

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

**DECLARATION OF ANDREW ADESSKY, MONITOR IN THE CCAA CASE, IN
SUPPORT OF CONFIRMATION OF TRUSTEE'S REVISED FIRST AMENDED
PLAN OF LIQUIDATION DATED JULY 15, 2015**

I, Andrew Adessky, pursuant to 28 U.S.C. § 1746, state as follows:

INTRODUCTION

1. This Declaration is submitted in connection with and in support of confirmation of the *Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [Docket No. 1534] (the "Plan").¹

2. I am a vice-president of Richter Advisory Group Inc. ("Richter"), the Monitor appointed in the CCAA Case of MMA Canada. I am authorized to make this declaration on behalf of Richter.

3. Attached hereto as Exhibits A through C are true and correct copies of each of the following documents:

- (a) Exhibit A: *Twentieth Report of the Monitor for the Purpose of the Sanction of the Petitioner's Amended Plan of Arrangement*, dated June 11, 2015 (No. 450-11-000167-134) (the "Monitor's Twentieth Report");
- (b) Exhibit B: the unofficial English translation of the order of the CCAA court sanctioning the CCAA Plan: *Judgment on Motion to Approve the Plan of Arrangement*, dated July 13, 2015 (No. 450-11-000167-134); and

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan and/or the Revised First Amended Disclosure Statement for the Trustee's Plan of Liquidations Dated July 15, 2015 [D.E. 1497] (the "Disclosure Statement").

- (c) Exhibit C: Order Rendered on the Motion for the Convening, Holding and Conduct of a Meeting of Creditors, dated May 5, 2015 (the “CCAA Creditors Meeting Order”).

Information Sessions

4. As set forth in the Monitor’s Twentieth Report, on May 27, 2015 and June 3, 2015, the Monitor held information sessions (together, the “Information Sessions”) to provide a detailed overview of the Plan to the residents of Lac-Mégantic and permit them to ask questions they had regarding all aspects of the Plan. See Monitor’s Twentieth Report, ¶ 22. The presentation made by the Monitor to attendees of the Information Sessions is attached as an exhibit to the Monitor’s 20th Report. In particular, the releases and injunctions contained in the CCAA Plan (the “Releases”) and the effects thereof were discussed at the Information Session.

5. It is estimated that more than 750 residents attended the Information Sessions. See Monitor’s Twentieth Report, ¶ 22.

6. In addition, the media attended the Information Sessions and reported on them such that the subject matter discussed at the Information Sessions, including the CCAA Plan contents, were widely broadcast. See Monitor’s Twentieth Report, ¶ 23.

The Meeting of Creditors

7. After the Information Sessions, in accordance with the CCAA Creditors Meeting Order, the Monitor distributed the notice of the meeting of creditors for voting on the CCAA Plan (the “Meeting of Creditors”). See Monitor’s Twentieth Report, ¶ 25. In accordance with the CCAA Creditors Meeting Order, the Monitor (a) published the notice of the Meeting of Creditors on May 15 and May 22, 2015 in The Sherbrooke Record and l’Echo de Frontenac, May 16 and May 23, 2015 in La Presse, La Tribune and The Gazette. , (b) posted the notice of the Meeting of Creditors on the Monitor’s website, and (c) mailed an information package including the notice of the Meeting of Creditors, the CCAA Plan, a voting proxy letter, the

Monitor's report on the CCAA Plan, the Trustee's Plan in the Chapter 11 Case and the CCAA Creditors Meeting Order, to over 6,000 parties in interest. *See* Monitor's Twentieth Report, ¶ 62.

8. Voting on a plan of arrangement in the Canadian insolvency regime is conducted in person or by proxy.

9. At the Meeting of Creditors, the CCAA Plan was unanimously accepted by the creditors who voted in the CCAA Case, with 3,879 positive votes representing approximately \$694 million of claims. *See* Monitor's Twentieth Report, ¶ 26.

The Sanction Order

10. The only party that objected to the CCAA Court sanctioning the CCAA Plan was Canadian Pacific ("CP" and such objection, the "CP Objection"). In particular, no Derailment victim nor any other creditor or party other than CP objected to the Releases. The CCAA Court overruled the CP Objection.

11. On July 13, 2015, the CCAA Court entered the Sanction Order. Among other things, the Sanction Order sanctioned the CCAA Plan and authorized the releases and injunctions described therein. With respect to the CP Objection, Justice Dumas, presiding over the CCAA Court, found that CP's "sole objective" was to "defeat the proposed [CCAA] Plan [] or to obtain a strategic negotiating advantage that would provide it with even more rights than it would have if the parties had simply decided to settle the class action out of court." *See* Translated Sanction Order, ¶ 16.

12. The Monitor supports confirmation of the Trustee's Chapter 11 Plan and believes the same is in the best interests of the creditors of the CCAA Case.

[signature page follows]

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: September 17, 2015

Richter Advisory Group Inc.

Per: _____

Andrew Adessky

[signature page for Adessky declaration]

EXHIBIT

A

CANADA
PROVINCE OF QUEBEC
DISTRICT OF SAINT-FRANÇOIS
No.: 450-11-000167-134

SUPERIOR COURT
(Commercial Division)
The Companies' Creditors Arrangement Act

**IN THE MATTER OF THE PLAN OF
ARRANGEMENT WITH RESPECT TO:**

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

Petitioner

-and-

**RICHTER ADVISORY GROUP INC. (RICHTER
GROUPE CONSEIL INC.)** a duly incorporated legal
person having its principal place of business at
1981 McGill College, 12th Floor, in the city and
district of Montreal, Quebec, H3A 0G6

Monitor

**TWENTIETH REPORT OF THE MONITOR
FOR THE PURPOSE OF THE SANCTION OF THE PETITIONER'S AMENDED PLAN OF ARRANGEMENT
June 11, 2015**

INTRODUCTION

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. (hereafter in this Report "MMAC" or "Petitioner") filed with the Quebec Superior Court a Motion for the Issuance of an Initial Order ("Motion") pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "CCAA"). On August 8, 2013, the Honourable Martin Castonguay, J.S.C., issued an initial order (the "Initial Order"), which inter alia appointed Richter Advisory Group Inc. ("Richter") as Monitor (the "Monitor"). An initial stay of proceedings was ordered until September 6, 2013 ("Stay Period").
2. The Stay Period was extended by the Court twelve times with the most recent extension to December 15, 2015 having been granted by the Court on April 15, 2015.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.
4. On June 11, 2015 the Petitioner filed a Motion for the Approval the Amended Plan of Compromise and Arrangement.
5. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in the Amended Plan. All amounts reflected in this report are stated in Canadian currency unless otherwise noted.
6. The purpose of this Twentieth Report of the Monitor is to inform the Court on the following subjects:
 - Background and Overview of Restructuring Proceedings;
 - Amended CCAA Plan of Compromise and Arrangement;
 - Information Sessions;
 - Meeting of Creditors and the Vote;
 - Canadian Pacific Railway Company Motions
 - Chapter 15
 - Chapter 11 Trustee's Plan of Liquidation;
 - Monitor's Recommendation to the Court on the Amended Plan.

BACKGROUND AND OVERVIEW OF RESTRUCTURING PROCEEDINGS

7. MMAC operated a shortline railroad of approximately 250 route miles servicing customers in the Province of Quebec. MMAC's parent company, Montreal, Maine & Atlantic Railway Limited ("MMAR") (together the "Companies") operated a shortline railroad of approximately 250 route miles servicing customers in Maine and Vermont.
8. Following the tragic train derailment on July 6, 2013 in the City of Lac-Mégantic, Quebec ("Derailment"), MMAC, on August 6, 2013, filed for protection under the CCAA. MMAR similarly filed for protection under Chapter 11 of the U.S. Bankruptcy Code on August 7, 2013. On August 21, 2013, Robert J. Keach was appointed Chapter 11 Trustee of MMAR ("Trustee").
9. Following the commencement of the restructuring proceedings, the immediate focus was to preserve the operations of the railroad in order to service the many customers and municipalities located along its route and who were dependent on the railway for the operations of their business as well as preserve the employment of the Companies' work force.

10. In September 2013, the Petitioner and the Chapter 11 Trustee engaged an investment banker to conduct a sale process of the assets of the Companies to be sold as a going concern. A purchaser was identified and following an auction, the sale of the operating assets to the purchaser was approved by the Court and the U.S. Bankruptcy Court in January 2014. The sale of assets was concluded in May/June 2014, and the operations of MMAC were terminated effective June 30, 2014.
11. Following the Derailment, a class action was commenced in Canada against a large number of defendants and multiple law suits were filed in the United States on behalf of the estates and various family members of deceased victims.
12. In order to compensate creditors for damages suffered as a result of the Derailment, it was clear to all concerned from the outset that this could only be accomplished through contributions from potentially liable third parties ("Third Parties") in exchange for full and final releases in respect of all litigation relating to the Derailment.

AMENDED CCAA PLAN OF COMPROMISE AND ARRANGEMENT

13. On March 31, 2015, the Petitioner filed the Plan of Compromise and Arrangement ("Plan"). Similarly, on March 31, 2015, the Trustee filed the Trustee's Plan of Liquidation ("U.S. Plan") (collectively the "Plans").
14. On June 8, 2015, the Petitioner filed an Amended Plan of Compromise and Arrangement ("Amended Plan"). By June 23, 2015, the Trustee will file the Trustee's Amended Plan of Liquidation ("U.S. Amended Plan") (collectively the "Amended Plans").
15. The Plan and Amended Plan are the result of many months of multilateral discussions between the Petitioner's counsel, the Monitor and its counsel, the Trustee, Petitioner's principal stakeholders, namely the Province of Quebec ("Province"), the Class Representatives, the attorneys for derailment victims in the Chapter 11 case ("US Legal Representatives") and the attorney for the Official Victims Committee in the Chapter 11 ("Official Committee") (collectively the "Major Stakeholders") and Third Parties, the purpose of which was to negotiate contributions by Third Parties to the Settlement Funds to be distributed to derailment victims.
16. Pursuant to the Amended Plan, settlements have been reached with all but one of the Third Parties ("Contributing Third Parties"). Under the terms of these settlements, the Contributing Third Parties will deliver, in the aggregate, contributions of CA\$182.3 million and US\$198.9 million which represent a total contribution of approximately CA\$432 million as of the date of the filing of the Amended Plan on June 8, 2015 (USD have been converted at a rate of approximately 1.25 as at June 8, 2015). In exchange for these contributions to the Settlement Funds, Contributing Third

Parties will receive a full, complete and final release in both Canada and the United States from all litigation relating to the Derailment.

17. Contributing Third Parties include the World Fuel parties, Irving Oil, the Federal Government and companies that can be described as oil producers, tank car lessors, insurance companies, as well as all of the directors and officers of the Petitioner including Edward Burkhardt and various companies related to Edward Burkhardt. A complete list of Contributing Third Parties is provided in Schedule A to the Amended Plan.
18. Consequently, the only third party with whom no settlement has been reached is the Canadian Pacific Railway Company ("Canadian Pacific");
19. In the event that Canadian Pacific does not reach an agreement to contribute to the Settlement Funds, all of the litigation already commenced in Canada against Canadian Pacific may be continued and all parties will be free to institute fresh litigation in any jurisdiction.
20. The Amended Plan provides that the Settlement Funds, to the exclusion of the XL Indemnity Payment, shall be subject to an Administration Charge in the amount of \$20 million (plus taxes in respect of the Canadian Professionals) to secure the payment of the fees and disbursements owed or which may become owed to the Canadian Professionals in connection with the CCAA Proceedings and the payment of the fees and disbursements owed or which may become owed to the U.S. Professionals (as defined in the Amended Plan) in connection with the Chapter 11.
21. We refer to the Monitor's Nineteenth Report for a summary of the important terms of the Plan. We summarize below certain amendments to the Plan and creditors should refer to the Amended Plan and its terms for all legal purposes. In the case of any discrepancy between the Amended Plan and this summary, the terms of the Amended Plan shall prevail. For the purpose of this report, we have employed the same terminology as defined and used in the Amended Plan.

Amendments

- Inclusion of the World Fuel Group and the SMBC Group as settling parties in Schedule A to the Amended Plan;
- Clarification of Unaffected Claims as relates to the release of directors of MMAC as provided for in the settlement agreement with the directors of MMAC such that Section 3.3(k) of the Amended Plan reads as follows:

"claims that fall under Section 5.1(2) of the CCAA, except that, in exchange for the consideration provided by or on behalf of the D&O Parties such that D&O Parties shall benefit from the Injunction and Release with respect to any and all Claims related to the Derailment, to the exclusion of the Claims set forth in paragraph 3.3(b)."

- Reallocation of amounts for distribution within the category of Government Claims giving effect to the amended claim filed by the City of Lac-Mégantic and the amended claim filed by the CSST;
- In the event that the aggregate value of the Property and Economic Damages Claims is reduced below \$75 million, the distribution related to the difference between \$75 million and the revised aggregate value of these claims ("Economic Savings") will be allocated as follows:
 - firstly, a global amount of up to \$884,000 to allow for a payment of up to \$17,000 to each of the grandparents and grandchildren of the deceased, in which case the grandparents and grandchildren will be removed from Schedule F (Bodily Injury and Moral Damages Claims) and included in paragraph 7 of Schedule E (Wrongful Death Claims);
 - secondly, a global amount of Economic Savings sufficient to increase the overall carve-out for parents, siblings, grandparents and grandchildren from 5% to 12.5%;
 - thirdly, on a pro-rata basis, to the payment of the claims in the other categories described in Sections 4.2 (a), (b), (d) and (e).
- Other amendments relating to Sections 5.1, 5.3, 8.4 and 8.6.

Distributions

- As a result of the increase in the Settlement Funds, the amounts to be distributed to each category of claimants can be summarized as follows:

Montreal, Maine & Atlantic Canada Co. and Montreal, Maine & Atlantic Railway Ltd. Summary of Estimated Distribution ¹		
	Plan March 31/15	Amended Plan June 8/15
Wrongful Death Claims	\$ 77,203,000	\$ 111,221,000
Bodily Injury and Moral Damages Claims	34,070,000	48,846,000
Property and Economic Damages Claims	28,848,000	41,554,000
Subrogated Insurer Claims	11,259,000	16,808,000
Government Claims:		
Province	121,463,000	179,766,000
Attorney General	-	-
Lac-Mégantic	1,652,000	9,438,000
CSST	104,000	2,319,000
	123,219,000	191,523,000
Non-Derailment Claims	-	-
Total	\$ 274,599,000	\$ 409,952,000

¹ Estimated Distribution is net of the provision for the Administration Charge but is prior to any fees that may be payable to (i) Class Counsel for the Class Representatives (for certainty, we note that the amounts payable to Class Counsel are subject to Court approval, and we are advised that pursuant to the engagements executed by the Class Representatives, these amounts will not exceed 25% of the amounts received by Class Members, plus disbursements, plus taxes) or (ii) to the US Legal Representatives (in respect to creditors represented by the US Legal Representatives, they will be subject to fees as indicated in the confidential mandates signed by various creditors).

Releases, Implementation and Timeline

- Aside from the addition of the World Fuel Group and the SMBC Group to the list of Released Parties, there are no other changes to the releases, implementation and timeline due to the filing of the Amended Plan as summarized in our Nineteenth Report.

