equipment involved in the Derailment

to, any of the foregoing entities and any of the successors and assigns of any of the foregoing entities.

14. **Trinity Industries, Inc., Trinity Industries Leasing Company, Trinity Tank Car, Inc., and Trinity Rail Leasing 2012 LLC, Trinity Rail Group LLC, RIV 2013 Rail Holdings LLC, and Trinity Rail Leasing Warehouse Trust**, inclusive of each of their respective predecessors, agents, servants, employees, shareholders, officers, directors, attorneys, representatives, successors, assigns, parents, subsidiaries, Affiliates, limited liability companies, insurers, and reinsurers (but strictly to the extent of coverage afforded to the such parties by said insurers and reinsurers), including but not limited to whether such entities are in the business of leasing, manufacturing, servicing or administrating rail cars.
15. **Union Tank Car Company, the UTLX International Division of UTCC, The Marmon Group LLC and Procor Limited (the "UTCC Parties")**, and each of their respective predecessors, servants, employees, owners, members (strictly with respect to The Marmon Group LLC), shareholders, officers, directors, partners, associates, attorneys, representatives, successors, assigns, subsidiaries, Affiliates, and parent companies, insurers, and reinsurers listed in schedule 15 attached hereto, but strictly to the extent of coverage afforded to the UTCC Parties by said insurers and reinsurers, regardless of whether such entities are or were in the business of leasing, manufacturing, servicing, or administering rail car leases or otherwise.
16. **First Union Rail Corporation ("First Union")**, together with its parents, subsidiaries, Affiliates, officers, directors, predecessors, successors, assigns, servants, employees, shareholders, attorneys, representatives and insurers and reinsurers (strictly to the extent limited to coverage afforded to First Union, and including, but not limited to, Lexington Insurance Company (including pursuant to the Pollution Legal Liability Select Policy no. PL52675034 and Stand Alone Excess Liability Policy no. 018403252) and Superior Guaranty Insurance Company (including pursuant to Excess Liability Policy no. 404-1XSCI13)).

17. **CIT Group, Inc.**, and its Affiliates, Federal Insurance Company solely in its capacity as an insurer of CIT Group, Inc. and its Affiliates and not in any other capacity, and Arch Insurance Group solely in its capacity as an insurer of CIT Group, Inc. and its Affiliates, and not in any other capacity.
18. **ConocoPhillips Company (“ConocoPhillips”)**, together with its subsidiaries, Affiliates, and each of their former and current respective employees, officers and directors, successors and permitted assignees, attorneys, and insurers (and the insurers direct and indirect parents, subsidiaries and Affiliates), but with regards to such insurers, only to the extent of coverage provided to ConocoPhillips by such insurers in relation to the Derailment, as well as those entities identified in Schedule 18 hereto, but strictly as non-operating working interest owners in the specific ConocoPhillips operated wells that produced and supplied oil that was transported on the train involved in the Derailment.
19. **Shell Oil Company and Shell Trading (US) Company**, together with their subsidiaries, Affiliates, and each of their former and current respective employees, officers and directors, successors and permitted assignees, attorneys, and insurers (and the insurers’ direct and indirect parents, subsidiaries and Affiliates), but with regards to such insurers, only to the extent of coverage provided to Shell Oil Company and Shell Trading (US) Company, by such insurers in relation to the Derailment.
20. **Incorr Energy Group LLC (“Incorr”)**, together with its subsidiaries, Affiliates and each of their former and current respective employees, officers and directors, successors and permitted assignees, attorneys and insurers but only with respect to coverage afforded by such insurers to Incorr in relation to the Derailment.
21. **Enserco Energy, LLC**, together with its parent, subsidiaries, Affiliates, and each of their former and current respective employees, officers and directors, successors and permitted assignees, attorneys, and insurers (and the insurers’ direct and indirect parents, subsidiaries and Affiliates), but with regards to such insurers, only to the extent of coverage provided to Enserco Energy, LLC, by such insurers in relation to the Derailment.

22. **The Attorney General of Canada, the Government of Canada, Her Majesty the Queen in Right of Canada and the departments, crown corporations and agencies including the Canadian Transportation Agency, and including all past, present and future Ministers, officers, employees, representatives, servants, agents, parent, subsidiary and affiliated crown corporations and agencies, and their respective estates, successors and assigns.**
23. **(i) Irving Oil Limited, Irving Oil Company, Limited, Irving Oil Operations General Partner Limited and Irving Oil Commercial G.P.,** (ii) any of their Affiliates (as defined in the settlement agreement), (iii) any predecessors, successors and assigns of any of the foregoing Persons named in clauses (i) and (ii) of this paragraph 23, and (iv) any directors, officers, agents and/or employees of any of the foregoing Persons named in clauses (i), (ii) and (iii) of this paragraph 23 (the “**Irving Parties**”), and the insurers listed in Schedule 23 attached hereto, but only in their respective capacities as insurers of the Irving Parties under the insurance policies listed by policy numbers in said Schedule 23 (the “**Irving Insurers**”). Notwithstanding the foregoing or anything else in this list and the Plan, the claims (including the Claims) and/or other rights that the Irving Parties have (or may have) against their insurers (including but not limited to the Irving Insurers) or any one or more of them under any applicable policies, at law, in equity or otherwise, are fully preserved and said insurers (including but not limited to the Irving Insurers) are not Released Parties in connection with said claims and/or other rights of the Irving Parties.

Notwithstanding the foregoing or anything else in this list, and without implying or providing any limitation, the term “Settling Defendants” as used herein or above does not include, and shall not be deemed to include, any of the following: (a) Canadian Pacific Railway Company, (b) World Fuel Services Corporation, (c) World Fuel Services, Inc., (d) World Fuel Services, Canada, Inc., (e) Petroleum Transport Solutions, LLC, (f) Western Petroleum Co., (g) Strobel Starostka Transfer LLC, (h) Dakota Plains Marketing LLC, (i) Dakota Plains Holdings, Inc., (j) DPTS Marketing Inc., (k) Dakota Plains Transloading LLC, (l) Dakota Petroleum Transport Solution LLC, and (m) SMBC Rail Services, LLC.



**SCHEDULE 2**  
**LIST OF NON-OPERATING WORKING INTEREST OWNERS OR**  
**JOINT VENTURERS IN OASIS OPERATED WELLS**

Whiting Oil And Gas Corporation;  
Hess Corporation;  
Hess Bakken Investments II LLC  
Continental Resources Inc;  
Sinclair Oil And Gas Company;  
Conoco Phillips Company;  
Black Bear Resources, LLLP;  
Castlerock Resources Inc;  
Deep Creek Exploration;  
Enerplus Resources Usa Corporation;  
Fidelity E&P Company;  
Fidelity Exploration & Production Co;  
Inland Oil & Gas Corporation;  
Jake Energy Inc.;  
Kerogen Resources Inc;  
Lilley & Company;  
Lilley And Associates LLC;  
Linn Energy Holdings LLC;  
Lone Rider Trading Company;  
Mayhem Oil And Gas Inc;  
Missouri River Royalty Corp;  
Nj Petroleum LLC;  
Northern Energy Corporation;  
Northern Oil & Gas Inc;  
O.T. Cross Oil LLC;  
Ottertail Land & Permit Services;  
Penroc Oil Corporation;  
Reef 2011 Private Drilling Fund LP;  
Shakti Energy LLC;  
Slawson Exploration Company Inc;  
Statoil Oil & Gas LP;  
WHC Exploration LLC;

## SCHEDULE 5

### LIST OF NON-OPERATING WORKING INTEREST OWNERS OR JOINT VENTURERS IN MARATHON OPERATED WELLS

ALAMEDA ENERGY INC  
ARTHUR FRANK LONG JR  
BEARTOOTH RIDGE RESOURCES  
CARL W STERUD JR  
CHUGASH EXPLORATION LP  
CONDOR PETROLEUM INC  
CONTINENTAL RESOURCES INC  
DISPUTED STATE-TRIBAL INTEREST  
ENDEAVOR ENERGY RESOURCES LP  
ENERPLUS RESOURCES CORPORATION  
ESTATE OF KARL WILLIAM STERUD  
ESTATE OF WALLACE HICKEL  
EVERTSON ENERGY PARTNERS LLC  
GADECO LLC  
GOLDENEYE RESOURCES LLC  
HALCON WILLISTON I LLC  
HESS BAKKEN INVESTMENTS II LLC  
ILAJEAN REAMS  
JENNIFER BYSTROM  
JOSEPHINE ANN KJONAAS  
KOOTENAI RESOURCE CORP  
LA PETROLEUM INC  
LGFE-M LP  
LINDA ELWOOD  
LOUIS WALTER LONG  
MARCIN PRODUCTION LLC  
MICHAEL HARVEY STERUD  
MISSOURI RIVER ROYALTY CORPORATION  
MONTANA OIL PROPERTIES INC  
MONTE TEDDY LONG  
NATURAL RESOURCE PARTNERS LP  
NORTHERN ENERGY CORP  
NORTHERN OIL AND GAS INC  
PETROGULF CORP  
QEP ENERGY COMPANY  
RAINBOW ENERGY MARKETING CORP  
RONALD KNIGHT  
S REGER FAMILY INC

SLAWSON EXPLORATION COMPANY INC  
SLAWSON RESOURCES COMPANY  
SPOTTED HAWK DEVELOPMENT LLC  
STEWART GEOLOGICAL INC  
TDB RESOURCES LP  
USG PROPERTIES BAKKEN II LLC  
VERSA ENERGY LLC  
VITESSE ENERGY LLC  
VITESSE OIL LLC  
W NORTH FUND II LP  
ZAGOIL COMPANY LLC