INFORMATION SESSIONS

22. Information sessions were conducted by the Monitor with the assistance of counsel to MMAC at the Centre sportif Mégantic on May 27, 2015 and June 3, 2015. The purpose of these information sessions was to provide a detailed overview of the Plan to the residents of Lac-Mégantic and permit them to ask questions they had regarding all aspects of the Plan. It is estimated that in excess of 750 residents attended the information sessions.
23. Further, the information sessions were attended by the media who then reported on the content further increasing the dissemination of the information provided at the information sessions.
24. A copy of the Monitor's presentation is annexed hereto as Exhibit 1.

MEETING OF CREDITORS AND THE VOTE

25. All of the notices ordered by the Meeting Order were issued or mailed as the case may be and the meeting of creditors was held on June 9, 2015 at the Centre sportif Mégantic. Attached as Exhibit 2 are the minutes to the meeting of creditors.
26. The vote in favor of the Amended Plan was unanimous with 3,879 positive votes representing approximately \$694 million of claims.

CANADIAN PACIFIC RAILWAY COMPANY MOTIONS

27. On May 7, 2015, Canadian Pacific filed the following motions:
 - Requête de *Bene Esse* de la Compagnie de chemin de fer Canadien Pacifique pour Ordonner la Communication de Documents (« Disclosure Motion »);
 - 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* (« Jurisdiction Motion »).
28. In respect of the Disclosure Motion we note the following:
 - Considering that Canadian Pacific can obtain the various settlement agreements, redacted with respect to the financial terms and considerations thereof;

- Considering that the essence of the settlement agreements have been disclosed to counsel to the Province, counsel to the Class Representatives as well as the U.S. Legal Representatives who collectively represent approximately 98% of the claims and 90 % of the value thereof;
- Considering that the settlement agreements are available for review by this Court.

The Monitor believes that sufficient disclosure of the settlement agreements has occurred to ensure due process throughout these proceedings.

29. In respect of the Jurisdiction Motion, we note that Canadian Pacific has been involved in these proceedings since the issuance of the Initial Order and that it is apparent that Canadian Pacific should not be allowed at this juncture to contest the jurisdiction of this Court.
30. Furthermore, the Monitor agrees with MMAC that even if MMAC could have been considered a railway company within the meaning of that expression as used in the CCAA it is certainly no longer a railway company and could indeed file fresh proceedings under the CCAA and achieve what has been achieved to date. Of course, that would be an unwarranted waste of efforts and financial resources in the circumstances.

CHAPTER 15

31. As previously reported, the Monitor, in its capacity as the authorized foreign representative under the CCAA Proceeding, will file for the recognition of the Canadian Approval Order under Chapter 15 of the US Bankruptcy Code and seek the recognition in the United States of the releases being provided to Contributing Third Parties.
32. In this respect, the Monitor will retain US counsel and it is expected that these proceedings will be commenced within the next few weeks.

CHAPTER 11 TRUSTEE'S PLAN OF LIQUIDATION

33. The Trustee will be filing an Amended Plan of Liquidation on or before June 23, 2015 to take into account the most recent settlements as well as other amendments set out in the Amended Plan.

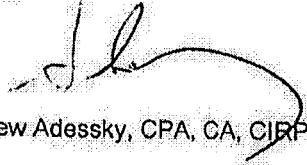
MONITOR'S RECOMMENDATION TO THE COURT ON THE AMENDED PLAN

34. The Monitor supports the Amended Plan and recommends its acceptance. As noted above, the Plan and the Amended Plan have been the subject of intense and very lengthy negotiations involving a wide variety of parties including the Major Stakeholders. The Plan provides for substantial Settlement Funds to be shared by all of the victims of the Derailment. MMAC has acted in good faith throughout these proceedings and all statutory conditions for the approval of the Amended Plan are met.

35. In exchange for contributions to the Settlement Funds, the Amended Plan provides that all Contributing Third Parties will receive full and final releases from all litigation relating to the Derailment in both Canada and the United States. If a settlement is not reached with Canadian Pacific, all of the rights and recourses of all the victims are preserved and may be continued or instituted.
36. The alternative to the approval of the Amended Plan will be the termination of the CCAA process and the continuation of litigation in both Canada and the United States, which litigation will be costly, complex and will most likely take many years before any resolution, which resolution is uncertain at this point in time.
37. In light of the foregoing and the discussions the Monitor has had with the Major Stakeholders as well as the unanimous vote of the creditors and the near unanimous support of the Contributing Third Parties, the Monitor believes the Amended Plan and the settlement agreements are fair and reasonable in the circumstances.

Respectfully submitted at Montreal, this 11th day of June, 2015.

Richter Advisory Group Inc.
Monitor



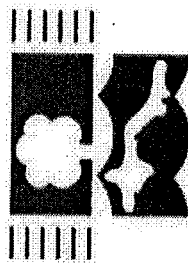
Andrew Adessky, CPA, CA, CFP

Exhibit 1

RICHTER

Présentation
Richter Groupe Conseil Inc.
Contrôleur nommé par la Cour de
Montréal, Maine & Atlantique
Canada Cie

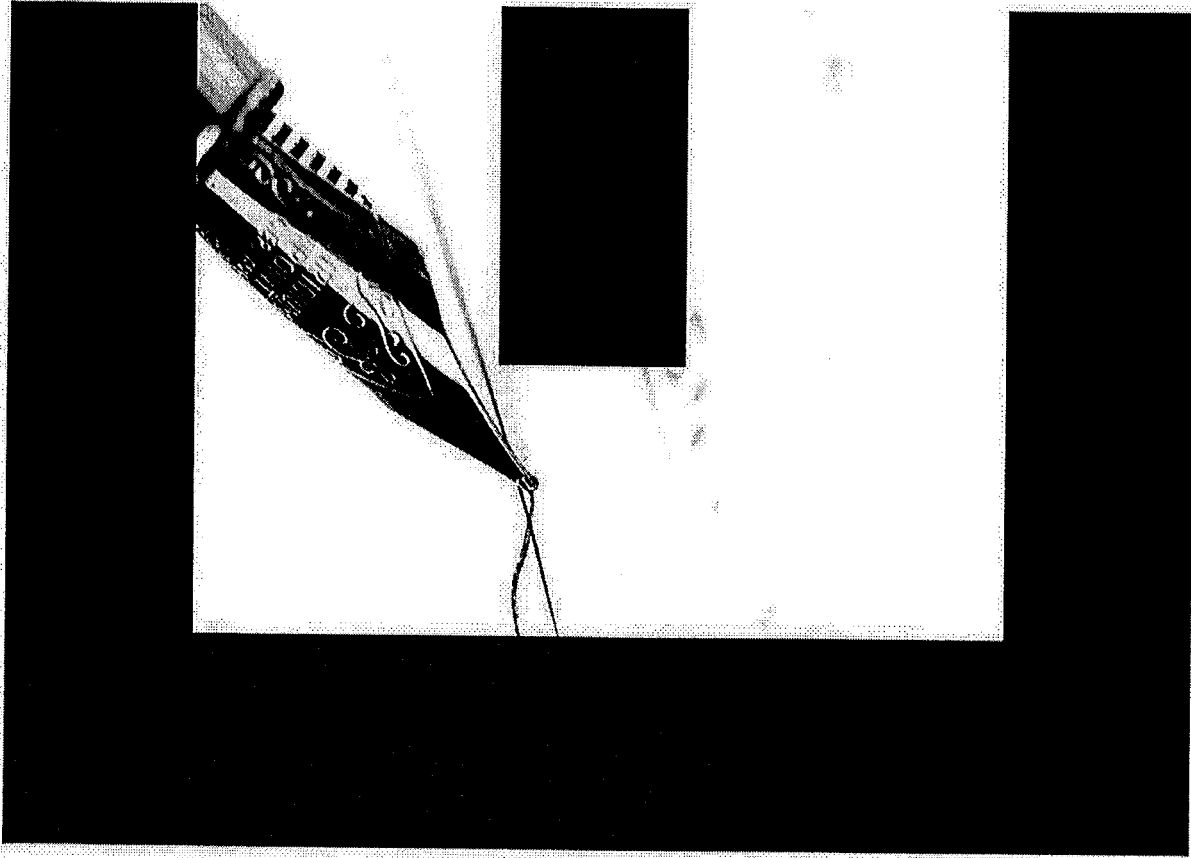
Présenté aux :
Résidents de la Ville de
Lac-Mégantic



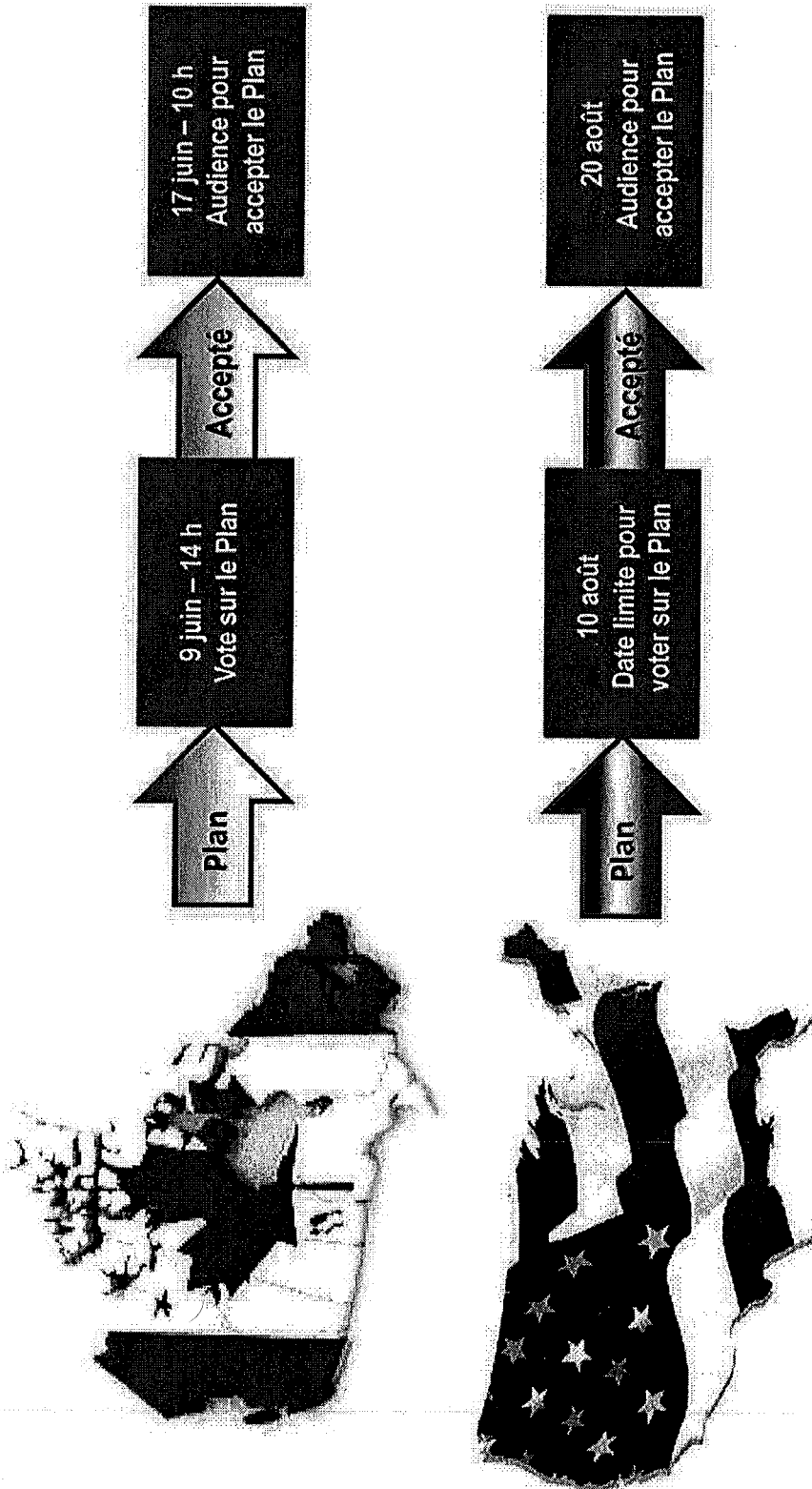
Lac-Mégantic

Session d'information **Ville de Lac-Mégantic**

Le 3 juin 2015, à 18 h 00, Centre sportif Mégantic



Procédures



Réclamations



Réclamations dans les cas de décès

Ne s'appliquent qu'aux familles (conjoint, enfants, parents ainsi qu'aux frères et aux sœurs) des 48 victimes

(sujet à l'amendement qui sera discuté à la page 11)

Réclamations en raison de lésions corporelles et de dommages moraux

S'appliquent aux catégories suivantes :

- Troubles et inconvénients
- Indemnités pour évacuations
- Réclamations pour personnes qui résidaient dans la zone rouge ou la zone jaune
- Réclamations par les grands-parents ou petits-enfants
- Stress post-traumatique à court ou à long terme
- Lésions corporelles

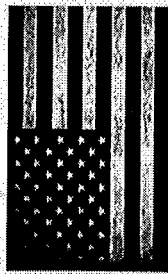
(sujet à l'amendement qui sera discuté à la page 11)

Réclamations pour dommages matériels et économiques

S'appliquent aux dommages suivants :

- Biens détruits
- Perte d'usage d'un bien
- Pertes de revenus
- Autres

Plan de transaction et d'arrangement en vertu de la LACC



Familles des victimes (net des honoraires légaux)

Honoraires des avocats Américains selon les ententes, et dans certains cas recours collectif et fiduciaires

Fiducie aux États-Unis au bénéfice des familles des personnes décédées

Environ 77 M\$

Contributions des Tiers défendants et de l'assureur XL

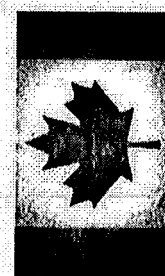
Contrôleur Fonds d'environ 275 M\$ (net de la charge d'administration de 20 M\$)

Représentants légaux du recours collectif

Honoraires des avocats du recours collectif et dans certains cas les avocats Américains, selon les ententes

Domages moraux et économiques (net des honoraires légaux)

Environ 63 M\$ (Moraux 34 M\$ Économiques 29 M\$)



Parties non représentées dans les diverses catégories

Environ 135 M\$

(Gouvernements, Municipalité et Assureurs subrogés)