**SCHEDULE 6**

**LIST OF NON-OPERATING WORKING INTEREST OWNERS OR JOINT  
VENTURERS IN QEP OPERATED WELLS**

3LAND INC  
ACTION REALTORS INC  
ADELE L. SKODA  
AMERADA HESS CORPORATION  
ANDREW J HORVAT REVOCABLE TRUST  
ARMSTRONG CHILDREN'S TRUST  
ARMSTRONG MINERALS, LLC  
AVALON NORTH LLC  
BADLANDS HOLDING COMPANY  
BANDED ROCK LLC  
BIG PRAIRIE INVESTMENTS, LLC  
BLACK STONE ENERGY COMPANY, LLC  
BORGOIL RESOURCES, LLP  
BRUCE P. IVERSON  
BURLINGTON RESOURCES OIL & GAS  
BXP PARTNERS III, LP  
CHUGASH EXPLORATION LP  
CONTINENTAL RESOURCES INC  
COPPERHEAD CORPORATION  
CRESCENT ENERGY, INC.  
CRS MINERALS LLC  
DAKOTA WEST LLC  
DALE LEASE ACQUISITIONS 2011-B LP  
DAVIS EXPLORATION  
DEBRA KAY TORNBERG  
DEEP CREEK EXPLORATION LLC  
DEVON ENERGY PRODUCTION CO. LP  
DIAMOND EXPLORATION INC  
DORCHESTER MINERALS LP  
DUANE A. IVERSON  
E. W. BOWLES  
ENDEAVOR ENERGY RESOURCES LP  
ENERPLUS RESOURCES (USA)  
ESTATE OF ROBERT J MCCANN JR  
EZ OIL, LLC

FORESTAR PETROLEUM GROUP  
GAEDEKE WILLISTON BASIN HOLDINGS  
GARY LEE MCCORMICK  
GREEN RIVER ENERGY LLC  
HALCON RESOURCES CORP COMPANY  
HESS BAKKEN INVESTMENTS II LLC  
HESS CORPORATION  
INTERNATIONAL PETROLEUM CORPORATION  
INTERNOS, INC.  
J KAMP OIL LLC  
JEFF GARSKE  
JERALDINE BJORNSON  
JJS WORKING INTERESTS LLC  
JOEL ALM  
JOHN B. BJORNSON  
JT ENERGY, LLC  
JTT OIL LLC  
JUNE ANN GREENBERG  
KENNETH STEVENSON  
KODIAK OIL & GAS (USA) INC  
L LOWRY MAYS  
LANDSOUTH PROPERTIES, LLC  
LEE MCCORMICK MARITAL TRUST  
LEGION LAND & EXPLORATION CORP  
LELAND STENEHJEM, JR.  
LGFE-M L.P.  
LINDSEY K MULLENIX  
LMAC, LLC  
LONE RIDER TRADING COMPANY  
LONETREE ENERGY & ASSOCIATES  
M & M ENERGY INC  
MADDOX FAMILY TRUST  
MARATHON OIL COMPANY  
MBI OIL & GAS LLC  
MCBRIDE OIL & GAS CORPORATION  
MILBURN INVESTMENTS, LLC  
MISSOURI RIVER ROYALTY COMPANY  
MUREX PETROLEUM CORPORATION  
NORTHERN ENERGY CORPORATION  
NORTHERN OIL AND GAS, INC.

NORTHLAND ROYALTY CORPORATION  
NOWITZKI OIL & GAS LP  
O. A. HANSON  
OPINOR ANNA PTY KAISER FUND  
PETROGLYPH ENERGY  
PETROVAUGHN INC.  
PHILIP R. BISHOP  
PRADERA DEL NORTE, INC.  
RALPH MADDOX FAMILY TRUST  
RAVEN OIL PROPERTIES INC  
REEF 2011 PRIVATE DRILLING FUND LP  
ROBERT J. MCCORMICK  
ROBERT POST JOHNSON  
SCOTT ENERGY, LLC  
SCOTT K. BJORNSON  
SCOTT WARD  
SIDNEY K. LEACH  
SIERRA RESOURCES INC  
SINCLAIR OIL & GAS COMPANY  
SIXTY NINE OIL & GAS LP  
SKLARCO LLC  
SLAWSON EXPLORATION CO INC  
SM ENERGY COMPANY  
SOUTH FORK EXPLORATION, LLC  
SPOTTED HAWK DEVELOPMENT LLC  
SRP ENTERPRISES, INC.  
STEVEN H HARRIS FAMILY LIMITED  
STUBER MINERAL RESOURCES LLC  
SUNDHEIM OIL CORPORATION  
SUSAN D STENEHJEM  
THE ERICKSON FAMILY TRUST  
THE MILLENNIUM CORPORATION  
THE TRIPLE T INC.  
TIMOTHY J. RITTER  
TL & JH KAISER SUPERANNUATION  
TURMOIL INC  
TWIN CITY TECHNICAL, LLC  
USG PROPERTIES BAKKEN II LLC  
VINNIE CORP  
VINTAGE OIL & GAS, LLC

VIVIAN MCCORMICK WARREN  
WESTERN ENERGY CORPORATION  
WILLIAM G SEAL ESTATE  
WOLF ENERGY LLC  
XTO ENERGY INC  
XTO OFFSHORE INC  
ZACHARY D VANOVER

## SCHEDULE 7

### LIST OF NON OPERATING WORKING INTEREST OWNERS OR JOINT VENTURERS IN SLAWSON OPERATED WELLS

A.G. Andrikopoulos Resources, Inc.  
Abercrombie Energy, Inc.  
Alameda Energy, Inc.  
Anthony J. Klein  
Bakken HBT II, LP  
Beartooth Ridge Resources, Inc.  
Beck Sherven Legion Post #290  
Benjamin Kirkaldie  
BigSky Oil & Gas, LLC  
Bob Featherer LLC  
Brendall Energy, LLC  
Burlington Northern & Sante Fe  
C King Oil  
Cedar Creek Wolverine, LLC  
Centaur Consulting, LLC  
Chugash Exploration, LP  
Comanche Exploration Company  
Continental Resources, Inc.  
Craig A. Slawson  
D. Sumner Chase, III 2001 Irr. Trust  
David L. Hilleren  
David W. Strickler Trust  
Davis Exploration, LLC  
Deep Blue, LLC  
Dogwood Hill Farms, LLC  
DS&S Chase, LLC  
Enerplus Resources (USA) Corp  
Formation Energy LP  
Frederic Putnam  
Gadeco, LLC



Gaedeke Williston Basin, Ltd.  
Gasco Limited Partnership  
GHG Partners, LLC  
Great Plains Oil Properties, LLC  
Greenhead Energy, Inc.  
Gulfport Energy Corporation  
HRC Energy, LLC  
Huston Energy Corporation  
Icenine Properties, LLC  
Inland Oil and Gas Corporation  
James H Bragg  
John Schell  
Kenneth Lyson and Claudia G. Lyson  
Kodiak Oil & Gas (USA), Inc.  
Kootenai Resources Corporation  
L D Davis & Marilyn Davis, JTS  
Lario Oil and Gas Company  
Linn Energy Holdings, LLC  
Marcin Production, LLC  
Mark Lee  
Marshall & Winston, Inc.  
Mary Newman  
Melbby Gas III, LLC  
Missouri River Royalty Corporation  
Montana Oil Properties, Inc.  
MRG Holdings, LLC  
Mwiley Resources, Inc.  
Nadel and Gussman Bakken, LLC  
Northern Oil and Gas, Inc.  
Oxy USA, Inc.  
Pegasus Group Inc.  
Petro-Huston, LLC  
Petroshale (US) Inc.  
Pine Oil Co.  
Pine Petroleum, Inc.  
Piscato Oil, LLC

Polish Oil & Gas, Inc.  
Raymond Resources Inc.  
Riley Resources, Inc.  
Robert A. Erickson & Cleo  
S. Reger Family, Inc.  
Sheringham Corporation  
Slawson Resources Co.  
Statoil Oil & Gas, LP  
Stewart Geological, Inc.  
Stuart F. Chase  
Stuart F. Chase 2001 Irr. Trust  
Thomas Lambert  
Todd Slawson  
Todd Slawson Trust  
Tracker Resource Development III, LLC  
U S Energy Development Corporation  
USG Properties Bakken II, LLC  
Vitesse Energy, LLC  
Vitesse Oil, LLC  
W B Oil LLC  
Whiting Oil and Gas  
Windsor Dakota, LLC  
Zagoil Company, LLC

## SCHEDULE 15

### LIST OF UTCC'S INSURERS AND REINSURERS

#### Canadian Insurance Companies

ACE INA Insurance

Chartis Insurance Company of Canada (n/k/a AIG Insurance Company of Canada)

Westport Insurance Corporation

#### U.S. Insurance Companies

ACE American Insurance Company

American Zurich Insurance Company

Lexington Insurance Company

North American Capacity Insurance Company

Starr Indemnity & Liability Company

#### Bermudian Insurance Companies

ACE Bermuda Insurance Ltd.

Allied World Assurance Company Ltd.

Argo Re Ltd.

Chartis Excess Limited (n/k/a American International Reinsurance Company Ltd.)

Chubb Atlantic Indemnity Ltd.

Hanseatic Insurance Company (Bermuda) Limited

Iron-Starr Excess Agency Ltd. / Ironshore Insurance Ltd. / Starr Insurance & Reinsurance Limited

Starr Insurance & Reinsurance Limited

XL Insurance (Bermuda) Ltd.