Distribution relativement aux réclamations dans le cas de décès

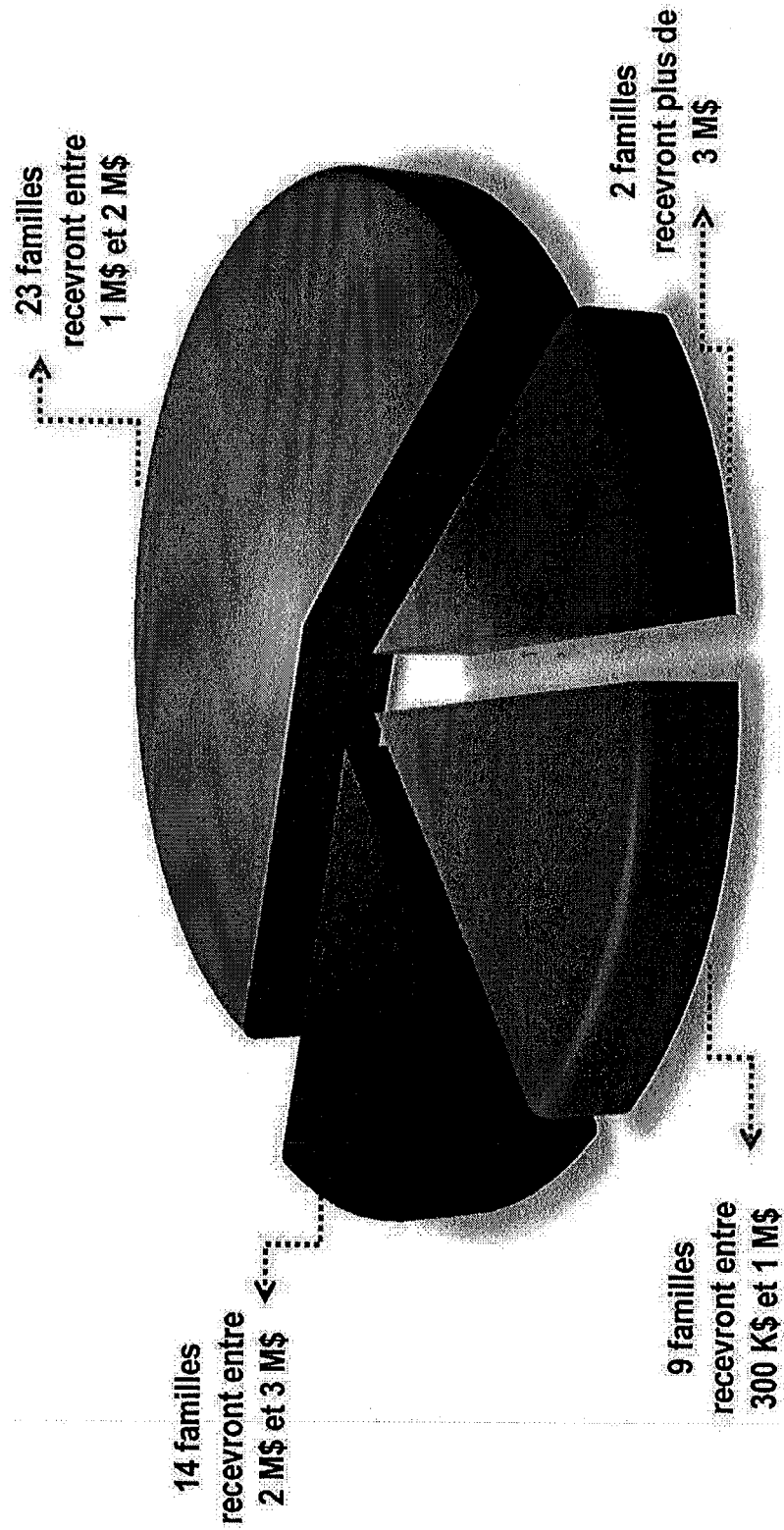


Matrice pour l'attribution de points													
Critère	Points attribués par critère												
1. Age de la personne décédée	<table border="1"> <thead> <tr> <th>Age de la personne décédée</th> <th>Points</th> </tr> </thead> <tbody> <tr> <td>Moins de 18 ans</td> <td>3</td> </tr> <tr> <td>De 18 à moins de 26 ans</td> <td>8</td> </tr> <tr> <td>De 26 à moins de 60 ans</td> <td>10</td> </tr> <tr> <td>De 60 à moins de 66 ans</td> <td>8</td> </tr> <tr> <td>66 ans et plus</td> <td>3</td> </tr> </tbody> </table>	Age de la personne décédée	Points	Moins de 18 ans	3	De 18 à moins de 26 ans	8	De 26 à moins de 60 ans	10	De 60 à moins de 66 ans	8	66 ans et plus	3
Age de la personne décédée	Points												
Moins de 18 ans	3												
De 18 à moins de 26 ans	8												
De 26 à moins de 60 ans	10												
De 60 à moins de 66 ans	8												
66 ans et plus	3												
2. Si la personne décédée laisse des enfants	<table border="1"> <thead> <tr> <th>Age des enfants survivants</th> <th>Points</th> </tr> </thead> <tbody> <tr> <td>Moins de 21 ans</td> <td>15</td> </tr> <tr> <td>De 21 à moins de 31 ans</td> <td>7</td> </tr> <tr> <td>De 31 à moins de 51 ans</td> <td>5</td> </tr> <tr> <td>51 ans et plus</td> <td>3</td> </tr> </tbody> </table>	Age des enfants survivants	Points	Moins de 21 ans	15	De 21 à moins de 31 ans	7	De 31 à moins de 51 ans	5	51 ans et plus	3		
Age des enfants survivants	Points												
Moins de 21 ans	15												
De 21 à moins de 31 ans	7												
De 31 à moins de 51 ans	5												
51 ans et plus	3												
3. Si la personne décédée laisse un conjoint	<table border="1"> <thead> <tr> <th>Revenu annuel de la personne décédée</th> <th>Points</th> </tr> </thead> <tbody> <tr> <td>Moins de 20 000 \$</td> <td>12,50</td> </tr> <tr> <td>De 20 000 \$ à moins de 50 000 \$</td> <td>15,00</td> </tr> <tr> <td>De 50 000 \$ à moins de 75 000 \$</td> <td>16,25</td> </tr> <tr> <td>De 75 000 \$ à moins de 100 000 \$</td> <td>17,50</td> </tr> <tr> <td>100 000 \$ et plus</td> <td>18,75</td> </tr> </tbody> </table>	Revenu annuel de la personne décédée	Points	Moins de 20 000 \$	12,50	De 20 000 \$ à moins de 50 000 \$	15,00	De 50 000 \$ à moins de 75 000 \$	16,25	De 75 000 \$ à moins de 100 000 \$	17,50	100 000 \$ et plus	18,75
Revenu annuel de la personne décédée	Points												
Moins de 20 000 \$	12,50												
De 20 000 \$ à moins de 50 000 \$	15,00												
De 50 000 \$ à moins de 75 000 \$	16,25												
De 75 000 \$ à moins de 100 000 \$	17,50												
100 000 \$ et plus	18,75												
4. Si la personne décédée laisse un conjoint, mais aucun enfant	<ul style="list-style-type: none"> Si la personne décédée laisse des parents, 5 points supplémentaires. Si la personne ne laisse aucun parent, mais une fratrie, 2,5 points supplémentaires par membre de la fratrie, jusqu'à concurrence de 7,5 points. 												
5. Si la personne décédée était mineure et qu'elle ne laisse ni conjoint ni enfant	<ul style="list-style-type: none"> 10 points pour chaque parent survivant 5 points pour chaque membre de la fratrie survivant 												
6. Si la personne décédée était majeure et qu'elle ne laisse ni conjoint ni enfant	<ul style="list-style-type: none"> 5 points pour chaque parent survivant 2,5 points pour chaque membre de la fratrie survivant 												
7. Si la personne décédée laisse un enfant	<ul style="list-style-type: none"> Ségréguer 5 % du montant de la réclamation pour les parents et la fratrie aux fins d'une réaffectation possible, en vue d'assurer un versement minimal de 25 000 \$ à chaque parent et membre de la fratrie. 												

Distribution estimative aux familles des victimes



Avant l'imputation des honoraires des avocats Américains et dans certains cas les avocats du recours collectif



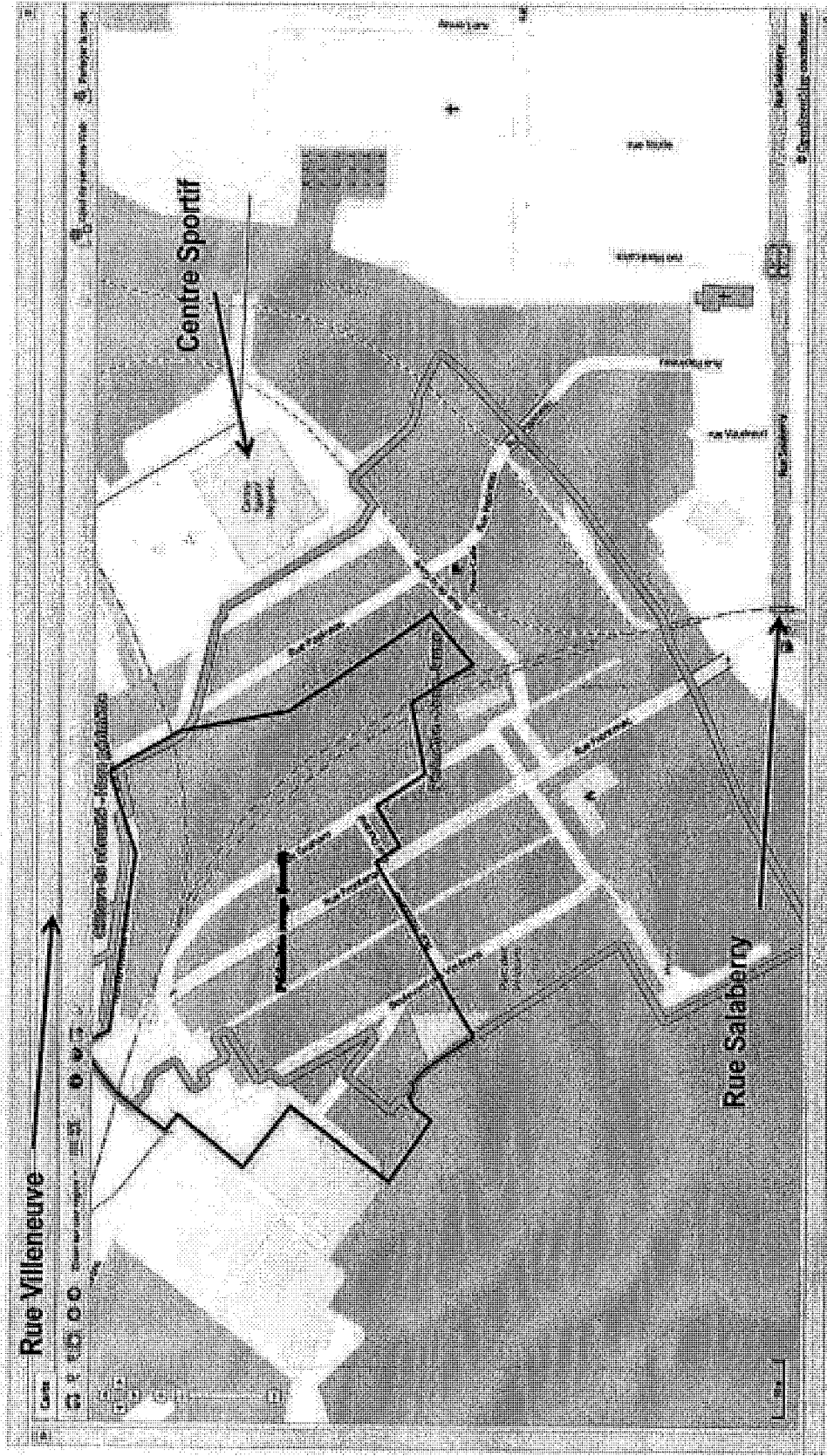
Distribution relativement aux réclamations en raison de dommages moraux

Avant l'imputation des honoraires des avocats du recours collectif et dans certains cas les avocats Américains

	<u>Points</u>	<u>Nombre estimé de réclamants</u>	<u>Total des points estimés</u>	<u>%</u>	<u>Dist. estimée</u>	<u>Dist. par réclam.</u>
Dérangements et inconvénients	5.0	3,700	18,500	35.8%	\$ 11,472,000	\$ 3,100
<u>Évacuations</u>						
Par jour de déplacement	1.0	1,850	10,370	20.1%	6,430,000	620
Maximum	30.0					par jour
Zone rouge zone jaune	50.0	140	7,000	13.5%	4,341,000	31,010
Grands-parents et petits-enfants	15.0	50	750	1.5%	465,000	9,300
Stress post-traumatique - à court terme	50.0	100	5,000	9.7%	3,100,000	31,000
Stress post-traumatique - à long terme	100.0	100	10,000	19.3%	6,201,000	62,010
Lésions corporelles	50.0	2	100	0.2%	62,000	31,000
Montant tampon					2,000,000	
Total			51,720	100%	\$ 34,071,000	

**Selon les données actuelles, les réclamants recevraient entre 3 100 \$ et 145 000 \$.
Ces montants seront réduits compte tenu des réclamations tardives admises et dépendamment du nombre de réclamations qui seront déposées pour stress post-traumatique.**

E
Zone rouge



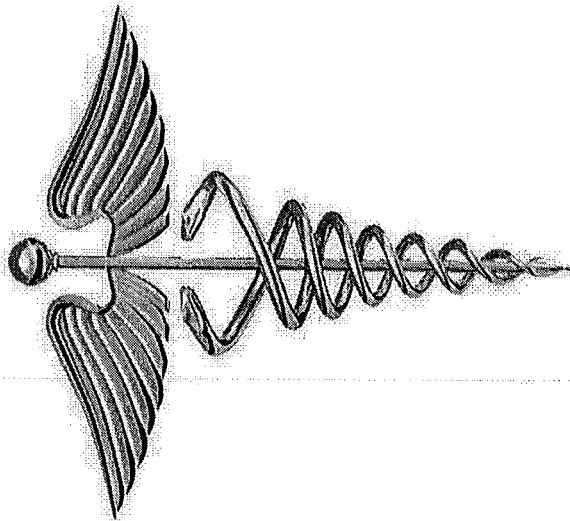
<http://geoeq1.msp.gouv.qc.ca/golocmsp/?id=4105ed74c3>

Stress post-traumatique

Formulaire de déclaration médicale pour stress post-traumatique

Les réclamations pour stress post-traumatique qui peuvent être soumises sont classées en deux catégories et les informations à fournir varient selon la catégorie.

- a) **Zone rouge – réclamations à court terme** : cette catégorie de réclamation s'adresse aux Créanciers qui étaient présents dans la zone rouge au moment du Déraillement et qui réclament une compensation pour des problèmes de santé mentale à court terme;
- **aucune preuve de diagnostic ou de traitement médical n'est exigée.**
- b) **Zone rouge – réclamations à long terme, et hors zone rouge – réclamations à court et à long terme** : ces catégories de réclamations s'adressent aux Créanciers qui i) étaient présents dans la zone rouge au moment du Déraillement et qui réclament une compensation pour des problèmes de santé mentale à long terme, ou ii) qui n'étaient pas présents dans la zone rouge au moment du Déraillement et qui réclament une compensation pour des problèmes de santé mentale à court ou à long terme.
- **doivent être accompagnées d'une preuve de diagnostic ou de traitement médical.**



Le Formulaire de déclaration rempli doit être reçu par le Contrôleur le lundi 31 août 2015 à 17 h AU PLUS TARD.

Stress post-traumatique



Centre intégré
universitaire de santé
et de services sociaux
de l'Estrie - Centre
hospitalier universitaire
de Sherbrooke



Centre administratif

Procédure à suivre pour obtenir une déclaration médicale

Dans le cadre des procédures entourant les recours collectifs en lien avec le déraillement survenu à Lac-Mégantic, certains d'entre vous devez faire compléter un formulaire au professionnel de la santé que vous avez consulté. Voici la procédure à suivre.

1- Si vous avez consulté votre médecin de famille ou un autre intervenant au privé (ex. : un psychiatre, un psychologue, un travailleur social, etc.), contactez-le pour obtenir sa déclaration.

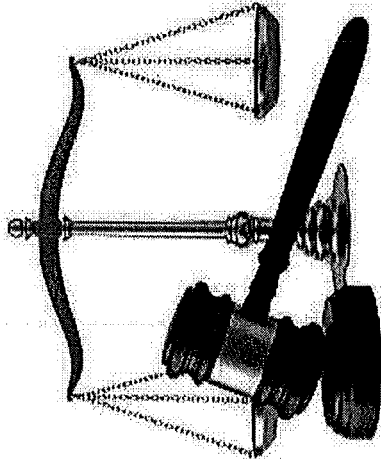
SINON

2- Si vous avez consulté l'équipe psychosociale de l'Hôpital de Lac-Mégantic (dans les roulettes ou au Centre de santé et de services sociaux du Granit), notamment :

- le Dr Lapierre, psychiatre;
 - le Dr Pinero-Medina, psychiatre;
 - la Dr Bilodeau, psychiatre;
 - la Dr Surprenant, médecin de famille;
 - la Dr Bolly, résidente;
 - le Dr Coulloudon, psychiatre;
 - le Dr Lambert-Comeau, psychiatre;
 - une travailleuse sociale ou un travailleur social;
- communiquiez avec nous aux coordonnées suivantes.

<p>A. Par téléphone 1 844 236-2036 (sans frais)</p>	<p>Si l-vous-plait, mentionner :</p> <ul style="list-style-type: none"> • le nom du recours collectif • votre nom et prénom • le nom de jeune fille de votre mère • votre date de naissance • votre numéro de téléphone • votre adresse et code postal • le nom du médecin ou intervenant au dossier (si connu) <p>Note : si vous agissez au nom d'une autre personne, faites-nous parvenir une procuration signée.</p>
<p>B. Par courriel lac-megantic@ssss.gouv.qc.ca</p>	
<p>C. Par la poste Déclaration médicale - Recours Lac-Mégantic 300, rue King Est, bureau 300 Sherbrooke (Québec) J1G 1B1</p>	

Réclamations pour dommages matériels et économiques



Dommages économiques

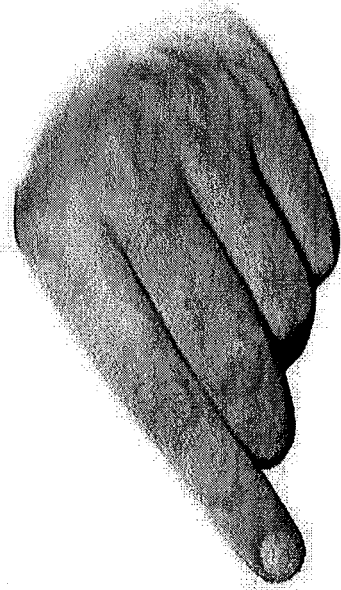
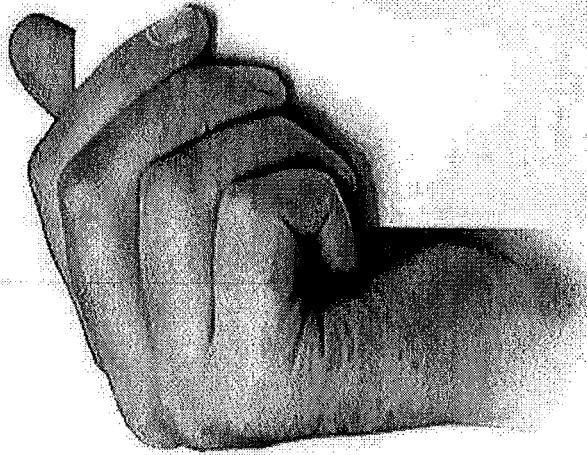
- Les réclamations sont fondées sur les montants pouvant être supportés par des preuves tangibles;
- Un processus de révision est en cours et les réclamants pourraient être demandés de fournir des preuves additionnelles des dommages réclamés;
- Le processus en question pourrait prendre plusieurs mois;
- Un processus légal a été mis en place donnant la possibilité au Contrôleur de rejeter des réclamations;
- Les parties dont les réclamations seront rejetées pourront interjeter appel auprès d'un officier indépendant nommé à cette fin.

Plan Amendé



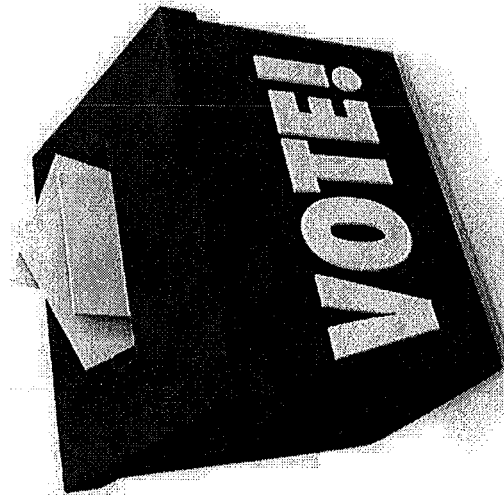
Plan Amendé avec le consensus de toutes les Principales parties intéressées

- Augmentation du pourcentage ségrégué pour les parents et les frères et sœurs de 5% à 12.5%. L'augmentation en pourcentage ne sera possible que si les Réclamations de dommages matériels et économiques sont réduites en deçà de 75 millions de dollars. Le premier 3,1 millions de dollars de redistribution de dommages matériels et économiques sera redistribué aux parents et frères et sœurs.
- Les grands-parents et petits-enfants ont été déplacés avec les créanciers titulaires de Réclamations dans le cas de décès. La distribution pour les grands-parents et petits-enfants vient du 12.5% ségrégué et est présentement évaluée à environ 17 000 \$.



Réunion des créanciers du 9 juin 2015

E



Si vous êtes représentés par les avocats du recours collectif :

- Les représentants désignés votent pour les parties inscrites au recours collectif
- Rien de nouveau à remplir
- Vous êtes les bienvenus d'assister à la réunion comme observateur

Si vous êtes représentés par les avocats Américains :

- Les avocats votent pour les parties qu'ils représentent
- Rien de nouveau à remplir
- Vous êtes les bienvenus d'assister à la réunion comme observateur

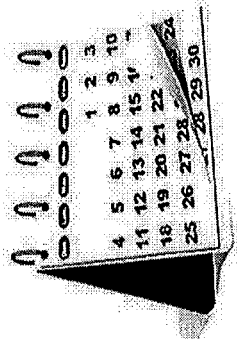
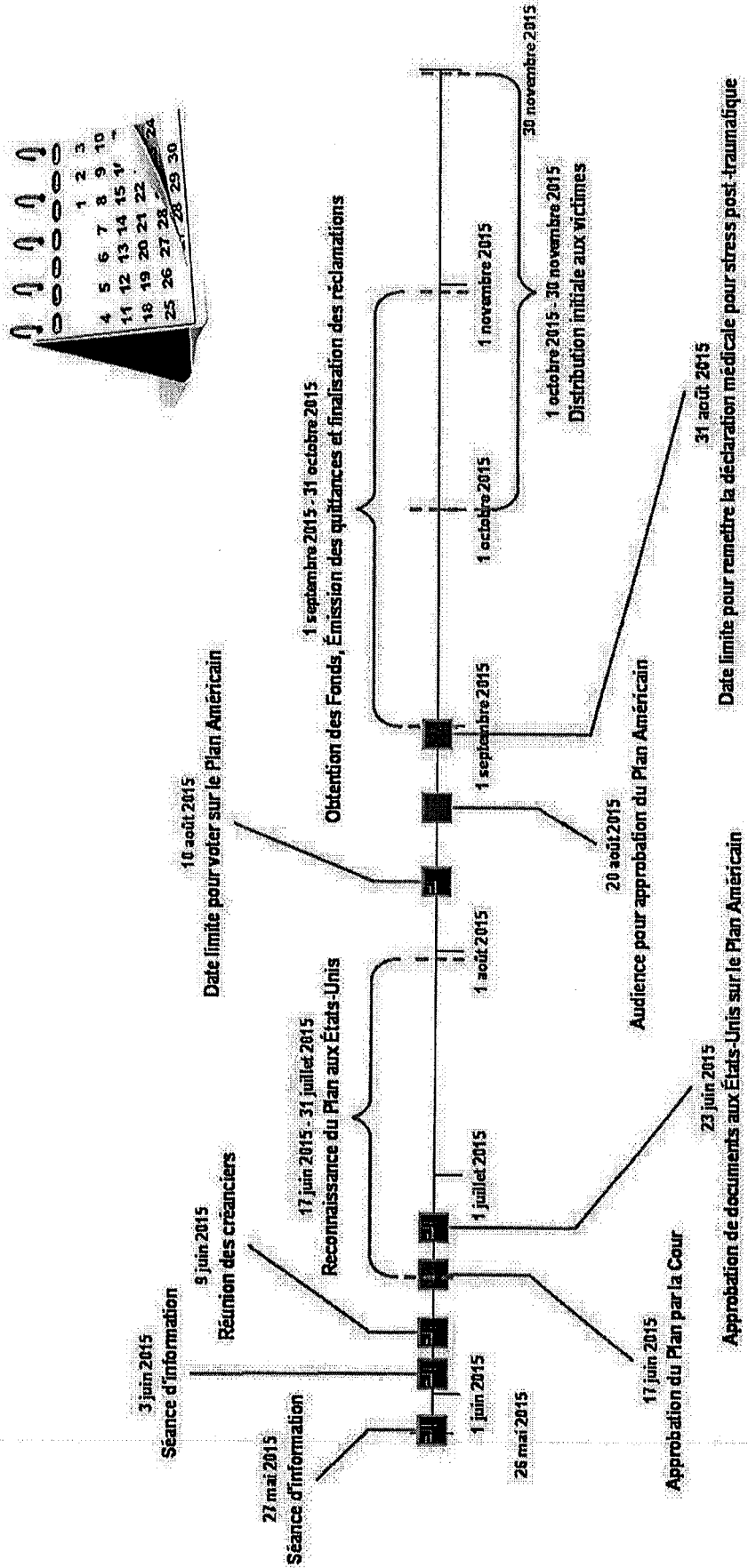
Si vous n'êtes pas représentés :

- Vous devez remplir un formulaire de vote et/ou procuration
- Vous pouvez voter avant ou à la réunion des créanciers

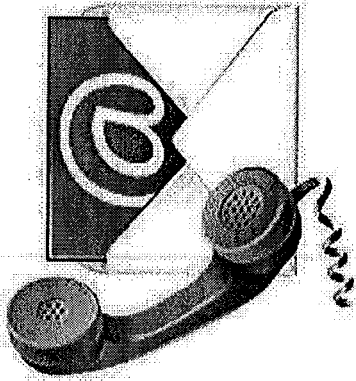
Pour être accepté, le Plan nécessite au minimum le vote suivant :

- 50 % plus 1 en nombre, **plus**
- 2/3 en valeur

Échéancier



Contacts



RICHTER

Téléphone : 1-866-845-8958
 Par courriel : mmareclamations@richter.ca
 Documents disponibles : www.richter.ca/fr-ca/insolvency-cases/m/montrreal-maine-and-atlantic-canada-co

Centre intégré
 universitaire de santé
 et de services sociaux
 de l'Estrie - Centre
 hospitalier universitaire
 de Sherbrooke



Centre administratif

<p>A. Par téléphone 1.844.236.2036 (sans frais)</p>	<p>S'il-vous-plait, mentionner :</p> <ul style="list-style-type: none"> • le nom du recours collectif • votre nom et prénom • le nom de jeune fille de votre mère • votre date de naissance • votre numéro de téléphone • votre adresse et code postal • le nom du médecin ou intervenant au dossier (si connu) <p>Note : si vous agissez au nom d'une autre personne, faites-nous parvenir une procuration signée.</p>
<p>B. Par courriel lac-megantic@sss.gouv.qc.ca</p>	
<p>C. Par la poste Déclaration médicale - Recours Lac-Mégantic 300, rue King Est, bureau 300 Sherbrooke (Québec) J1G 1B1</p>	



Carte géographique pour la zone rouge/jaune :

<http://geoegl.msp.gouv.qc.ca/golocmsp/?id=4105ed74c3>

Questions



Questions

Exhibit 2

RICHTER

Richter Advisory Group Inc.
1981 McGill College
Mil (Qc) H3A 0G6
T. 514.934.3400
F. 514.934.3504
www.richter.ca

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

COUR SUPÉRIEURE
(Chambre commerciale)
(à titre de tribunal désigné en vertu de la *Loi sur les
arrangements avec les créanciers des compagnies*,
L.R.C. (1985), c. C-36, en sa version modifiée)

**DANS L'AFFAIRE DU PLAN DE TRANSACTION ET
D'ARRANGEMENT DE :**

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

Débitrice

-et-

RICHTER GROUPE CONSEIL INC.

Contrôleur

Procès-verbal de l'Assemblée des créanciers de la Débitrice

Tenue
le 9 juin 2015 à 14 h
au Centre sportif Mégantic,
situé au 5400, rue Papineau, Lac-Mégantic (Québec) G6B 0B9

Assemblée des créanciers visant à examiner et à approuver le Plan de transaction et d'arrangement modifié
(le « Plan modifié ») de Montréal, Maine & Atlantique Canada Cie (« MMAC »)

PRÉSENCES

Gilles Robillard, CPA, CA, CIRP, Richter Groupe Conseil Inc., Contrôleur nommé par la Cour
Andrew Adessky, CPA, CA, CIRP, Richter Groupe Conseil Inc., Contrôleur nommé par la Cour
Shawn Travitsky, CPA, CA, CIRP, Richter Groupe Conseil Inc., Contrôleur nommé par la Cour
M^e Sylvain Vauclair, Woods s.e.n.c.r.l., à titre de conseiller juridique du Contrôleur
M^{es} Patrice Benoit, Pierre Legault et Alexander Bayus, Gowlings Lafleur Henderson s.e.n.c.r.l., à titre de conseillers
juridiques de MMAC

Le registre des présences se trouve ci-joint (Pièce 1).

PRÉSIDENT DE L'ASSEMBLÉE

Gilles Robillard, CPA, CA, CIRP, préside l'Assemblée des créanciers.

Le Président déclare qu'il y a quorum des créanciers présents (en personne ou par procuration) et que l'assemblée est par conséquent dûment convoquée.

Le Président présente les personnes assises à ses côtés.

INTRODUCTION

Le Président discute de la présentation faite aux créanciers, laquelle est jointe aux présentes (Pièce 2), qui fournit les points à l'ordre du jour de l'Assemblée des créanciers :

- les amendements au Plan;
- la distribution anticipée;
- la procédure de vote;
- le vote et le résultat.

AMENDEMENTS AU PLAN

M^e Patrice Benoit décrit les principaux amendements contenus dans le Plan modifié, soit :

- le règlement conclu avec World Fuel Services qui permet d'ajouter un montant de 110 millions de dollars américains au Fonds d'indemnisation, soit l'équivalent de 137 millions de dollars canadiens selon les taux de change en vigueur;
- le règlement conclu avec SMBC, une entreprise de location de wagons-citernes;
- les grands-parents et les petits-enfants seront retirés de la catégorie des dommages moraux pour être classés dans la catégorie des réclamations dans les cas de décès, ce qui leur donnera droit à un paiement fixe de 17 000 \$ par personne, sous réserve de l'épargne nécessaire qui sera réalisée advenant une réduction des réclamations pour dommages économiques;
- les changements apportés aux distributions dans la catégorie des réclamations gouvernementales compte tenu des réclamations modifiées déposées par la Ville de Lac-Mégantic et la CSST.