**SCHEDULE 18**

**LIST OF NON-OPERATING INTEREST OWNERS OR JOINT VENTURERS IN  
CONOCOPHILLIPS OPERATED WELLS**

Continental Resources Inc.

Hess Corporation

JAG Oil Limited Partnership

Linn Energy Holdings LLC

Newfield Production Company

Northern Oil & Gas Inc.

Twin City Technical LLC

WM Energy Resources Inc.

## SCHEDULE 23

### LIST OF IRVING INSURERS

1. ACE INA Insurance
  - CGL 523952
  - XBC 602712
2. Zurich Insurance plc, UK Branch
  - B0509E1149413
  - B0509E1181313
3. Zurich Insurance Company Ltd
  - 8840960
  - 8838799
4. AEGIS, Syndicate AES 1225
  - B0509E1149413
5. Mitsui Sumitomo, Insurance Corporate Capital, Limited as sole member of Syndicate, 3210 at Lloyds
  - B0509E1181113
6. QBE Casualty Syndicate 386
  - B0509E1181113
7. QBE Syndicate 1886
  - B0509E1181113
8. Underwriters at Lloyd's and Lloyd's Syndicates, Subscribing to Policy No. B0509HM231013, including the following
  - AEGIS Syndicate AES 1225
  - Syndicate CNP 4444
  - Syndicate MKL 3000
  - Syndicate HIS 33
  - Syndicate LIB 4472
  - Syndicate ANV 1861
  - Syndicate MFM 2468
  - Syndicate AUW 609
  - Syndicate TUL 1301

- Syndicate SKD 1897
  - Syndicate AML 2001
  - Syndicate NAV 1221
  - Syndicate TRV 5000
9. XL Insurance (Bermuda) Ltd.
- XLUMB-742875
10. Oil Casualty Insurance, Ltd.
- U920303-0313
11. Argo Re Ltd.
- ARGO-CAS-OR-000227.1
12. Chubb Atlantic Indemnity Ltd.
- 3310-17-91
13. Zurich Insurance Company Ltd
- 8838799
14. Iron-Starr Excess Agency Ltd.
- 1S0000822
15. AIG Excess Liability Insurance International Limited
- 1657346
16. ACE Bermuda Insurance Ltd.
- 1OC-1338/5
17. Liberty Mutual Insurance Company
- XSTO-631084-013
18. ACE Underwriting Agencies Limited, as managing agency of Syndicate 2488 at Lloyd's, and  
ACE European Group Limited
- B0509EI181413

**Schedule "D" List of Existing Agreements**

PLAN OF COMPROMISE AND ARRANGEMENT

concerning, affecting and involving

MONTREAL, MAINE & ATLANTIC CANADA CO.

**MONTREAL, MAINE & ATLANTIC CANADA CO.**  
**Schedule D**  
**List of Existing Agreements**

- Rail World Locomotive Leasing, LLC Railroad Locomotive Lease Agreement dated February 10, 2004, as amended.
- Rail World Locomotive Leasing, LLC Railroad Locomotive Lease Agreement dated July 1, 2012.
- Management Agreement dated January 8, 2003, as amended, by and among Montreal Maine & Atlantic Railway, Ltd., Montreal, Maine & Atlantic Canada Co., MM&A Rolling Stock Corporation, LMS Acquisition Corporation and Rail World, Inc.
- Retention Agreement between Montreal, Maine & Atlantic Railway, Ltd. and M. Donald Gardner dated on or about August 5, 2011.
- Retention Agreement between Montreal, Maine & Atlantic Railway, Ltd. and Joseph McGonigle dated on or about August 5, 2011.
- Retention Agreement between Montreal, Maine & Atlantic Railway, Ltd. and Gaynor Ryan dated on or about August 5, 2011.
- Agreement between Montreal Maine & Atlantic Railway, Ltd. and LMS Acquisition Corporation regarding payment of bulk starch transloading costs.
- Letter agreement dated May 31, 2012 between Montreal, Maine & Atlantic Canada and Rail World, Inc. regarding reimbursement payments from Government of Quebec, Minister of Transport.



**Schedule "E" Distribution mechanism with respect to the  
Wrongful Death Claims**

PLAN OF COMPROMISE AND ARRANGEMENT

concerning, affecting and involving

MONTREAL, MAINE & ATLANTIC CANADA CO.

**Montreal Maine & Atlantic Canada Co.**  
**Schedule E**  
**Distribution Mechanism with Respect to the Wrongful Death Claims**

<b>Points Allocation Matrix</b>		
<b>Criteria</b>	<b>Points per Criteria</b>	
<b>1. Age of the decedents</b>	<b><u>Age of Decedent</u></b>	<b><u>Points</u></b>
	<ul style="list-style-type: none"> <li>• Less than 18</li> <li>• 18 to less than 26</li> <li>• 26 to less than 60</li> <li>• 60 to less than 66</li> <li>• 66 and greater</li> </ul>	<ul style="list-style-type: none"> <li>• 3</li> <li>• 8</li> <li>• 10</li> <li>• 8</li> <li>• 3</li> </ul>
<b>2. If decedent survived by children</b>	<b><u>Age of Surviving Children</u></b>	<b><u>Points</u></b>
	<ul style="list-style-type: none"> <li>• Less than 21</li> <li>• 21 to less than 31</li> <li>• 31 to less than 51</li> <li>• 51 and greater</li> </ul>	<ul style="list-style-type: none"> <li>• 15</li> <li>• 7</li> <li>• 5</li> <li>• 3</li> </ul>
<b>3. If decedent is survived by a spouse</b>	<b><u>Annual Income of Decedent</u></b>	<b><u>Points</u></b>
	<ul style="list-style-type: none"> <li>• Less than \$20,000</li> <li>• \$20,000 to less than \$50,000</li> <li>• \$50,000 to less than \$75,000</li> <li>• \$75,000 to less than \$100,000</li> <li>• \$100,000 and greater</li> </ul>	<ul style="list-style-type: none"> <li>• 12.50</li> <li>• 15.00</li> <li>• 16.25</li> <li>• 17.50</li> <li>• 18.75</li> </ul>
<b>4. If decedent is survived by a spouse but no children</b>	<ul style="list-style-type: none"> <li>• If parents, 5 additional points</li> <li>• If no parents, but siblings, then 2.5 points per sibling to a maximum of 7.5 points</li> </ul>	
<b>5. If decedent is not survived by a spouse or child and the decedent <u>is a minor</u></b>	<ul style="list-style-type: none"> <li>• 10 points for each surviving parent and</li> <li>• 5 points for each surviving sibling</li> </ul>	
<b>6. If decedent is not survived by a spouse or child and the decedent <u>is not a minor</u></b>	<ul style="list-style-type: none"> <li>• 5 points for each surviving parent and</li> <li>• 2.5 points for each surviving sibling</li> </ul>	
<b>7. If decedent is survived by a child</b>	<ul style="list-style-type: none"> <li>• Set aside of 5% to parents and siblings with a potential reallocation to ensure a minimum payment of \$25,000 to each parent and sibling</li> </ul>	

**Montreal Maine & Atlantic Canada Co.  
Schedule E**

**Distribution Mechanism with Respect to the Wrongful Death Claims**

<b>Victim</b>	<b>Total Points</b>	<b>Allocation %</b>	<b>Estimated Potential Distribution</b>
1	68	4.78%	\$ 3,691,000
2	23	1.63%	1,257,000
3	32	2.27%	1,750,000
4	20	1.42%	1,094,000
5	18	1.24%	957,000
6	20	1.42%	1,094,000
7	6	0.42%	328,000
8	38	2.66%	2,049,000
9	28	1.95%	1,504,000
10	14	0.99%	765,000
11	23	1.63%	1,258,000
12	16	1.13%	875,000
13	20	1.42%	1,094,000
14	28	1.95%	1,504,000
15	40	2.83%	2,187,000
16	52	3.65%	2,816,000
17	28	1.95%	1,504,000
18	25	1.77%	1,367,000
19	23	1.63%	1,257,000
20	40	2.83%	2,187,000
21	17	1.20%	929,000
22	18	1.27%	984,000
23	38	2.66%	2,050,000
24	21	1.45%	1,121,000
25	23	1.63%	1,258,000
26	55	3.90%	3,007,000
27	25	1.77%	1,367,000
28	53	3.72%	2,871,000
29	40	2.83%	2,187,000
30	31	2.16%	1,668,000
31	20	1.42%	1,094,000
32	23	1.63%	1,257,000
33	25	1.77%	1,367,000
34	40	2.83%	2,187,000
35	13	0.92%	711,000
36	13	0.92%	711,000
37	45	3.15%	2,433,000
38	21	1.45%	1,121,000
39	25	1.77%	1,367,000
40	30	2.12%	1,640,000
41	23	1.59%	1,230,000
42	41	2.92%	2,255,000
43	40	2.83%	2,187,000
44	40	2.83%	2,187,000
45	13	0.92%	711,000
46	53	3.72%	2,871,000
47	31	2.21%	1,709,000
48	40	2.83%	2,187,000
<b>1,412</b>	<b>100.0%</b>	<b>\$</b>	<b>77,205,000</b>

The above amounts are prior to any fees that may be claimed by the claimants attorneys or the Class Representatives, as applicable.

**(all amounts are in Canadian dollars)**

**Schedule "F"    Distribution mechanism with respect to the Bodily  
Injury and Moral Damages Claims**

PLAN OF COMPROMISE AND ARRANGEMENT

concerning, affecting and involving

MONTREAL, MAINE & ATLANTIC CANADA CO.