DISTRIBUTION ANTICIPÉE

Le Président informe les créanciers que, compte tenu des règlements additionnels conclus, la valeur brute prévue au Fonds de Règlement s'établit à environ 432 millions de dollars au 8 juin 2015, ce qui, après déduction de la provision pour la Charge d'administration, procurera des fonds disponibles pour distribution d'environ 410 millions de dollars, qui seront répartis comme suit entre les types de réclamations :

- réclamations dans les cas de décès : 111 221 428 \$;
- réclamations en raison de lésions corporelles et de dommages moraux : 48 846 487 \$;
- réclamations pour dommages matériels et économiques : 41 554 303 \$;
- réclamations des assureurs subrogés : 16 808 080 \$;
- réclamations gouvernementales : 191 522 874 \$.

La répartition des fonds entre la catégorie des réclamations dans les cas de décès et celle des réclamations en raison de dommages moraux a ensuite été revue.

Il n'y a aucune question de la part des créanciers sur les amendements apportés au plan ni sur la distribution anticipée à chaque catégorie de créanciers.

PROCÉDURE DE VOTE / VOTE ET RÉSULTAT

Le Président explique qui est en droit de voter, le rôle du recours collectif ainsi que celui des familles représentées par les avocats américains.

Après avoir accordé du temps pour la soumission des formulaires de votation finaux, le Président annonce que les créanciers ont voté à l'unanimité en faveur du Plan modifié. Au total, 3,879 votes sont exercés en faveur du Plan modifié, ce qui représente des réclamations d'une valeur nominale d'environ 694 millions de dollars.

Le Président informe les personnes présentes qu'une requête visant l'homologation du Plan modifié sera soumise à la Cour de Sherbrooke le 17 juin 2015 à 10 h.

FIN DE LA RÉUNION

L'ordre du jour étant épuisé et en l'absence d'autres questions, la séance est levée.

Richter Groupe Conseil Inc.
Contrôleur nommé par la Cour



Gilles Robillard, CPA, CA, CIRP
À titre de Président de l'Assemblée des créanciers

p. j.

Pièce 1

Registre des présences à la première assemblée des créanciers / Attendance register at the First Meeting of Creditors
 Dans l'affaire du Plan de transaction ou d'arrangement de / In the matter of the Plan of Compromise or Arrangement of
 Montréal, Maine & Atlantique Canada Cie / Montreal, Maine & Atlantic Canada Co

Nom de l'individu Individual's Name	Nom de la compagnie Company's Name	Nom du créancier représenté Name of Creditor represented	Número de téléphone Telephone Number	Signature
Yvetta Cyr				Yvetta Cyr
Christel Guibé	Sentice Canada			Christel Guibé
Leïane Dal			819-583-3593	Leïane Dal
Edith Laroché			819-583-3588	Edith Laroché
ARACEL CAMERON			819-583-0474	Aracel Cameron
BEATRICE LAYRON			819-583-3190	Beatrice Layron
Caroline Tremblay		Suc. Gray Bobac	(438) 435-3768	Caroline Tremblay
WILMONT LACHAPPE			819-583-1463	Wilmont Lachappe
Charval Dion	Ville de Lac-Épave	Ville de Lac-Épave	819-583-1463	Charval Dion
LOUIS COMTOIS	P6Q		819-583-3446	Louis Comtois
Chérie Bouché	Suc. Lac-Épave			Chérie Bouché
Michelle Gosselin				Michelle Gosselin
37 Gregg Gosselin				Gregg Gosselin
DELO RONDIC				DeLo Rondic
Mariane Poudrier			819-583-5555	Mariane Poudrier
Wesley Gohd	CAE Estrie	CAE - Megard	819-583-3328	Wesley Gohd
ANDRÉE JACQUES		LAC-ÉPAVE	819-583-3098	Andrée Jacques

Registre des présences à la première assemblée des créanciers / Attendances register at the First Meeting of Creditors
 Dans l'affaire du Plan de transaction ou d'arrangement de / In the matter of the Plan of Compromise or Arrangement of
 Montréal, Maine & Atlantique Canada Cie / Montreal, Maine & Atlantic Canada Co

Nom de l'individu Individual's Name	Nom de la compagnie Company's Name	Nom du créancier représenté Name of Creditor represented	Numéro de téléphone Telephone Number	Signature
ISABELLE				
Manon Lapierre				
Chaire Poirier				
SERGE PARENT			819-554-6997	
Guy Ouellet			819-582-3313	
Jeremy Côté	Kujler Kumbisnik		514-878-2861	
PIERRE WEGAU	GOWLING		514-393-9559	
CHRISTIAN LARONTE			819-537-8802	
Anna Rodrigue			819-583-4261	
Robert Dorelli	2'EXOTIK		819-583-1811	
ADRISETTE ROY			819-582-5307	
Nicole Gaudreau	Senard		819-583-2538	
THERÈSE LEMIEUX			819-554-8906	
Yselle Doyon	1310 Place du M. oulin		819-583-1631	
Madeline Roy			819-583-7698	
Chaire Lapierre				
A. FRANÇOIS	STEVEN ARCHER		514-878-8855	

Registre des présences à la première assemblée des créanciers / Attendance register at the First Meeting of Creditors
Dans l'affaire du Plan de transaction ou d'arrangement de / In the matter of the Plan of Compromise or Arrangement of
Montréal, Maine & Atlantique Canada Cie / Montreal, Maine & Atlantic Canada Co

Nom de l'individu Individual's Name	Nom de la compagnie Company's Name	Nom du créancier représenté Name of Creditor represented	Numéro de téléphone Telephone Number	Signature
Denise No de au.		Amel Madani	819-583-4231	Denise No de au.
Johanne Ouellet		Richard Bolduc	819-583-3408	Johanne Ouellet
Michelle Bolduc		GILLES THIBAUDOU	514-759-5952	Michelle Bolduc
Jacques Mayrand		Jacques Mayrand	819-583-1973	Jacques Mayrand
Karine Dusé	ULM		819-583-2444	Karine Dusé
Stéphanie Bolduc			819-583-5477	Stéphanie Bolduc
Angèle Jeanvier			819-583-4243	Angèle Jeanvier
LEAN RUEL			819-583-4243	Lean Ruel
LILIANE DUMIVRE			819-583-8365	Liliane Dumivre
Berthe Gagnier			819-583-1391	Berthe Gagnier
GERVAISE BOURANGER			819-583-3117	Gervaise Bouranger
Jeff Ouellet	CIG	Régis Collet	514-266-7865	Jeff Ouellet
LILLIANE DUQUETTE SEVIGNY			819-583-3214	Lilliane Duquette
Manu Fontaine			819-583-3656	Manu Fontaine
Real Roy			819-583-1209	Real Roy
JEAN-YVES			819-583-2488	Jean-Yves
Pierrette S-LAURENT			819-583-3851	Pierrette S-LAURENT

Registre des présences à la première assemblée des créanciers / Attendance register at the First Meeting of Creditors
 Dans l'affaire du Plan de transaction ou d'arrangement de / In the matter of the Plan of Compromise or Arrangement of
 Montréal, Maine & Atlantique Canada Cie / Montreal, Maine & Atlantic Canada Co

Nom de l'individu Individual's Name	Nom de la compagnie Company's Name	Nom du créancier représenté Name of Creditor represented	Número de telephone Telephone Number	Signature
PIERRE LEBEAU			819-583-5988	<i>[Signature]</i>
JEAN CLAUDIO			819-583-5876	<i>[Signature]</i>
ROBERT DALLAIRE			819-583-3374	<i>[Signature]</i>
SUZANNE CAMERON			418-443-1265	<i>[Signature]</i>
GABRIAN DANSEUR			819-559-8906	<i>[Signature]</i>
CLAUDETTE GAGNON			819-583-2299	<i>[Signature]</i>
Nicolas Beaudin	McCully Télévisé		418-580-4115	<i>[Signature]</i>
LADRIER WATERS			819-583-3549	<i>[Signature]</i>
ARROULT, JACQUES			819-554-8476	<i>[Signature]</i>
Genevieve Poirier			819-583-3183	<i>[Signature]</i>
LOUISE LACHANCE			819-582-4056	<i>[Signature]</i>
MARIE-PIERRE DEKLEUC			819-554-6499	<i>[Signature]</i>
Rene Brimard			819-554-8092	<i>[Signature]</i>
Suzanne Lussier			583-4388	<i>[Signature]</i>

Registre des présences à la première assemblée des créanciers / Attendance register at the First Meeting of Creditors
 Dans l'affaire du Plan de transaction ou d'arrangement de / In the matter of the Plan of Compromise or Arrangement of
 Montréal, Maine & Atlantique Canada Cie / Montreal, Maine & Atlantic Canada Co

Nom de l'individu Individual's Name	Nom de la compagnie Company's Name	Nom du créancier représenté Name of Creditor represented	Numéro de téléphone Telephone Number	Signature
Alain Poirier			583-3791	Alain Poirier
Léonard Poirier			583-2791	Léonard Poirier
Rene Bolduc			554-8626	Rene Bolduc
Dany S. Le			719-553-2334	Dany S. Le
Alain Poirier	Restin, A. Lesarbois		819-583-4897	Alain Poirier
Messieurs Bolduc			519-583-2458	Messieurs Bolduc
BOLLE C.A.D.B.I.E.N			819-583-2450	BOLLE C.A.D.B.I.E.N
Manon Bouchard			819-583-6700	Manon Bouchard
Henri Fenech			418-496-7524	Henri Fenech
Barthelemy				Barthelemy
Esabelle Goggin			819-554-8094	Esabelle Goggin
Diliane Goggin			819-583-2334	Diliane Goggin
EARL RAYMOND			819-583-2117	Earl Raymond
DANIEL POIRIER			819-583-5531	Daniel Poirier
CHRISTIAN			819-554-8343	Christian
RICHARD THOMPSON			819-583-1132	Richard Thompson
James Buckley				James Buckley

Registre des présences à la première assemblée des créanciers / Attendance register at the First Meeting of Creditors
 Dans l'affaire du Plan de transaction ou d'arrangement de / In the matter of the Plan of Compromise or Arrangement of
 Montréal, Maine & Atlantique Canada Cie / Montreal, Maine & Atlantic Canada Co

Nom de l'individu Individual's Name	Nom de la compagnie Company's Name	Nom du créancier représenté Name of Creditor represented	Numéro de téléphone Telephone Number	Signature
COCCOLINE BRANDOIN	BGF AVOCATA			<i>[Signature]</i>
GASTON SAUNDREAU				<i>[Signature]</i>
PIERRETTE BILONNET				<i>[Signature]</i>
BERNARD AMYOT	LEMARCHE	GERSCO	514 988 8111	<i>[Signature]</i>
PIERRETTE FONTAINE			819-583-6574	<i>[Signature]</i>
FAU TEUX	MARC		819-583-7052	<i>[Signature]</i>
Paul Brochu			819 583-4242	<i>[Signature]</i>
MARIGTE SPORE			514 583-4368	<i>[Signature]</i>
EASTON CHAMPAGNE			819-583-2648	<i>[Signature]</i>
Nicolas Ploerde	Saviezin Ploerde	UTCC / Procor	514-360-4353	<i>[Signature]</i>
François Le Moine	"	"	514 213 9050	<i>[Signature]</i>
JACQUES S. D'ARME	BLG	UNITED STATES OF AMERICA	94.954.3156	<i>[Signature]</i>
JACQUES S. D'ARME	BLG	DELL ALLIANT	514.954.3156	<i>[Signature]</i>
BOBES LAURIE DEBART	Gouvernement des Québecs	COMOCC	418-581-6888	<i>[Signature]</i>
Bernard Thibierge			503-760-5050	<i>[Signature]</i>

Registre des présences à la première assemblée des créanciers / Attendance register at the First Meeting of Creditors
Dans l'affaire du Plan de transaction ou d'arrangement de / In the matter of the Plan of Compromise or Arrangement of
Montréal, Maine & Atlantique Canada Cie / Montreal, Maine & Atlantic Canada Co

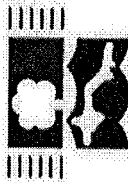
Nom de l'individu Individual's Name	Nom de la compagnie Company's Name	Nom du créancier représenté Name of Creditor represented	Numéro de téléphone Telephone Number	Signature
JEAN-GUY GRONDIN			819-583-0474	<i>Jean-Guy Grondin</i>
PATRICIA MARCOUX			819-582-5300	<i>Patricia Marcoux</i>
JEAN LAERAN	SOS HOOTCHES		(819) 583-5115	<i>Jean Laeran</i>
RAMP-CHARLESQUIN	Le Digne		(89) 514-5454	<i>Ramp-Charlesquin</i>
VERONIQUE LORANCE	Bureau du député de Hégaric		819-583-4500	<i>Veronique Lorraine</i>
Thérèse Doyon			819-583-1743	<i>Thérèse Doyon</i>
				<i>Roger Doyon</i>

Pièce 2

RICHTER

Présentation
Richter Groupe Conseil Inc.
Contrôleur nommé par la Cour de
Montréal, Maine & Atlantique
Canada Cie

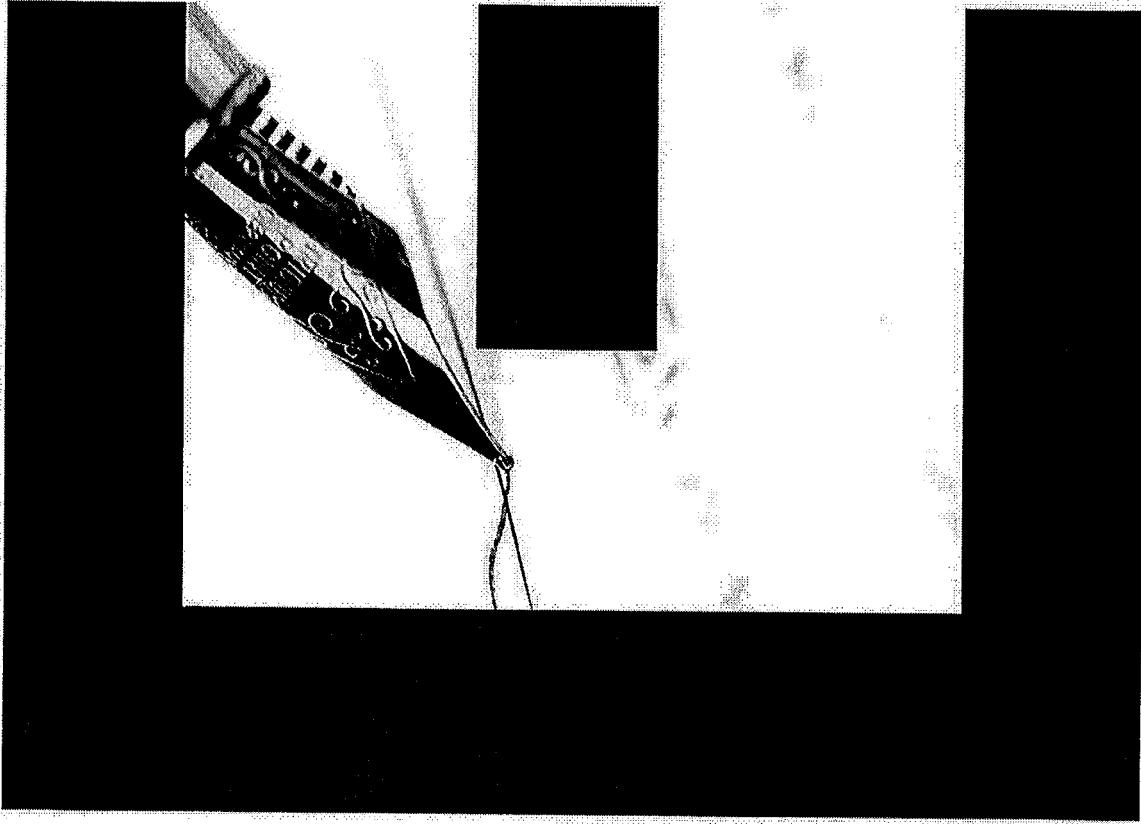
Présenté aux :
Créanciers de MMA



Lac-Mégantic

Réunion des créanciers Ville de Lac-Mégantic

Le 9 juin 2015, à 14 h 00, Centre sportif Mégantic



Ordre du jour

- Mot de bienvenu
- Amendements au Plan
 - Règlement avec WFS
 - Règlement avec SMBC
 - Traitement des grands-parents et petits-enfants
 - Autres
- Distribution anticipée
- Procédure de vote
- Vote et résultat
- Résumé des étapes à venir

Principaux amendements au Plan



1. Règlement avec World Fuel Services (« WFS »)

Un règlement est intervenu avec WFS le 8 juin 2015, lequel prévoit un paiement de 110 millions US\$ au fonds de règlement. Ceci équivaut au taux de change du 7 juin 2015 à 137 millions Can\$.

2. Montants payables aux grands-parents et petits-enfants de personnes décédées

Suite à des discussions avec les divers intervenants, le montant payable aux grands-parents et petits enfants pourrait être établi à 17 000 \$. Cet amendement a été effectué suite à une demande des représentants du recours collectif. Cet amendement n'est applicable qu'à partir des économies, le cas échéant, résultant de réductions des réclamations économiques.

Les pages qui suivent identifient les amendements apportés au Plan de compromis et d'arrangement résultant principalement des 2 points ci-haut.

Principaux amendements au Plan



Section 1.1 – Termes définis

Fonds de Règlement (p. 8)

les contributions monétaires totales payables aux termes des Conventions de Règlement, y compris l'indemnité de XL et le Paiement Additionnel de XL, avant le recouvrement potentiel des réclamations cédées à MMAC et au Syndic par certaines des Parties Quittançées, lesquelles contributions monétaires sont estimées, à la date des présentes, à cent quatre-vingt-deux millions trois cent mille dollars canadiens (182 300 000,00 \$ CA), plus cent quatre-vingt-dix-huit million neuf cent mille quatre-vingt-neuf millions quatre-cent mille dollars américains (198 900 000,0089-400-000,00 \$ US);

Injonction et Quittance (p. 8)

une ordonnance de la Cour Responsable de la LACC et de la Cour de Faillite Américaine quittance, empêchant et interdisant, en permanence et automatiquement, la mise à exécution, la poursuite, la continuation et (ou) le commencement de toute Réclamation qu'une Personne ou un Reclamant détient ou revendique ou qu'il peut détenir ou revendiquer à l'avenir contre l'une ou plusieurs des Parties Quittançées, à l'exception de toutes réclamations préservées aux termes du paragraphe 5.3 contre les Tiers Défendeurs qui ne sont pas des Parties Quittançées, ou qui pourrait donner lieu à une Réclamation contre l'une ou plusieurs des Parties Quittançées, que ce soit au moyen d'une demande reconventionnelle,

Ordonnance Finale (p. 10)

une ordonnance de la Cour Responsable de la LACC, de la Cour du Recours Collectif ou de la Cour de Faillite Américaine qui n'a pas été renversée, annulée, amendée, modifiée ou suspendue et qui n'est plus susceptible d'appels ultérieurs, soit parce que le délai d'appel a pris fin sans qu'un appel ne soit logé, soit parce qu'elle a été confirmée par toutes les cours ayant compétence pour entendre des appels s'y rapportant;

Principaux amendements au Plan

Article 3 – Catégorie, Vote et Questions connexes

3.3 Réclamations non visées (p. 20)

- k) les Réclamations qui font partie de celles décrites au paragraphe 5.1 (2) de la LACC, sauf qu'en contrepartie de la contribution faite par les Parties A&D ou en leur nom, lesdites Parties A&D sont bénéficiaires de l'Injonction et Quitittance à l'égard de toutes Réclamations relatives au Dérailement, à l'exclusion des Réclamations décrites au paragraphe 3.3 (b).

Article 4 - Distributions

4.2 Distribution aux créanciers (p. 23)

- e) les Créanciers ayant des Réclamations Gouvernementales recevront globalement 52,4 % des Fonds pour Distribution en règlement intégral et final de leurs Réclamations Prouvées contre les Parties Quittancées. Le Contrôleur distribuera ce montant proportionnellement entre la Province, la Ville Lac-Mégantic, le Procureur général du Canada (pour le compte du Développement économique Canada pour les régions du Québec) et la Commission de la santé et de la sécurité au travail (CSSST). Aux fins du présent Plan, les Réclamations Prouvées de la Province, de la ville de Lac-Mégantic, du gouvernement fédéral du Canada (Développement économique Canada pour les régions du Québec) et de la Commission de la santé et de la sécurité au travail (CSSST) sont ainsi évaluées et établies :
- i) la Province : 409 313 000 \$ CA (soit 89,9 %~~94,4~~ des Réclamations Gouvernementales);
 - ii) la Ville Lac-Mégantic : 20 000 000 \$ CA (soit 4,4 %~~4,1~~ des Réclamations Gouvernementales);
 - iii) le Procureur général du Canada (pour le compte du Développement économique Canada pour les régions du Québec) : 21 000 000 \$ CA (soit 4,6 %~~4,8~~ des Réclamations Gouvernementales)
 - iv) CSST : 4 915 257 \$~~313 775~~ \$ CA (soit 1,1 %~~0,4~~ des Réclamations Gouvernementales)

Principaux amendements au Plan

Article 4 - Distributions

4.2 Distribution aux créanciers (p. 23)

Il est entendu que les Créanciers ayant des Réclamations Gouvernementales recevront globalement 52,4 % des Fonds pour Distribution en règlement intégral et final de leurs Réclamations Prouvées contre les Parties Quitancées. Le Contrôleur distribuera ce montant proportionnellement entre la Province, la Ville Lac-Mégantic, le Procureur général du Canada (pour le compte du Développement économique Canada pour les régions du Québec) et la Commission de la santé et de la sécurité au travail (CSST). Aux fins du présent Plan, les Réclamations Prouvées de la Province, de la ville de Lac-Mégantic, du gouvernement fédéral du Canada (Développement économique Canada pour les régions du Québec) et de la Commission de l'est entendu que les Créanciers ayant des Réclamations en Indemnisation et des Réclamations Autres que les Réclamations Liées au Déraillement n'auront droit à aucune distribution aux termes du présent Plan ou du Plan Américain à l'égard du Fonds d'Indemnisation et n'auront aucun droit à aucune partie des Fonds pour Distribution. Cependant, les Créanciers ayant des Réclamations Autres que les Réclamations Liées au Déraillement contre MMAC auront droit à des distributions aux termes du Plan Américain, selon ses modalités, sur tout produit net disponible de la liquidation des biens de MMA.

Malgré ce qui précède, si, après l'examen des Réclamations pour Dommages Matériels et Économiques conformément à l'Ordonnance Relative à la Procédure de Résolution des Réclamations, la valeur totale des Réclamations pour Dommages Matériels et Économiques est réduite en deçà de 75 millions de dollars, le montant pour distribution relatif à la différence entre le montant de 75 millions de dollars et la valeur totale révisée de ces Réclamations (l'« Épargne sur les Réclamations Économiques ») sera proportionnellement attribuée comme suit : à la valeur des Réclamations des autres catégories décrites aux paragraphes 4.2a), b), c) et e).

- i) Premièrement, le montant requis jusqu'à 384 000 \$ pour permettre un paiement jusqu'à 17 000 \$ à chaque grand-parent et petit-enfant des personnes décédées, auquel cas les grands-parents et petits-enfants seront retranchés de l'Annexe F et inclus au paragraphe 7 de l'Annexe E;
- ii) Deuxièmement, le montant requis à partir de l'épargne sur les Réclamations Économiques pour permettre une augmentation de l'enveloppe pour parents, frères et sœurs, grands-parents et petits-enfants de 5 % à 12,5 %;
- iii) Troisièmement, proportionnellement, à la valeur des Réclamations des autres catégories décrites aux paragraphes 4.2a), b), c) et e).

Pour plus de certitude, le montant total requis à même l'Épargne sur les Réclamations Économiques pour permettre une augmentation de l'enveloppe pour les parents, frères et sœurs, grands-parents et petits-enfants à 12,5 % au sein de la catégorie des Victimes dans le cas de Décès ne devra pas excéder 5,1 millions de dollars.

Principaux amendements au Plan

4.3 Distributions additionnelles aux créanciers (p. 24)

Avec le consentement de la Province et du gouvernement fédéral du Canada (Développement économique Canada pour les régions du Québec), tous les montants payables aux termes du présent Plan :

- a. à la Province sur l'indemnité de XL (évalués à 43-735-000 \$ CA-13 383 000 \$ CA);
 - b. au procureur général du Canada (pour le compte du Développement économique Canada pour les régions du Québec) (évalués à 9 909 589 \$ 6-936-000-\$ CA);
- (collectivement, les « Dividendes Réaffectés »)

Article 5 – Quittances et Injonctions

5.1 Quittances et injonctions aux termes du Plan (p. 27)

Toutes les Réclamations Visées feront entièrement, définitivement, absolument, inconditionnellement, complètement, irrévocablement et à jamais, l'objet d'un compromis, d'une remise, d'une quittance, d'une libération, d'une annulation et seront proscrites à la Date de Mise en Oeuvre du Plan contre les Parties Quittancées.

Toutes les Personnes (peu importe si ces Personnes sont ou non des Créanciers ou des Réclamants) seront empêchées et il leur sera interdit, en permanence et à jamais, i) de poursuivre toute Réclamation, directement ou indirectement, contre les Parties Quittancées, ii) de poursuivre ou d'entreprendre, directement ou indirectement, toute action ou autre procédure à l'égard d'une Réclamation contre les Parties Quittancées ou de toute Réclamation qui, à l'exception de toutes réclamations préservées aux termes du paragraphe 5.3 contre les Tiers Défendeurs qui ne sont pas des Parties Quittancées, pourrait donner lieu à une Réclamation contre les Parties Quittancées.

Distribution estimative

Montréal, Maine & Atlantique Canada Cie.

Distribution estimative aux diverses catégories de créanciers

Selon l'information disponible le 8 juin 2015

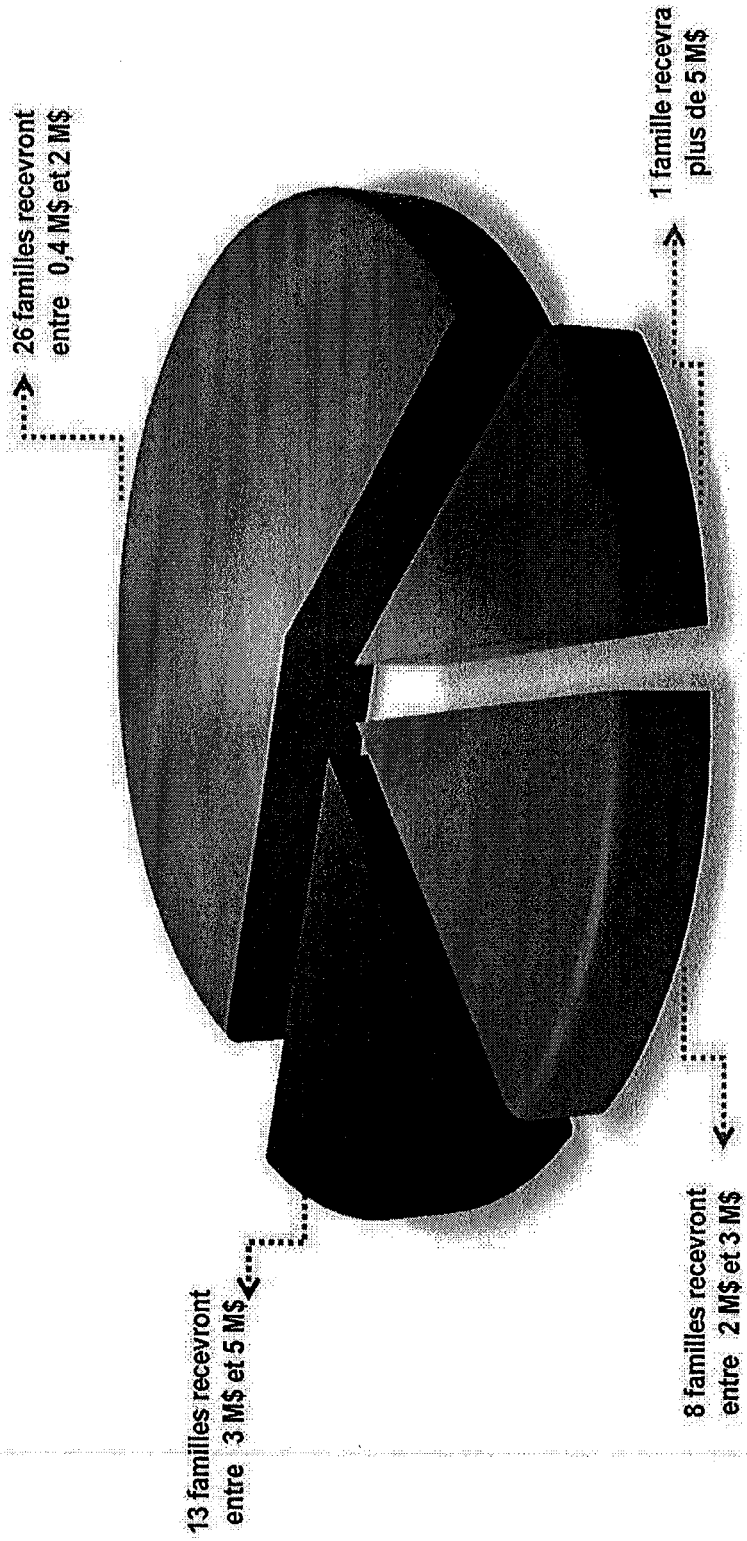
<p>Contributions au fonds de règlement</p> <p>Charge d'administration (incluant les taxes)</p> <p>Fonds disponibles pour distribution</p>	<p>431 750 172 \$</p> <p>(21 797 000)</p> <hr/> <p>409 953 172 \$</p>	<p>→ Réclamations dans les cas de décès</p> <p>→ Réclamations en raison de lésions corporelles et dommages moraux</p> <p>→ Réclamations pour dommages matériels et économiques</p> <p>→ Réclamations des assureurs subrogés</p> <p>→ Réclamations gouvernementales</p>	<p>111 221 428 \$</p> <p>48 846 487</p> <p>41 554 303</p> <p>16 808 080</p> <p>191 522 874</p> <hr/> <p>409 953 172 \$</p>
---	--	--	---

Avant l'imputation des honoraires des avocats Américains et dans certains cas les Avocats du recours collectif

Répartition des fonds aux familles de personnes décédées



Avant l'imputation des honoraires des avocats Américains et dans certains cas les Avocats du recours collectif



Répartition des fonds pour dommages moraux



Montreal, Maine & Atlantic Canada Co.
Répartition des fonds pour dommages moraux

	Points	Nombre estimatif de réclamants	Total des points	%	Distribution estimative	Distribution par réclamation
Trouble & inconvenient	5,0	3 700	18 500	24,9%	\$ 11 677 000	\$ 3 160
Évacuations						
Montant par jour Maximum	1,0 30,0	1 850	10 370	14,0%	6 545 000	630 par jour
Zones rouge et jaune	50,0	140	7 000	9,4%	4 418 000	31 560
Grand-parents et petits-enfants	15,0	50	750	1,0%	473 000	9 460
Stress Post Traumatique - court terme (note 2)	50,0	250	12 500	16,8%	7 890 000	31 560
Stress Post Traumatique - long terme (note 2)	100,0	250	25 000	33,7%	15 780 000	63 120
Blessures	50,0	2	100	0,1%	63 000	31 500
Provision (note 3)					2 000 000	
Total (notes 1 & 4)			74 220	100%	\$ 48 846 000	

Les montants ci-haut reflétés ne tiennent pas compte des honoraires qui pourraient être redevables aux avocats des réclamants et ceux du recours collectif.