Montreal, Maine & Atlantic Canada Co.  
 Schedule F  
 Distribution Mechanism with Respect to the Moral Damage Claims

	Points	Estimated # of claimants	Total points	%	Est. Dist.	Dist. per claim
Trouble & inconvenience	5.0	3,700	18,500	35.8%	\$ 11,472,000	\$ 3,100
<b>Evacuations</b>						
Per day of displacement	1.0	1,850	10,370	20.1%	6,430,000	620
Maximum	30.0					par jour
Red Zone/Yellow Zone	50.0	140	7,000	13.5%	4,341,000	31,010
Grandparents and grandchildren (note 1)	15.0	50	750	1.5%	465,000	9,300
Post Traumatic Stress - short term (note 2)	50.0	100	5,000	9.7%	3,100,000	31,000
Post Traumatic Stress - long term (note 2)	100.0	100	10,000	19.3%	6,201,000	62,010
Bodily Injury	50.0	2	100	0.2%	62,000	31,000
Buffer (note 3)					2,000,000	
<b>Total (notes 1 &amp; 4)</b>			<b>51,720</b>	<b>100%</b>	<b>\$ 34,071,000</b>	

The above amounts are prior to any fees that may be claimed by the claimants' attorneys or the Class Representatives, as applicable.

Note 1: This is a cumulative calculation, whereby one claimant can fall into more than one category, however wrongful death claimants cannot claim for post traumatic stress.

Note 2: For those who have been given a medical diagnosis of post traumatic stress, a depressive disorder, an anxiety disorder and/or otherwise remain under medical care for mental health issues arising from the disaster and for those who were present in the red zone at the time of the derailment. In order to qualify in this category and to determine if you qualify for short term or long term post traumatic stress further details will be required by the Monitor.

Note 3: To be used for any increase in the post traumatic stress category (if any) and thereafter any unused portion will be distributed to all the other categories of moral damages on a pro rata basis.

Note 4: The final amounts may vary depending on further information received.

(all amounts are in Canadian dollars)

**Schedule "G" Distribution mechanism with respect to the property  
and Economic Damages Claims**

PLAN OF COMPROMISE AND ARRANGEMENT

concerning, affecting and involving

MONTREAL, MAINE & ATLANTIC CANADA CO.

**Montreal, Maine & Atlantic Canada Co.**  
**Schedule G**  
**Distribution Mechanism with Respect to the Property and Economic Damages Claims**

- Property and Economic Damages Claims will be valued pursuant to the Claims Resolution Order.
- The value of the Property and Economic Damages Claims is currently estimated at \$75 million.
- Following the valuation of the Property and Economic Damages Claims pursuant to the Claims Resolution Order, creditors having Proven Claims will be paid on a pro-rata basis.
- In the event that, following the review of these claims pursuant to the Claims Resolution Order, the aggregate value of the Property and Economic Damages Claims is reduced below \$75 million, the difference between the amount of \$75 million and the revised aggregate value of these claims will be allocated on a pro-rata basis to the value of the claims in the other categories described in Sections 4.2 (a) (b) (d) and (e).

**Any distributions made may be subject to fees that may be claimed by the claimants' attorneys or the Class Representatives, as applicable.**

**(all amounts are in Canadian dollars)**

**Schedule "H" XL Settlement Agreement**  
**PLAN OF COMPROMISE AND ARRANGEMENT**  
**concerning, affecting and involving**  
**MONTREAL, MAINE & ATLANTIC CANADA CO.**



**SETTLEMENT AGREEMENT**

This Agreement is made as of the Execution Date by the XL Companies, the Trustee and MMAC, and shall be effective as of the Approval Date.<sup>1</sup>

**RECITALS**

WHEREAS, MMA and MMAC are insureds under a Railroad Liability Insurance Policy, bearing number RRL003723801 and in effect from April 1, 2013 to April 1, 2014 (subject to any extensions as may be or have been agreed between the parties), issued by Indian Harbor;

WHEREAS, MMA and MMAC are insureds under a Railroad Liability Insurance Policy, bearing the number RLC003808301 and in effect from April 1, 2013 to April 1, 2014 (subject to any extensions as may be or have been agreed between the parties), issued by XL Insurance;

WHEREAS, on July 6, 2013, a train operated by MMAC and MMA derailed in Lac-Mégantic, Québec, Canada, causing numerous fatalities, bodily injury to hundreds of people, and extensive property and environmental damage;

WHEREAS, on August 6, 2013, MMAC filed a petition for the issuance of an initial order with the CCAA Court.

WHEREAS, Richter Advisory Group Inc. has been appointed as Monitor in connection with the CCAA Proceeding;

WHEREAS, on August 7, 2013, MMA filed a voluntary petition in the Bankruptcy Court for relief under chapter 11 of the Bankruptcy Code;

WHEREAS, on August 21, 2013, the United States Trustee appointed the Trustee, having full rights and power under the Bankruptcy Code to act for and on behalf of MMA;

---

<sup>1</sup> All capitalized terms used herein have the meanings contained in the definitions set forth in Section I of this Agreement.

EXECUTION COPY

WHEREAS, various claims arising out of the Derailment have been made against MMA, MMAC, and other insureds under the Policies;

WHEREAS, the Parties wish to resolve all Claims that have arisen or could in the future arise relating to the Policies by agreeing to a global settlement relating to Claims and possible Claims against the XL Companies arising out of the Derailment or otherwise under the Policies;

WHEREAS, the Canadian Policy is the applicable policy in respect of any loss, cost or expense arising out of the Derailment, and covered losses arising out of the Derailment will substantially exceed the applicable CAN \$25 million per occurrence limit in the Canadian Policy;

WHEREAS, the Parties recognize that, to the extent applicable, Quebec law provides that the proceeds of the Canadian Policy are property of the victims of the Derailment, and the Parties seek to establish a mechanism for promptly providing those victims with access to those proceeds;

WHEREAS, the parties also seek to achieve a global resolution of any and all other matters relating to the Policies, through a buy-back, by the XL Companies, of the Trustee's and MMAC's remaining interests in the Policies;

WHEREAS, through this Agreement, the Plan and the Approval Orders, the Parties seek to provide the XL Companies with the broadest possible release with respect to the Policies and to provide that the XL Companies shall have no further obligations to any Person for any and all Claims that have been, or could in the future be, asserted against the XL Companies in relation to the Policies and/or the Derailment;

WHEREAS, the XL Companies have sought, and the Trustee, MMAC and the Monitor have agreed, through the negotiations leading to this Agreement, to create a mechanism under

which all of the Directors, Officers and Employees, and all other Persons that assert any right or interest in the Policies have had reasonable opportunity to become a Settling Defendant and Released Party by entering into an appropriate settlement agreement.

WHEREAS, the Parties intend that this Agreement shall be approved in the Bankruptcy Case and CCAA Proceeding and given the effect by the U.S. Approval Order and the Canadian Approval Order.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound, the Parties agree as follows:

I. DEFINITIONS

As used in this Agreement, the following terms have the meanings set forth below.

- 1.1. "Agreement" means this Settlement Agreement.
- 1.2. "Approval Date" means the date on which the U.S. Approval Order and the Canadian Approval Order become Final Orders. If the U.S. Approval Order and the Canadian Approval Order become Final Orders on different dates, the Approval Date is the date on which the later order to become a Final Order becomes a Final Order.
- 1.3. "Approval Orders" means the U.S. Approval Order and the Canadian Approval Order, collectively.
- 1.4. "Bankruptcy Case" means the case styled *In re Montreal, Maine & Atlantic Railway Ltd.*, Bankr. D. Me. No. 13-10670.
- 1.5. "Bankruptcy Code" means Title 11 of the United States Code.
- 1.6. "Bankruptcy Court" means the United States Bankruptcy Court for the District of Maine, as presiding over the Bankruptcy Case.
- 1.7. "Canadian Approval Order" means an order entered in the CCAA Proceeding, which Order shall be in form and substance acceptable to the XL Companies, and shall, among

other things, (i) approve, sanction and/or confirm the Canadian Plan, (ii) approve this Agreement; (iii) authorize MMAC to undertake the settlement and the transactions contemplated by this Agreement; (iv) authorize the sale of MMAC's remaining interest, in the Policies, if any, to the extent permitted by law, to the XL Companies free and clear of any and all claims and interests; (v) vest any and all interests in the XL Indemnity Payment; (vi) provide that the XL Companies are good faith purchasers of MMAC's remaining interests in the Policies and, as such, are entitled to all protections provided to a good-faith purchaser; and (vii) provide for the Injunction.

1.8. "Canadian Policy" means the insurance policy issued by XL Insurance, bearing number RLC003808301.

1.9. "Canadian Plan" means a plan of compromise or arrangement, to be filed by MMAC in the CCAA Proceeding, which shall provide, among other things, for approval of this Agreement and entry of the Canadian Approval Order, which Canadian Plan shall be in form and substance acceptable to the XL Companies.

1.10. "CCAA" means the Companies' Creditors Arrangement Act, R.S.C. c. C-36, as amended.

1.11. "CCAA Court" means the Superior Court, Province of Québec, as presiding over the CCAA Proceeding.

1.12. "CCAA Proceeding" means the case styled *In the Matter of the Plan of Compromise or Arrangement of Montreal, Maine & Atlantic Canada Co.*, Superior Court, Province of Québec, No. 500-11-045094-139.

1.13. "CIT Group" means CIT Group, Inc.

1.14. "Claim" means past, present and future claims, causes of action, obligations, rights, suits, judgments, remedies, interests, actions, liabilities, demands, duties, injuries, damages, expenses, fees, or costs of whatever kind or nature (including attorney's fees and expenses), whether foreseen or unforeseen, known or unknown, asserted or unasserted, contingent or matured, liquidated or unliquidated, whether in tort, contract, extra-contractual or otherwise, whether statutory, at common law or in equity, including but not limited to claims for breach of contract, breach of the implied covenant of good faith and fair dealing, statutory or regulatory violations, for indemnity or contribution, or punitive, exemplary or extra-contractual damages of any type, (a) arising out of, based upon, or relating in any way related to, in whole or in part, directly or indirectly, whether through a direct claim, cross-claim, third-party claim, subrogation claim, class action or otherwise, to (i) the Derailment, including any claims for wrongful death, personal injury, emotional distress, property damage, economic loss, or environmental damage, remediation or exposure; (ii) the Policies; (iii) the issuance of the Policies; (iv) insurance coverage under the Policies, reimbursement or payment under the Policies; (v) any act or omission of an insurer of any type for which a Claimant might seek relief in connection with the Policies, or (b) that would otherwise constitute a claim (i) provable in bankruptcy under the Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3, had MMAC become bankrupt on August 6, 2013; or (ii) within the definition of "claim" set forth in Section 101(5) of the Bankruptcy Code.

1.15. "Claimant" means any Person holding or potentially holding any Claim against (i) MMA, (ii) MMAC, (iii) to the extent applicable, the Estates, (iv) any XL Company, and/or (v) any of the Released Parties.

1.16. "Derailment" means the July 6, 2013 derailment in Lac-Mégantic, Québec.

1.17. "Directors, Officers and Employees" mean any and all persons or entities who qualify as an officer, director, partner, or employee under either of the Policies.

1.18. "Estates" means the MMA bankruptcy estate and, to the extent applicable, the MMAC estate.

1.19. "Execution Date" means the first day upon which all Parties have executed this Agreement.

1.20. "Final Order" means an order of the Bankruptcy Court or the CCAA Court that is no longer subject to further appeals, either because the time to appeal has expired without an appeal being filed, or because it has been affirmed by any and all courts with jurisdiction to consider any appeals therefrom.

1.21. "Indian Harbor" means Indian Harbor Insurance Company.

1.22. "Injunction" means an order by the CCAA Court and the Bankruptcy Court permanently releasing and enjoining the enforcement, prosecution, continuation or commencement of any (a) Claim that any Person or Claimant holds or asserts or may in the future hold or assert against the XL Companies arising out of, in connection with and/or in any way related to any of the Policies and (b) Claim against any Released Party and/or Settling Defendant arising out of, in connection with and/or in any way related to the Policies or the Derailment. The Injunction order shall provide that all Persons and Claimants, whether or not consensually, shall be deemed to have granted full and complete releases to the XL Companies and the Released Parties and shall be permanently and forever barred, estopped, stayed and enjoined from (i) pursuing any Claim against the XL Companies and the Released Parties, (ii) continuing or commencing any action or other proceeding with respect to any Claim against the XL Companies and the Released Parties, (iii) seeking the enforcement, attachment, collection or

recovery of any judgment, award, decree, or order against the XL Companies and the Released Parties or property of the XL Companies and the Released Parties with respect to any Claim, (iv) creating, perfecting, or enforcing any encumbrance of any kind against the XL Companies and the Released Parties or the property of the XL Companies and the Released Parties with respect to any Claim, and (v) asserting any right of setoff, subrogation, or recoupment of any kind against any obligations due to the XL Companies and the Released Parties with respect to any Claim, the whole to the extent that any such Claim Arises out of, is in connection with and/or in any way related to the Derailment or the Policies.

1.23. "MMA" means Montreal, Maine & Atlantic Railway Ltd.

1.24. "MMAC" means Montreal, Maine and Atlantic Canada Co.

1.25. "Monitor" means Richter Advisory Group Inc., in its capacity as Monitor in the CCAA Proceeding, or such other entity as may be approved by the CCAA Court in the future to serve in such capacity in the CCAA Proceeding.

1.26. "Other Insurer" means any Person that provided, or claims or is alleged to have provided, any insurance coverage to MMA, MMAC, any of their Directors, Officers and Employees, or affiliates.

1.27. "Parties" means the Trustee (for himself solely as a trustee, for MMA and for its estate), MMAC, and the XL Companies.

1.28. "Person" means and includes a natural person or persons, a group of natural persons acting as individuals, a group of natural individuals acting in collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, partnership, limited liability company or limited partnership, a proprietorship, joint venture, trust, legal representative, or any other unincorporated association, business organization or enterprise, any government entity and any

successor in interest, heir, executor, administrator, trustee, trustee in bankruptcy, or receiver of any person or entity.

1.29. "Plan" means the U.S. Plan and/or the Canadian Plan.

1.30. "Policies" mean the U.S. Policy and the Canadian Policy.

1.31. "Proceedings" mean the Bankruptcy Case and the CCAA Proceeding.

1.32. "Rail World" means Rail World, Inc.

1.33. "Released Parties" means any and all Persons with whom MMAC and the Trustee has executed or hereafter executes a settlement agreement substantially in the form of this Agreement (the "Settling Defendants") whereby the Settling Defendants are provided with a release of any Claim in connection with the Derailment, provided that Approval Orders are rendered approving such settlement agreements and providing the Injunction in favour of the Settling Defendants.

1.34. "Settlement Amount" means the sum of the XL Indemnity Payment plus the XL Additional Payment, to be paid by the XL Companies pursuant to Section 2.1 of this Agreement.

1.35. "Settling Defendant" has the meaning set forth in Section 1.33 of this Agreement.

1.36. "Trustee" means Robert J. Keach, in his capacity as chapter 11 Trustee appointed in the Bankruptcy Case, or such other person as may be approved by the Bankruptcy Court in the future to serve in such capacity in the Bankruptcy Case.

1.37. "U.S. Approval Order" means (x) an Order entered in the Bankruptcy Case sanctioning, approving and/or confirming the Plan, or (y) an order entered in the Bankruptcy Case pursuant to the applicable sections of chapter 15 of the Bankruptcy Code, which order recognizes and enforces the terms of the Canadian Approval Order. In either case, a "U.S. Approval Order" shall be in form and substance acceptable to the XL Companies, and must,



among other things, (i) approve this Agreement; (ii) authorize the Trustee to undertake the settlement and the transactions contemplated by this Agreement; (iii) authorize the sale of the MMA estate's remaining interest in the Policies to the XL Companies free and clear of any and all claims and interests; (iv) vest any and all interests in the XL Indemnity Payment; (v) provide that the XL Companies are good faith purchasers of the MMA estate's remaining interests in the Policies and, as such, are entitled to all protections provided to a good-faith purchaser; and (vi) provide for the Injunction.

1.38. "U.S. Plan" means the plan of reorganization, to be filed by the Trustee in the Bankruptcy Case, which shall provide, among other things, for approval of this Agreement and entry of the U.S. Approval Order, which U.S. Plan shall be in form and substance acceptable to the XL Companies.

1.39. "U.S. Policy" means the insurance policy issued by Indian Harbor, bearing number RRL003723801.

1.40. "XL Companies" means Indian Harbor, XL Insurance, XL Group plc and their affiliates.

1.41. "XL Additional Payment" is US \$5 million.

1.42. "XL Indemnity Payment" is CDN \$25 million.

1.43. "XL Insurance" means the Canadian Branch of XL Insurance Company SE (formerly XL Insurance Company Limited).

1.44. "XL Policies" means the Canadian Policy and the U.S. Policy.

II. SALE OF THE ESTATES' REMAINING INTERESTS IN THE POLICIES AND PAYMENT OF THE SETTLEMENT AMOUNT

2.1. Subject to all of the terms and conditions of this Agreement, in full and final settlement of all responsibilities under and arising out of the Policies, the XL Companies shall

purchase from the Trustee and MMAC, and the Trustee and MMAC shall sell, convey, transfer and deliver to the XL Companies, after payment of the Settlement Amount, MMA's and the MMAC's remaining interests, if any and to the extent permitted by law, in each of the Policies, free and clear of any and all Interests of any and all Persons. Within five calendar days of payment of the Settlement Amount, and upon request of the XL Companies, the Trustee and MMAC shall execute and deliver to the XL Companies bills of sale, in form and substance acceptable to the XL Companies, evidencing such sales of MMA's and the MMAC estate's remaining interests in the Policies to the XL Companies, which sales shall be effective as of the Approval Date.

2.2. Subject to all of the terms of this Agreement, in full and final settlement of all responsibilities under and arising out of the Policies, including the sale of MMA's and the MMAC estate's remaining interests in the Policies, XL Insurance shall pay the Settlement Amount to the Monitor by no later than the 10th calendar day after Approval Orders become Final Orders. The Trustee (to whom a portion of the Settlement Amount will be remitted by the Monitor for distribution to some of the Claimants, the whole in accordance with the Plan), MMAC and the Monitor covenant and agree that the proceeds of the XL Indemnity Payment shall be distributed in accordance with the Plan. The Trustee and MMAC intend to seek authorization to use the entire amount of the XL Additional Payment for the payment of (i) allowed administrative expenses in the Bankruptcy Case and (ii) the professional fees and disbursements of the Monitor, the Monitor's counsel and MMAC's counsel in the CCAA Proceeding.