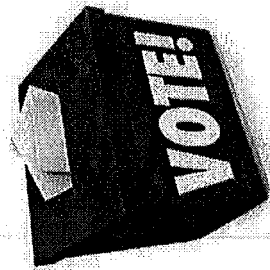
Note 1: Les montants représentés peuvent être cumulatifs si un réclamant est affecté par plus d'une situation énumérée. Cependant les réclamants classés dans la catégorie des cas de décès ne peuvent pas réclamer de compensation pour stress post-traumatique.

Note 2: S'applique à tous ceux qui ont été diagnostiqués pour stress post-traumatique, dépression, troubles d'anxiété, et/ou qui sont toujours suivis médicalement pour des causes découlant de la tragédie ou ceux présents dans la zone rouge au moment du déraillement. Afin de se qualifier dans cette catégorie, plus amples informations devront être transmises au Contrôleur.

Note 3: Afin d'être utilisé pour bonifier le montant pour stress post-traumatique, si nécessaire. Autant que cette provision ne soit pas utilisée à cette fin, le montant résiduel sera réparti aux autres postes des dommages moraux.

Note 4: Le montant final attribué à chaque catégorie, variera dépendamment de l'information additionnelle qui sera reçue par le Contrôleur, d'ici le 31 août 2015.

Réunion des créanciers du 9 juin 2015 - Vote



Qui vote :

Dans le cas du recours collectif :

- Représentants désignés votent pour les parties inscrits au recours collectif pour lesquels une preuve de réclamation a été déposée

Dans le cas des familles représentées par les avocats Américains :

- Avocats votent pour les parties qu'ils représentent et pour lesquels une preuve de réclamation a été déposée

Tous les autres circonstances :

- Chaque réclamant vote individuellement

Réunion des créanciers du 9 juin 2015 – Compilation du Vote



Pour être accepté, le Plan nécessite au minimum le vote suivant :

- 50% plus 1 en nombre, **plus**
- 2/3 en valeur

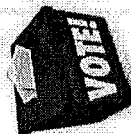
Compilation

En vertu du Plan, de l'Ordonnance relative à la procédure de réclamation, de l'Ordonnance relative à la procédure de résolution des réclamations et de l'Ordonnance visant la tenue d'une assemblée des créanciers, tous les Créanciers ont le droit de voter jusqu'à concurrence de la valeur nominale de leur réclamation assujettie aux conditions suivantes :

- le total des votes des titulaires de « Réclamations dans les cas de décès » ne doit pas représenter plus de 22,2 % de tous les votes des créanciers ou 200 000 000 \$;
- le total des votes des titulaires de « Réclamations en raison de lésions corporelles et de dommages moraux » ne doit pas représenter plus de 11,1 % de tous les votes des créanciers ou 100 000 000 \$;
- le total des votes des titulaires de « Réclamations de dommages matériels et économiques » ne doit pas représenter plus de 8,3 % de tous les votes des créanciers ou 75 000 000 \$;
- le total des votes des titulaires de « Réclamations subrogées d'un assureur » ne doit pas représenter plus de 3,8 % de tous les votes des créanciers ou 33 701 000 \$;
- le total des votes des titulaires de « Réclamations gouvernementales » ne doit pas représenter plus de 48,5 % de tous les votes des créanciers ou 435 627 000 \$;
- les titulaires de « Réclamations en Indemnisation » n'ont pas le droit de voter;
- le total des votes des titulaires de « Réclamations autres que les réclamations liées au déraillement » ne doit pas représenter plus de 6,1 % de tous les votes des créanciers ou 55 000 000 \$.

La valeur du vote de chaque créancier sera calculée selon la formule suivante :

$$\begin{array}{r}
 \text{Valeur nominale de la} \\
 \text{Preuve de réclamation du} \\
 \text{Créancier} \\
 \hline
 \text{Valeur nominale totale} \\
 \text{de toutes les Preuves de} \\
 \text{réclamations dans la} \\
 \text{catégorie de votation}
 \end{array}
 \times
 \begin{array}{r}
 \text{Valeur maximale totale} \\
 \text{attribuée au vote dans la} \\
 \text{catégorie de votation}
 \end{array}
 =
 \begin{array}{r}
 \text{Valeur de la} \\
 \text{Réclamation aux} \\
 \text{fins de votation du} \\
 \text{Créancier}
 \end{array}$$

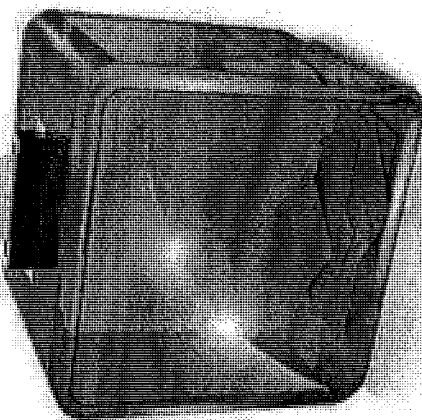


Questions

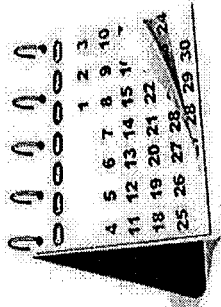
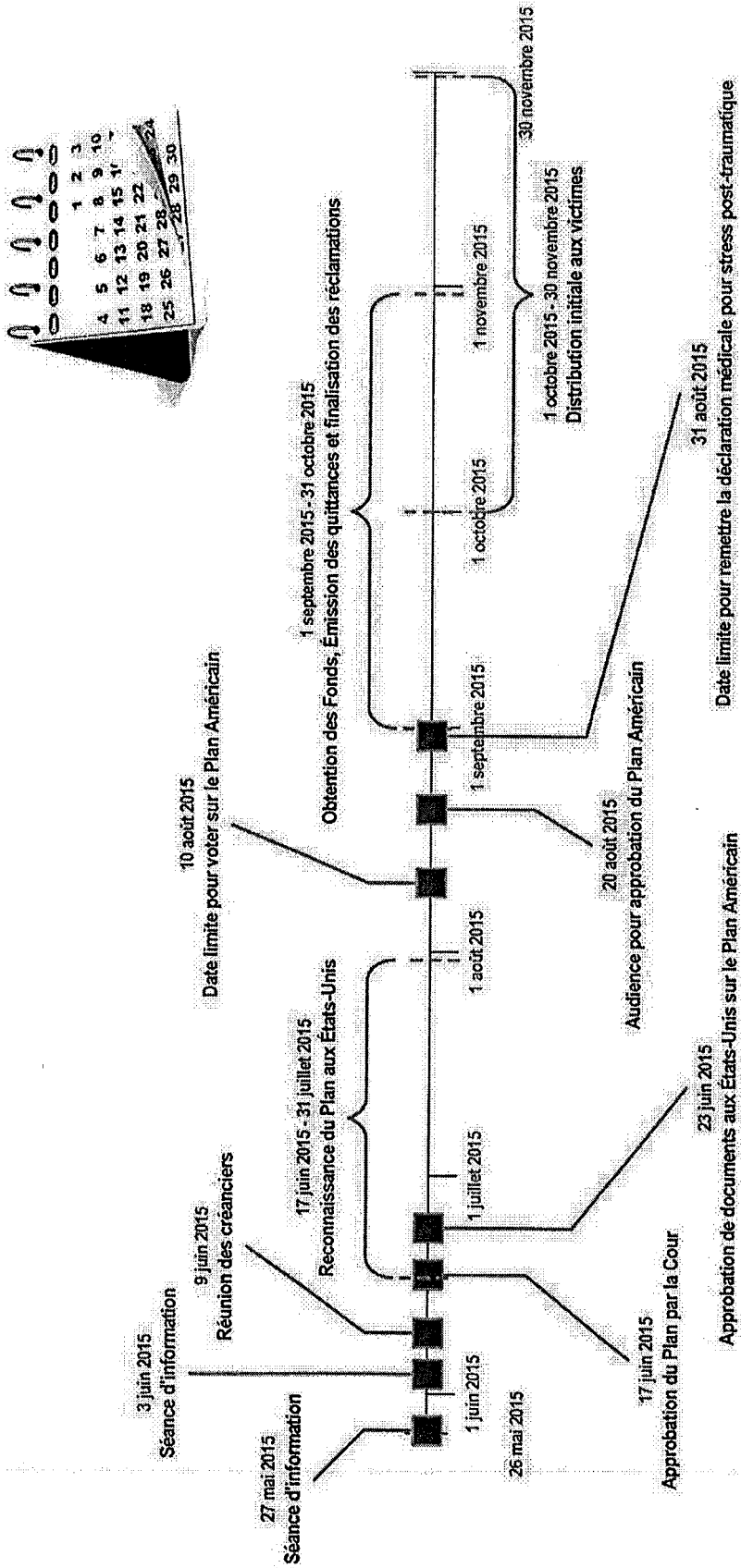
E

Questions

Résultat du vote



Échéancier



UNOFFICIAL IN-HOUSE TRANSLATION

**EXHIBIT
B**

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUEBEC
DISTRICT OF SAINT-FRANÇOIS

N° . . . **450-11-000167-134**

DATE: July 13, 2015

IN THE PRESENCE OF: THE HONORABLE GAÉTAN DUMAS, S.C.J.

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

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

Debtor

and

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

Monitor

and

CANADIAN PACIFIC RAILWAY COMPANY

Opponent

**JUDGMENT ON MOTION
TO APPROVE THE PLAN OF ARRANGEMENT**

450-11-000167-134

PAGE : 2

[1] The Court is seized with a motion to approve a plan of arrangement unanimously accepted at a meeting of the creditors of the debtor held in Lac-Mégantic on June 9, 2015.

[2] This plan of arrangement is filed following the railway tragedy that cost the lives of 48 people and devastated the downtown area of the City of Lac-Mégantic on July 6, 2013.

[3] Following an initial order issued by our colleague, Martin Castonguay, S.C.J., in August 2013, the undersigned was assigned this case.

[4] More than 40 judgments and orders have been rendered by the undersigned in this matter.

[5] As the undersigned pointed out in a judgment rendered on February 17, 2014:

[26] The CCAA proceedings sought, to the extent possible, to maintain the operation of the railway in order to service the many municipalities and the numerous clients situated along the railway. The proceedings also sought to put in place a sale process in order to sell the assets of MMA and MMAR as a going concern. Railroad Acquisition Holdings (“RAH”) was the winning bidder for the quasi-totality of the assets of the companies and the court authorized the sale on January 23, 2014.

[27] One of the objectives of the CCAA proceedings was to maintain the employment of specialized personnel that continue to work for the Petitioner in order to maximize the value of the Petitioner’s assets and ideally to ensure that these jobs would be maintained after the sale.

[28] According to the Asset Purchase Agreement, RAH will conserve most of MMA’s current employees.

[29] The CCAA proceedings also sought to establish a claims process to avoid the multiplicity of parallel judicial proceedings and to efficiently treat the claims of all of the interested parties, including the families of the victims and the holders of claims related to the derailment.

[6] The importance of maintaining a railway for the industries served does not require any further explanation.

[7] This first objective was achieved as early as February, 2014, namely less than seven months after the railway tragedy, through the sale of the Debtor’s assets and the orders necessary to complete that sale. The second objective clearly expressed by the Debtor from the start was to indemnify the victims of this railway tragedy for which the Debtor almost immediately acknowledged its liability. This objective remains to be achieved.

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 3

[8] The Court will not reiterate the complete history of the case since it fully appears from the orders previously rendered. Suffice to say that the undersigned rendered a judgment on May 27, 2015 summarizing the facts since the beginning of the case. Moreover, a judgment rendered by the undersigned on February 17, 2014 also outlined the situation then prevailing.

[9] It is important to recall that, as early as February 2014, the undersigned raised questions as to whether it was necessary to file a viable plan of arrangement in order to maintain the stay. The undersigned also raised questions as to whether a plan of arrangement could provide for the liquidation of the company or whether it was necessary for the plan to provide a complete restructuring of the company.

[10] Since the case seems to logically follow what is stated by the undersigned at pages 8 to 30 of the February 17, 2014 judgment, and since more than 4 000 creditors have relied on the direction provided by that judgment, it appears important to recall what the undersigned stated therein:

Obligation to File a Viable Plan of Arrangement in Order to Continue the Stay of Proceedings

[57] There has long existed a debate on the obligation to file a plan of arrangement if one wishes to benefit from the CCAA.

[58] Before the 2009 amendments, there was also a debate on the authority of the courts to authorize the liquidation of a company without the acceptance of a plan of arrangement. Section 36 CCAA provides as follows:

“36. (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

450-11-000167-134

PAGE : 4

- b) whether the monitor approved the process leading to the proposed sale or disposition;
- c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- d) the extent to which the creditors were consulted;
- e) the effects of the proposed sale or disposition on the creditors and other interested parties; and;
- f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[59] Before this amendment, no provision of the Act expressly permitted the partial or total liquidation of the assets of a company.

[60] The courts had used their inherent jurisdiction to authorize the sale of assets out of the ordinary course of business.

[61] Shelley C. Fitzpatrick¹ has mentioned that the flexibility of the CCAA has always allowed the liquidation of surplus assets. The debate centered more on the issue that some courts authorized the sale of assets that did not fit in this category :

"As is evident from the comments of Blair J.A. in Metcalfe, one of the major strengths of the CCAA is its flexibility in meeting any particular fact situation. Clearly, Parliament intended to allow a downsizing of redundant assets as part of the restructuring process. Such downsizing would assist in returning the debtor company to profitability and thereby enable it to remain in business. (page 41)

The courts, however, have permitted asset sales that extend well beyond a sale of redundant assets as part of a downsizing of operations. There are a variety of liquidation scenarios. On one end of the spectrum is a sale of assets to various purchasers who do not intend to continue the operations of any part of the debtor's business. On the other end of the spectrum is a sale to a single purchaser who does intend to continue operating the debtor's business. Somewhere in the middle is a sale to one or more purchasers who do intend to continue certain parts of the debtor's business on a going concern basis."

Shelley C. Fitzpatrick, *Liquidating CCAAs — Are We Praying to False Gods?*, dans *Annual Review of Insolvency Law 2008*, Janis P. Sarra, Toronto, Thomson/Carswell, 2008, p.41.

[62] Bill Kaplan similarly writes that courts throughout Canada have confirmed that it is possible to authorize the liquidation of assets under the CCAA, however, the jurisprudence is not consistent in the manner in which this liquidation has been permitted:

UNOFFICIAL IN-HOUSE TRANSLATION

"We will see later that there is no consensus among the Alberta Court of Appeal, the Ontario Courts and the British Columbia Court of Appeal considering the proper exercise of that jurisdiction, but there is no disagreement that there is jurisdiction under the CCAA to approve a liquidation of assets. » (page 94)

² Bill Kaplan, *Liquidating CCAAs: Discretion gone Amy?*, dans *Annual Review of Insolvency Law 2008*, Janis P. Sarra, Toronto, Thomson/Carswell, 2008, p.79

[63] There has therefore been a debate on the circumstances in which a liquidation of assets under the CCAA can be authorized both with respect to the kinds of assets that may be sold and whether or not there is an obligation to submit the liquidation plan to a vote by creditors.