2.3. The Parties agree that (i) the Settlement Amount is the total amount the XL Companies are obligated to pay on account of any and all Claims of any kind made under or

related to the Policies; (ii) under no circumstance will the XL Companies ever be obligated to make any additional payments to MMA, MMAC, the Trustee, the Estates (where applicable), or any other Person in connection with the Policies; (iii) all limits of liability of the Policies, including all per occurrence and aggregate limits, shall be deemed fully and properly exhausted; (iv) the Settlement Amount is the full purchase price of MMAC's and the MMA estate's remaining interests in the Policies, and upon payment of the Settlement Amount, the XL Companies will be deemed to own MMAC's and the MMA estate's remaining interests in the Policies free and clear of any and all claims and interests of any Person, (v) subject to the terms of this Agreement and the occurrence of the Approval Date, the XL Companies shall have no further obligation to MMA, MMAC, the Trustee, the Estates (where applicable), or any other Person or Claimant under or related to the Policies for any Claim; and (vi) the Settlement Amount is at least equal to the fair value of MMAC's and the MMA estate's remaining interests in the Policies.

2.4. Effective immediately upon payment of the Settlement Amount, and without any further action by any of the Parties, all of MMA's and MMAC's rights and the rights of all other Persons under and with respect to the Policies shall be permanently and irrevocably extinguished.

### III. BANKRUPTCY AND CCAA RELATED OBLIGATIONS

3.1. By on or about March 31, 2015, MMAC shall file the Canadian Plan in the CCAA Proceeding, and shall use its best efforts to obtain entry of the Canadian Approval Order as a Final Order. MMAC covenants and agrees that it will use its best efforts to obtain the Canadian Approval Order and that it will vigorously defend any objection to the Canadian Plan filed by any party or Person.

3.2. By on or about March 31, 2015, Trustee shall file the U.S. Plan in the Bankruptcy Case and shall use his best efforts to obtain entry of the U.S. Approval Order as a Final Order. The Trustee covenants and agrees that he will use his best efforts to obtain the U.S. Approval Order and that he will vigorously defend any objection to the U.S. Plan filed by any Person.

3.3. If either of the Approval Orders (or any other orders of the Bankruptcy Court or CCAA Court relating to this Agreement) shall be appealed by any Person (or a petition for certiorari or motion for rehearing or reargument shall be filed with respect thereto), the Trustee and MMAC agree to take all reasonable steps to defend against such appeal, petition or motion, provided, however, that nothing herein shall preclude the Parties from consummating the transactions contemplated herein if the Approval Orders shall have been entered and have not been stayed and the XL Companies, in their sole discretion, waive in writing the requirement that each of the Approval Orders be a Final Order.

3.4. Each of the Parties further agrees not to take any appeal from, or to seek to reopen, reargue or obtain reconsideration of, or otherwise contest or challenge in any way, directly or indirectly, the Approval Orders or any other order provided for by, or executed or entered pursuant to, or in implementation of, this Agreement, except to the extent that any such order shall be inconsistent with the terms hereof.

3.5. The Trustee and MMAC agree to cooperate with the XL Companies and their representatives in connection with seeking approval of the Plans and the Approval Orders. Such cooperation shall include consulting with the XL Companies, at their request, concerning the status of the Proceedings, including the status of the Plans and Approval Orders, and providing the XL Companies with draft copies of requested pleadings, notices, proposed orders and other documents relating to the Proceedings, the Plans, the Approval Orders and/or the service of the

Plans and Approval Orders as soon as reasonably practicable so as to afford the XL Companies a reasonable opportunity to review and comment on any such documents in advance of filing. The Trustee and MMAC further covenant and agree that they will not submit for approval in the Proceedings any motion, adversary proceeding, filing or other request the approval of which could conflict with, supersede, abrogate, nullify, modify or restrict the terms of the Agreement and the rights of the XL Companies hereunder, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement, including any transaction that is contemplated by or approved pursuant to the Plans or the Approval Orders.

3.6. In the event any Person asserts a Claim against any of the XL Companies after the Approval Date, arising out of or related to any matter released by this Agreement, the XL Companies shall notify the Trustee and/or MMAC and the Trustee and/or MMAC shall immediately seek an order from the CCAA Court and/or the Bankruptcy Court enjoining such Claim, as the XL Companies may elect and direct.

3.7. On the same day that MMAC and the Trustee file the Plan, or as soon as practicable thereafter, MMAC (through the Monitor) and the Trustee shall serve copies of the Plan on (i) each Person known to the Trustee, MMAC or the XL Companies to have a Claim against any of them or the Estates through participating in the Proceedings, the filing of a lawsuit, or the filing of a proof of claim or other assertion of a Claim, or otherwise (or to his, her, or its proxy, representative or counsel of record); (ii) any and all Persons known to the Trustee, MMAC or the XL Companies entitled or allegedly entitled to insurance coverage under the Policies, including Rail World, the Directors, Officers and Employees, and any other additional insured (or Persons claiming to be additional insureds) or otherwise claiming to be entitled to

benefits under the Policies and those Persons falling within a policy definition of "named insured"; (iii) all other Persons who or that have filed timely proofs of claim in the Proceedings; (iv) all Persons on the master service lists maintained in the Proceedings; and (v) all other parties in interest, including any Person who or that filed a notice of appearance and demand for service of papers in the Proceedings. MMAC (through the Monitor) and the Trustee shall also provide appropriate publication notice, and such further or other notice as may be required by the CCAA Court (with respect to MMAC) or the Bankruptcy Court (with respect to the Trustee). As soon as reasonably practical after filing the Plan, the certificates of the service provided by mail and by publication shall be filed by the Monitor in the CCAA Proceedings and by the Trustee in the Bankruptcy Case.

#### IV. RELEASE

4.1. Effective upon the Approval Date and the payment of the Settlement Amount, and without any further action of the Parties:

(a) MMAC and the Trustee, on behalf of themselves and, to the extent applicable, the Estates, hereby fully, finally, and completely remise, release, acquit and forever discharge the XL Companies from any and all Claims whether actual or alleged, known or unknown, accrued or unaccrued, existing or potential, suspected or unsuspected with respect to, relating to, or in any way arising out of the Policies. The release of the XL Companies under this Section 4.1 of the Agreement shall include, but shall not be limited to, any and all Claims for coverage with respect to, relating to, or in any way arising out of the Policies whether for property damage, bodily injury, personal injury, advertising injury, or any other form of loss, expense, or other benefits, covered or potentially covered, under the Policies. In addition, MMAC and the Trustee, on behalf of themselves and, to the extent applicable, the Estates, hereby withdraw any and all requests, demands, or tenders for defense or indemnity previously

submitted to the XL Companies under the Policies and further surrender, relinquish, and release any further right to tender or present any Claims whatsoever to the XL Companies under the Policies. Furthermore, by virtue of the foregoing releases and the Approval Orders, XL Companies shall have no duty to defend or indemnify MMA, MMAC, the Trustee and any other insured under the Policies, on behalf of themselves and the Estates, with respect to any past, present, or future Claim, nor shall XL Companies have any other duty or obligation whatsoever to any other Person with respect to any and all Claims arising out of, in connection with, and relating to the Policies.

(b) The XL Companies hereby fully, finally, and completely remise, release, acquit and forever discharge MMA, MMAC, the Trustee, the Estates and all the Released Parties from any and all Claims whether actual or alleged, known or unknown, accrued or unaccrued, existing or potential, suspected or unsuspected with respect to, relating to, or in any way arising out of the Policies. The XL Companies also waive any and all rights, at law or contractual, of subrogation, indemnification, and/or contribution that they have, or may have, against any Person as a result of or on account of the payment of the Settlement Amount, including without limitation any rights based on any "Other Insurance" clause in the Policies.

4.2. Releases Do Not Extend To Obligations Under The Agreement. The releases set forth in Section 4.1 of this Agreement are not intended to, and shall not, extend to or otherwise release or discharge any rights, privileges, benefits, duties, or obligations of any of the Parties by reason of, or otherwise arising under, this Agreement.

4.3. Changes In Fact Or Law. The Parties acknowledge that there may be changes in the law with respect to interpretation of coverage under the Policies or otherwise and/or that the Parties may hereafter discover facts different from, or in addition to, those which they now

believe to be true with respect to any and all of the claims herein released. Nevertheless, the Parties hereby agree that the releases set forth above, and in the Plan and the Approval Orders, shall be and remain effective in all respects, notwithstanding any changes in the law and/or the discovery of such additional or different facts. Moreover, the Trustee and MMAC understand that Claims that have been or may be asserted may increase or decrease in amount or in severity over time, that Claims that have been or may be asserted may include progressive, cumulative, unknown, and/or unforeseen elements, and that there may be hidden, unknown, and unknowable damages, defense expenses, or other costs related to such Claims. Nevertheless, the Parties irrevocably and knowingly agree that the releases contained in Section 4.1 of this Agreement include a full and complete and irrevocable release and discharge from all known and unknown rights or Claims or interest arising out of, in connection with, and/or relating to, in any manner or fashion, the Policies.

4.4. General Release. In furtherance of their express intent to fully, finally, and irrevocably release and discharge each other for all Claims, known and unknown, as set forth in this Section 4 of the Agreement, and in the Plan and the Approval Orders, each of the Parties expressly waives any and all rights it may have under any contract, statute, code, regulation, ordinance, or the common law, which may limit or restrict the effect of a general release as to Claims released herein, arising out of, in connection with, and/or relating to the Policies.

4.5. Reinsurance. The releases set forth in this Section 4 of the Agreement shall not apply to or have any effect on the XL Companies' right to any claim for reinsurance in connection with the Policies; nor shall any matter related to the XL Companies' assertion of any claim to reinsurance affect the XL Companies' obligations under this Agreement.



4.6. Beneficiaries Of Release. Subject to the other provisions of this Agreement, to the extent that the releases set forth in this Section 4 of the Agreement run to the favor of any Persons who are not signatories hereto, this Agreement is hereby declared to be made in and for their respective benefits and uses.

4.7. No Assignment Of Claims. The Trustee on behalf of himself, MMA and the MMA estate, and MMAC, on behalf of itself and, to the extent applicable, the MMAC estate, warrant and represent that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any Claims that they are releasing in this Agreement. Moreover, Trustee on behalf of himself, MMA and the MMA estate, and MMAC, on behalf of itself and the MMAC estate, represent, warrant, and agree that they will not in any way assist any Person in the establishment of any Claim against the XL Companies that arises out of, results from, or in any way relates to, the XL Companies' investigation, handling, defense, or settlement by the XL Companies of Claims released under this Agreement.

V. REPRESENTATIONS AND WARRANTIES OF THE PARTIES.

Each of the Parties separately represents and warrants as follows:

(a) Subject to the entry of the Approval Orders, it has the requisite power and authority to enter into this Agreement and to perform the obligations imposed on it or him by this Agreement;

(b) Subject to the Approval Date, the execution and delivery of, and the performance of the obligations contemplated by this Agreement have been approved by duly authorized representatives of the Party, and by all other necessary actions of the Party;

(c) Each Party has expressly authorized its or his undersigned representative to execute this Agreement on the Party's behalf as its or his duly authorized agent;

(d) This Agreement has been thoroughly negotiated and analyzed by its or his counsel and has been executed and delivered in good faith, pursuant to arm's length negotiations, and for value and valuable consideration; and

(e) Each Party will use its or his best efforts to seek entry of the Approval Orders.

VI. MISCELLANEOUS PROVISIONS

6.1. Conditions Precedent. This agreement is conditioned on the Approval Orders becoming Final Orders, the form and substance of which shall be acceptable to the XL Companies to the extent of any provision affecting the XL Companies and/or the rights thereof, after all parties, known by the Trustee or MMAC to be insured or to claim to be insured under the XL Policies, receive notice of the Plans and Approval Orders and have an opportunity to be heard thereon.

6.2. Termination Rights. If the Bankruptcy Court or the CCAA Court declines to enter either of the Approval Orders, or if the Approval Orders are vacated or modified in a way that is not acceptable to the XL Companies, or are reversed on appeal such that they do not become Final Orders, the XL Companies, may terminate this Agreement by delivering written notice of such termination to the Trustee and MMAC. In the event that this Agreement is terminated, (i) the Agreement shall be deemed null and void; (ii) the XL Companies shall not be obligated to pay the Settlement Amount pursuant to this Agreement; (iii) the XL Companies, MMAC and the Trustee shall have all of the rights, defenses and obligations under or with respect to any and all Policies that they would have had absent this Agreement; and (iv) any and all otherwise applicable statutes of limitations or repose, or other time-related limitations, shall be deemed to have been tolled for the period from the Execution Date through the date that the Agreement becomes null and void pursuant to the terms of this Agreement.

6.3. Amendments. Neither this Agreement nor any term set forth herein may be changed, waived, discharged, or terminated except by a writing signed by the Parties (or their successors or assigns).

6.4. No Precedential Value. The settlement reflected in this Agreement shall be without precedential value, and it is not intended to be, nor shall it be construed as, an interpretation of any insurance policies. It shall not be used as evidence, or in any other manner, in any court or other dispute resolution proceeding, to create, prove, or interpret the obligations of the XL Companies under any insurance policies issued to MMA, MMAC, or to any other Person, provided, however, that subject to the provisions of Section 6.15 of this Agreement, this Agreement may be used as evidence in any defense of the XL Companies of any obligation arising under the Policies.

6.5. Agreement Voluntarily Entered Into By Each Of The Parties. This Agreement is executed voluntarily by each of the Parties without any duress or undue influence on the part, or on behalf, of any of them. The Parties represent and warrant to each other that they have read and fully understand each of the provisions of this Agreement and have relied on the advice and representations of competent legal counsel of their own choosing.

6.6. Interpretation. This Agreement has been negotiated at arm's length and between and among Persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, this Agreement was drafted by experienced and knowledgeable legal counsel for each of the Parties. Accordingly, neither Party shall be presumptively entitled to have any provisions of the Agreement construed against the other Party in accordance with any rule of law, legal decision or doctrine.

6.7. No Admission of Liability. The Parties agree that this Agreement is the result of a compromise of disputed issues of coverage, and that the execution and delivery of this Agreement by any of the Parties shall not constitute or be construed as an admission of any liability, a course of performance, or wrongdoing on the part of any of them. The Parties acknowledge that this Agreement is not, and cannot be construed as, any admission by the XL Companies that any defense, indemnity, or other coverage obligation exists under the Policies, or that XL Companies have any other obligation of any nature whatsoever with respect to the Policies. By entering into this Agreement, the Trustee, MMAC, and the XL Companies have not waived nor will be deemed to have waived any right, obligation, privilege, defense or position it may have asserted or might assert in connection with any claim, matter, Person, or insurance policy outside the scope of this Agreement. No Person other than the Parties hereto shall have any legally enforceable rights or benefits under this Agreement except as specifically set forth in Section 4.6 of this Agreement.

6.8. Attorneys' Fees, Costs, And Expenses. Each of the Parties shall bear its own costs, attorneys' fees, and expenses in connection with the negotiations for and preparation of this Agreement. Additionally, the attorneys' fees, expenses, and costs incurred by the XL Companies for the investigation and defense of any claims prior to the Approval Date shall be the sole responsibility of the XL Companies. Notwithstanding the foregoing, the XL Companies acknowledge that the Trustee and MMAC intend to seek authorization to use the entire amount of the XL Additional Payment for the payment of (i) allowed administrative expenses in the Bankruptcy Case and (ii) the fees and disbursements of the Monitor, the Monitor's counsel and MMAC's counsel in the CCAA Proceeding.

6.9. Entire And Integrated Agreement. This Agreement is intended by the Parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the Parties with respect to the subject matters contained herein. This Agreement supersedes any and all prior promises, representations, warranties, agreements, understandings, and undertakings between or among the Parties with respect to such subject matters, and there are no promises, representations, warranties, agreements, understandings, or undertakings with respect to such subject matters other than those set forth or referred to herein.

6.10. No Third Party Beneficiaries. Except as set forth in Section 4.6 of this Agreement, nothing in this Agreement is intended or shall be construed to give any Person, other than the XL Companies, MMAC, and the Trustee (on behalf of himself as trustee, MMA, and the MMA estate) and their respective successors and permitted assigns, any legal or equitable right, remedy, or claim under or in respect to this Agreement or any provisions contained herein; this Agreement and any conditions and provisions hereof being and intended to be for the sole and exclusive benefit of the XL Companies, MMAC and the Trustee (on behalf of himself as a trustee, MMA, and the MMA estate) as well as each of their successors and permitted assigns, and for the benefit of no other Person. Notwithstanding the foregoing, neither this Agreement nor the rights and obligations set forth herein shall be assigned without the prior written consent of the other Party, except that this Section shall not prohibit any assignment by the XL Companies (a) made by merger, consolidation, or operation of law or (b) to a Person who succeeds to all or substantially all of such Party's assets.

6.11. Severability. If any provisions of this Agreement, or the application thereof, shall for any reason or to any extent be construed by a court of competent jurisdiction to be invalid or

unenforceable, the remainder of this Agreement, and application of such provisions to other circumstances, shall remain in effect and be interpreted so as best to reasonably effect the intent of the Parties. Notwithstanding the foregoing, all of the conditions precedent in this Agreement will remain in full force and effect following any determination that any other provisions of this Agreement are invalid or unenforceable.

6.12. Notice. Any notice or request required or desired to be given pursuant to this Agreement shall be sufficient if made in writing and sent by first class mail, postage prepaid, or email to the Parties at the addresses set forth below or to such other Persons as any of them may designate in writing from time to time:

(a) As to the XL Companies:

Anthony Vidovich  
General Counsel – Global Claims  
XL Group – Insurance  
100 Constitution Plaza  
Hartford, CT 06103  
anthony.vidovich@xlgroup.com

(b) As to the Trustee:

Robert J. Keach, Esq.  
Bernstein Shur Sawyer & Nelson  
100 Middle Street  
P.O. Box 9729  
Portland, ME 04104-5029  
rkeach@bernsteinshur.com

(c) As to MMAC:

Patrice Benoit  
patrice.benoit@gowlings.com  
-and-  
Pierre Legault  
pierre.legault@gowlings.com  
Gowlings Lafleur Henderson LLP  
1 Place Ville Marie, suite 3700  
Montreal, Quebec H3B 3P4

With a simultaneous copy to the Monitor:

Andrew Adessky  
AAdessky@richter.ca  
-and-  
Gilles Robillard  
grobillard@richter.ca  
Richter Advisory Group Inc.  
1981 McGill College, 11e étage  
Montréal (QC) H3A 0G6

6.13. Headings. The section titles, captions, and headings contained in this Agreement are inserted as a matter of convenience and for reference, and shall in no way be construed to define, limit, or extend the scope of this Agreement or the effect of any of its provisions.

6.14. Recitals. The recitals set forth at the beginning of this Agreement shall not be admissible to prove the truth of the matters asserted in any action or proceeding involving any of the Parties (other than an action or proceeding brought to enforce the terms of this Agreement), nor do any of the Parties intend such recitals to constitute admissions of fact by any of them.

6.15. Agreement Inadmissible. Any evidence of the terms or negotiations or discussions associated with this Agreement shall be inadmissible in any action or proceeding for purposes establishing any rights, duties or obligations of the Parties, except in (a) an action or proceeding to enforce the terms or effect of this Agreement or the Injunction, (b) proceedings before the Bankruptcy Court or CCAA Court to secure the Approval Orders, or (c) any possible action or proceeding between the XL Companies and any of their reinsurers bearing responsibility for any of the XL Companies' obligations under this Agreement. Except as set forth herein, this Agreement shall not be used as evidence or in any other manner, in any court or dispute resolution proceeding, to create, prove, or interpret the Parties' rights or obligations to each other or to any other Person.

6.16. Additional Necessary Documents. The Parties, and each of them, agree to execute such additional documents as may be reasonably required in order to carry out the purpose and intent of this Agreement, or to evidence anything contained herein.

6.17. Execution in Counterparts. This Agreement may be signed in multiple counterparts and the separate signature pages executed by the Parties may be combined to create a document binding on all of the Parties and together shall constitute one and the same instrument.

6.18. Cross-Border Insolvency Protocol. Each of the Parties hereby acknowledges and agrees that the Cross-Border Insolvency Protocol attached as Schedule C to this Agreement shall apply for purposes of any action, suit or proceeding arising out of or relating to this Agreement or any of the transactions contemplated hereby.

6.19. This Agreement may be executed in two or more counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

6.20. This Agreement constitutes the Parties' entire agreement and supersedes and replaces all prior written and oral agreements regarding the subject matter of this Agreement. Each Party acknowledges that no other Party or agent or attorney of any other Party has made any promise, representation or warranty, express or implied, which is not expressly contained in this Agreement.

6.21. Rules of Construction. As used in this Agreement, the singular and masculine gender shall mean also the plural and feminine or neuter, as may be appropriate, "it" shall include "he" and "she"; and "each" and "all" includes "each" and "every." Unless the context of this Agreement otherwise requires, (i) words using the singular or plural number also include the plural or singular number, respectively; (ii) the terms "hereof," "herein," "hereby" and




EXECUTION COPY

derivative or similar words refer to this entire Agreement; (iii) the words "include," "includes" or "including" shall be deemed to be followed by the words "without limitation," and (iv) the word "or" shall be disjunctive but not exclusive. References to this Agreement and other documents shall be deemed to include all subsequent amendments and other modification thereto.

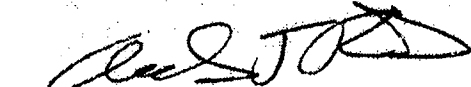
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth, along with the respective signatures, below.

**XL Insurance:**

  
Cindy Guyatt  
Canadian Chief Agent  
XL Insurance Company SE

Dated: March 4, 2015

**Indian Harbor Insurance Company:**

  
Andrew J. Pinkas  
Director and Executive Vice President

Dated: March 4, 2015

**Chapter 11 Trustee:**

\_\_\_\_\_  
Robert J. Keach  
Chapter 11 Trustee  
*In re Montreal, Main & Atlantic Railway, Ltd.*  
Bankr. D. Me. 13-10670

Dated: March \_\_, 2015

**Montreal, Maine and Atlantic Canada Co.:**

\_\_\_\_\_  
Robert J. Keach  
Sole Shareholder, in capacity as Chapter 11  
Trustee, *In re Montreal, Main & Atlantic  
Railway, Ltd.*, Bankr. D. Me. 13-10670

Dated: March \_\_, 2015

EXECUTION COPY

derivative or similar words refer to this entire Agreement; (iii) the words "include," "includes" or "including" shall be deemed to be followed by the words "without limitation," and (iv) the word "or" shall be disjunctive but not exclusive. References to this Agreement and other documents shall be deemed to include all subsequent amendments and other modification thereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth, along with the respective signatures, below.

**XL Insurance:**

\_\_\_\_\_  
Cindy Guyatt  
Canadian Chief Agent  
XL Insurance Company SE


Dated: March \_\_, 2015

**Indian Harbor Insurance Company:**

\_\_\_\_\_  
Andrew J. Pinkes  
Director and Executive Vice President

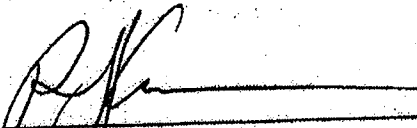
Dated: March \_\_, 2015

**Chapter 11 Trustee:**

  
\_\_\_\_\_  
Robert J. Keach  
Chapter 11 Trustee  
*In re Montreal, Main & Atlantic Railway, Ltd.,*  
Bankr. D. Me. 13-10670

Dated: March 23, 2015

**Montreal, Maine and Atlantic Canada Co.:**

  
\_\_\_\_\_  
Robert J. Keach  
Sole Shareholder, in capacity as Chapter 11  
Trustee, *In re Montreal, Main & Atlantic*  
*Railway, Ltd., Bankr. D. Me. 13-10670*

Dated: March \_\_, 2015

**R-4**

# McDermott Will & Emery

Boston Brussels Chicago Dallas Düsseldorf Frankfurt Houston London Los Angeles Miami  
Milan Munich New York Orange County Paris Rome Seoul Silicon Valley Washington, D.C.  
Strategic alliance with MWV China Law Offices (Shanghai)

J. Christian Nemeth  
Attorney at Law  
jnemeth@mwe.com  
+1 312 864 9292

April 16, 2015

**VIA FAX 612-977-8650**

Timothy R. Thornton, Esq.  
Paul Joseph Hemming, Esq.  
John R. McDonald, Esq.  
Briggs and Morgan, P.A.  
2200 IDS Center  
80 South 8th Street  
Minneapolis, MN 55402

Re: Notice of Potential Claim

Dear Counsel:

On behalf of Irving Oil Limited and its affiliates (collectively, "Irving Oil"), I am sending this letter to inform you about a potential claim that Irving Oil has against Canadian Pacific Railway Company and/or its affiliates (collectively, "CP") for certain losses, damages, and/or liabilities, as set forth below.

As you know, Irving Oil and CP were named as defendants in an adversary proceeding filed on behalf of the Trustee (the "Trustee") for Montreal, Maine & Atlantic Railway, Ltd. ("MMAR") in the U.S. Bankruptcy Court for the District of Maine, Adv. Pro. No. 14-1001 (the "Lawsuit"). In the Lawsuit, the Trustee asserts claims against Irving Oil, CP, and others arising from the train derailment that occurred in Lac-Mégantic, Quebec (Canada) on July 6, 2013 (the "Derailment"). The Trustee alleges, inter alia, that CP acted negligently during the transport of the crude oil at issue, and that its negligence caused MMAR to suffer damages due to the Derailment. In addition, nineteen personal injury actions have been filed in the United States based on the Derailment. Although Irving Oil has not been named as a defendant in any of those United States cases to date, Irving Oil understands that there could be an attempt to include Irving Oil in those United States cases.

Irving Oil recently negotiated and executed a settlement agreement (the "Settlement") with the Trustee requiring Irving Oil (i) to pay \$75 million (CDN) to a fund designated for the compensation of victims of the Derailment, and (ii) to assign to the Trustee all rights to claims Irving Oil may have against certain third parties, including CP, in connection with the Derailment. The Settlement is subject to court approval, which has not yet been obtained.

April 16, 2015

Page 2

While Irving Oil has not yet paid the settlement amount or effectuated any assignment of claims, I, on behalf of Irving Oil, am sending this letter at the direction of the Trustee to advise your client about a potential claim to recover the settlement amount that Irving Oil has or will have against CP under applicable Canadian and/or United States law (including under the Carmack Amendment, should a court determine that body of law applies). Irving Oil reserves its rights to seek recovery of all losses, damages, liabilities, and/or any other costs relating to the Settlement, the Lawsuit, and/or any other lawsuits (present or future) relating to the Derailment, including those incurred should the Settlement not receive court approval.

Very Truly Yours,



J. Christian Nemeth

cc. Robert Keach

N° : 450-11-000167-134

PROVINCE DE QUÉBEC  
COUR SUPÉRIEURE  
DISTRICT DE ST-FRANÇOIS

**DANS L'AFFAIRE DE LA PROPOSITION OU  
PLAN D'ARRANGEMENT DE:**

**MONTREAL, MAINE & ATLANTIQUE  
CANADA CIE.**

Débitrice

et

**RICHTER GROUPE CONSEIL INC.**

Syndic

et

**COMPAGNIE DE CHEMIN DE FER  
CANADIEN PACIFIQUE,**

Requérante

10303/111372.00027

BF1339

**REQUÊTE DE LA COMPAGNIE DE CHEMIN DE FER  
CANADIEN PACIFIQUE EN EXCEPTION  
DÉCLINATOIRE ET EN RÉVISION DE  
L'ORDONNANCE INITIALE RENDUE EN VERTU DE  
LA LOI SUR LES ARRANGEMENTS AVEC LES  
CRÉANCIERS DES COMPAGNIES.**

(Article 164 C.p.c.; articles 2 et 3 LACC; article 106 et  
suivants Loi sur les transports au Canada)

Original

Fasken Martineau DuMoulin LLP  
Tour de la Bourse  
Suite 3700, C.P. 242  
800 Place Victoria  
Montréal, Québec  
H4Z 1E9

Enrico Forlini

Tel. +1 514 397 4328  
Fax. +1 514 397 7600