Arguments in favour of liquidation

[64] In some cases, the liquidation of assets through the CCAA is preferable to a liquidation under another insolvency scheme and this is why it was permitted by certain Courts. Continuing the company's operations may have the effect of increasing its value upon liquidation and therefore improving the result for the creditors and various stakeholders³.

³ *Ibid*, p.89.

[65] According to Fitzpatrick⁴, this line of case law started with the following cases:

"The line of cases that, in obiter, "endorse" liquidating CCAAs can be traced to two early authorities: Re Amirault Fish Co. and Re Associated Investors of Canada Ltd."

[Citations omitted]

⁴ *Supra*, note 1, p. 47.

[66] She also refers to other decisions that warranted the liquidation of assets in the interests of creditors. It should be noted that such decisions are derived from Ontario courts which, over time, were more proactive than courts elsewhere in Canada in authorizing the liquidation of assets under the CCAA, which will be discussed later:

"In Re Anvil Range Mining Corp., [...] Farley J. referred to Olympia & York and Lehndorff as support for the principle that "the CCAA may be used to affect a sale, winding up or liquidation of a company and its assets in appropriate circumstances".

It is important to note that in Anvil Range, Farley J. also mentioned "maximizing the value of the stakeholders pie". In Lehndorff, Farley J. stated that it appeared to him that "the purpose of the CCAA is also to protect the interests of creditors" which may involve a liquidation or downsizing of the business, "provided the same is proposed in the best interests of the creditors generally". »

⁵ *Re Lehndorff General Partner Ltd.* (1993), 17 C.B.R. (3d) 24; *Re Olympia & York Developments Ltd.* (1995), 34 C.B.R. (3d) 93; *Re Anvil Range Mining Corp.* (2001), 25 C.B.R. (4th) 1.

[67] Secondly, and this is where the argument is most controversial, professionals involved in a liquidation incur less risk if the liquidation is conducted under the *CCAA* than under the "*Bankruptcy and Insolvency Act (BIA)*". Indeed, when an administrator is appointed under the *BIA* and takes possession and administers the assets of the company, he engages his liability. Under the *CCAA*, the company remains the owner of its assets and continues its operations, which does not give rise to a third party's liability, which may reassure creditors on the management of the business.

⁶ *Supra*, note 2, p.90.

Arguments against liquidation

Use against the objective of the Act

[68] The first submission against the liquidation of assets other than excess assets, is that the objective of the *CCAA* is not to allow the liquidation of a business and that there are other ways, such as the *BIA*, under which the liquidation should take place. In the case of *Hongkong Bank of Canada vs. Chef Ready Foods Ltd*⁷, the British Columbia Court of Appeal defines the purpose of the *CCAA* and the Court's role as follows:

"The purpose of the C.C.A.A. is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors to the end that the company is able to continue business. [...] When a company has recourse to the C.C.A.A., the Court is called upon to play a kind of supervisory role to preserve the status quo and to move the process along to the point where a compromise or arrangement is approved or it is evident that the attempt is doomed to failure."

⁷ (1990), 4 C.B.R. (3d) 311 (CB C.A.).

[69] Such interpretation is supported by the decision of the British Columbia Court of Appeal in *Cliffs Over Maple Bay Investments Ltd. vs. Fisgard Capital Corp.*⁸ which will be discussed later.

⁸ 2008 BCCA 327.

[70] In Québec, the Court of Appeal, per Justice Louis Lebel, expressed the same opinion and made a distinction between the *CCAA* and the *BIA*. It mentioned in *Laurentienne du Canada vs. Groupe Bovac Ltée*⁹ :

"26 Moreso than focusing on the liquidation of the company, the Act is focused on the reorganization of the business and its protection during the interim period in which the plan of reorganization will be approved and executed. Conversely, the Bankruptcy Act (R.S.C. 1985, c. B-3) seeks the orderly liquidation of the bankrupt's assets and the

450-11-000167-134

PAGE : 7

distribution of the proceeds of such liquidation between the creditors, according to the order of priority defined by the Act. The Companies' Creditors Arrangement Act satisfies a separate need and objective, at least as generally interpreted since its enactment. The goal is to prevent bankruptcy or to have the business emerge from such situation."

⁹ EYB 1991-63766 (QC C.A.), par. 26.

[71] However, as raised by Shelley C. Fitzpatrick¹⁰, the situation remains unresolved since no Court of Appeal in Canada has recently looked at whether the liquidation of assets under the *CCAA* respects its objective.

¹⁰ *Supra*, note 1.

The secured creditors are doing indirectly what they cannot do directly

[72] As was mentioned earlier, the liquidation of assets under the *CCAA* has the benefit of reducing the risks undertaken by the professionals involved. In the case of liquidation under the *BIA*, the secured creditors are required to pay an indemnity to the professionals in order to alleviate such risks. Although they must act the same way upon liquidation under the *CCAA*, the indemnity is undoubtedly lower, since the risk involved is reduced. Thus, with the agreement of the debtor company, the secured creditors are liquidating the assets of the company under the *CCAA* without ever having intended to agree on a plan of arrangement or to see the company survive, which is contrary to the purpose of the Act¹¹.

¹¹ *Supra*, note 2, p.54, 55.

UNOFFICIAL IN-HOUSE TRANSLATION

Iniquities affecting various stakeholders

[73] As the Court of Appeal of Ontario reminds us in the *Metcalfe*¹² case, the CCAA was enacted during the Great Depression in the 1930's and was designed to reduce the number of business bankruptcies and thereby the unusually high employment rate. Over time, the courts have given a social purpose to this Act, which must now serve the interests of investors, creditors, employees and other stakeholders involved in a business.

¹²*ATB Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 (Ont. C.A.), par.51, 52.

[74] This evolution pushed the courts, in some cases, to take more political than judicial positions, the whole in the broader interest.

[75] The inclusion of social criteria in the court's decision-making process can sometimes result in the unequal treatment of the various stakeholders involved. Indeed, the interests of the investors, creditors, employees and other stakeholders rarely come together in one solution. This situation occurred in the *Re Pope & Talbot Ltd*¹³ case in which the Supreme Court of British Columbia authorized the sale of assets of the company not to the party presenting most lucrative offer but, rather, to a company proposing to continue the operations of the business, despite the existence of a higher offer. Ultimately, the Court determined that the interests of the community and preserving jobs should take precedence over obtaining the best price and over the creditors' satisfaction. Author Shelley C. Fitzpatrick disagrees:¹⁴

"The court is essentially making a legislative statement grounded in public policy as to whether the community of Nanaimo is better off with pulp mill jobs as opposed to construction/golf course jobs (or whatever alternative use the site would have been put to). It is difficult to see the evidentiary basis upon which the court could come to the conclusion that the interests of the employees, suppliers and the community of Nanaimo outweighed obtaining the best price for the assets."

¹³ 2009 BCCS 17 (CanLII).

¹⁴ *Supra*, note 1, p.60.

[76] The author also raises an interesting point in this excerpt when she mentions that the Court takes a legislative position. Indeed, as she subsequently states, this type of social position should be left to the legislators and not to the courts¹⁵.

¹⁵ *Supra*, note 1, p.61.

Impact on third parties' rights

[77] When a company is placed under the protection of the *CCAA*, its suppliers are not required to fulfill their contractual obligations if the company does not wish it or if it does not intend to fulfill its correlative obligations¹⁶.

¹⁶ *Supra*, note 1, p.71.

[78] In the *Pope & Talbot* case, Canfor, a supplier of Pope & Talbot, was required to continue to fulfill its contractual obligations towards Pope & Talbot by a court order in the course of the initial application. In addition, the Court gave an order staying Canfor's right to terminate the contract binding it to Pope & Talbot, despite its breach of contract¹⁷.

¹⁷ *Supra*, note 1, p.72, 73.

[79] Thus, Pope & Talbot, and thus its creditors, could keep the contract alive without fulfilling their obligations and possibly transfer it to a purchaser of the business. This situation granted more rights to the creditors of the company placed under the protection of the *CCAA* than the company would otherwise have if it did not benefit from such protection, the whole to the detriment of suppliers such as Canfor¹⁸. To quote a metaphor used in Shelley C. Fitzpatrick's text, the creditors use the Act as a sword allowing them to obtain a better strategic position and, therefore, a higher price for the assets of the company; not as a shield allowing to maintain the status quo, as it should be¹⁹.

¹⁸ *Supra*, note 1, p.73.

¹⁹ *Supra*, note 2, p.67.

Circumstances and parameters of the liquidation

[80] The new section 36 of the Act settled the question of whether the Court has the power to allow liquidation. However, it gives very little indication as to how the Court will exercise this power. This new section 36 provides, however, that the Court may authorize the liquidation without the approval of creditors.

Various examples of the discretion exercised by the courts

Ontario

[81] As previously mentioned, the Ontario courts are significantly more active than elsewhere in Canada in the exercise of their discretion to authorize the liquidation of assets under the *CCAA*. Thus, liquidations were authorized without a plan of arrangement having been previously approved.

[82] It is the case in *Re Canadian Red Cross Society I Société Canadienne de la Croix-Rouge*²⁰. While the organization was faced with law suits of nearly 8 billion dollars from victims having developed various diseases through contaminated blood transfusions, the

450-11-000167-134

PAGE : 10

Court authorized the transfer of its assets to other organisations before a plan of arrangement was proposed to creditors. Justice Blair justifies his decision through the flexibility of the CCAA, which allows him to so act, and by the circumstances of the case, which results in the best solution²¹:

"[45] It is very common in CCAA restructurings for the Court to approve the sale and distribution of assets during the process and before the Plan is formally tendered and voted upon. There are many examples where this has occurred, the recent Eaton's restructuring being only one of them. The CCAA is designed to be a flexible instrument and it is that very flexibility which gives it its efficacy.

[...]

[46] [...] There is no realistic alternative to the sale and transfer that is proposed and the alternative is a liquidation/bankruptcy scenario, which, on the evidence would yield an average of about 44% of the purchase price which the two agencies will pay. To forego that purchase price supported as it is by reliable expert evidence would in the circumstances be folly, not only for the ordinary creditors but also for the Transfusion Claimants, in my view."

²⁰ 1998 CanLII 14907 (ON S.C.).

²¹ *Mid*, par.45, 47.

[83] Author Bill Kaplan also gives the example of the *Re Anvil Range Mining Corp.*²² case, in which the Court authorized the liquidation of the company's assets following a plan of arrangement that had been voted on only by the secured creditors. The plan provided that only the secured creditors were authorized to vote and the unsecured creditors would not receive any amounts following the liquidation. The Court relied on the fact that unsecured creditors would suffer no prejudice since, regardless of the solution put forward, the liquidation would in no event allow the payment of any indemnity to them²³.

²² 2001 CanLII 28449 (ON S.C.).

²³ *Mid*, par.12.

[84] Bill Kaplan summarized the position of the Ontario Courts with respect to the liquidation of assets under the CCAA as follows, all while stating that it departs from that of other provinces²⁴:

"The Ontario authority demonstrates not only that the courts in Ontario have embraced liquidating CCAAs, but will approve asset sales under the CCAA without requiring that a Plan of Arrangement be filed. That is not an approach sanctioned by the Alberta Court of Appeal, or apparently by the British Columbia Court of Appeal, nor as we shall see, is it an approach that as met favour with Courts in the province of Quebec. »

²⁴ *Supra*, note 2, p.103.

UNOFFICIAL IN-HOUSE TRANSLATION

British Columbia

[85] The situation in British Columbia is interesting since, until recently, the courts of this province joined the Ontario courts when it came time to authorize the liquidation of assets under the CCAA. However, the situation has dramatically changed since the *Cliffs Over Maple Bay Investments Ltd. vs. Fisgard Capital Corp.*²⁵ decision.

²⁵ *Supra*, note 8.

[86] In this decision, the Court of Appeal of British Columbia concludes that, in accordance with the objective of the CCAA, it may not grant the protection of the CCAA when the debtor company does not intend to propose a plan of arrangement to its creditors. As Bill Kaplan²⁶ explains:

"The Court of Appeal observed that the fundamental purposes of the CCAA was to facilitate, comprises and arrangements between companies and their creditors. Section 11, the stay provision, was merely ancillary to that fundamental purpose, and should only be granted in furtherance of that fundamental purpose. While the filing of a draft Plan of Arrangement or compromise is not a prerequisite to the granting of a stay under s. 11, the Court concluded that a stay should not be granted if the debtor company does not intend to propose a compromise or arrangement to its creditors."

²⁶ *Supra*, note 2, p.85.

Alberta

[87] The Alberta case law is more demanding than elsewhere in Canada when it comes to authorizing a liquidation of assets under the CCAA. The *Royal Bank vs. Fracmaster Ltd.*²⁷ case is a good example. Indeed, the Court of Appeal of Alberta took this opportunity to take a position on the conditions that should guide the Court when authorizing a liquidation under the CCAA²⁸:

"Although there are infrequent situations in which a liquidation of a company's assets has been concluded under the CCAA, the proposed transaction must be in the interests of the creditors generally [...] There must be an ongoing business entity that will survive the asset sale [...] A sale of all or substantially all of the assets of the company to an entirely different entity with no continued involvement by former creditors and shareholders does not meet this requirement."

[citation taken from the *Liquidating CCAs: Discretion Gone Awryl* text?]

²⁷ (1999), 11 C.B.R. (4th) 204 (Alta. Q.A.).

²⁸ *Ibid*, par.16.

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 12

[88] By imposing the condition of survival of the business for a liquidation of assets under the *CCAA* to be authorized, the *Fracmaster* case made it considerably more difficult to obtain such orders in Alberta than elsewhere in Canada²⁹.

²⁹ *Supra*, note 2, p.112.

Québec

[89] According to author Bill Kaplan, prior to granting a company protection under the *CCAA*, Québec courts require real evidence of the general structure and content of the potential plan of arrangement to be submitted to the creditors³⁰.

³⁰ *Supra*, note 2, p.113.

[90] In support of this view, he refers to the *Re Boutiques San Francisco Incorporées*³¹ decision. In this case, the Court refuses to grant protection under section 11 of the *CCAA* because the plan submitted by the debtor company was incomplete³²:

“20 As a result, while it is receptive to issue some Initial Order to allow the BSF Group the possibility to avail itself of some of the protections of the *CCAA* under the circumstances, the Court will not grant all the conclusions sought at this stage because of this situation and the lack of information on the proposed plan.”

³¹ EYB 2003-51913 (QCCS).

³² *Ibid*, par.20.

[91] In support of this decision, the Court refers to the judgment of Justice LeBel of the Court of Appeal in *Banque Laurentienne du Canada vs. Groupe Bovac Ltée*³³:

56 [...] If sections 4 and 5 indicate that the order to convene the creditors or, if applicable, the shareholders of the company depends on the judge's discretion, the exercise thereof implies an existing basic element. Such an event occurs when a transaction or an arrangement "is proposed". A draft arrangement must physically exist. A simple statement of intention is not enough. Otherwise, the mechanisms provided at law are fundamentally transformed. It then becomes a way to obtain a simple stay, without the obligation to establish that a draft arrangement does exist and without the possibility to assess its plausibility. The emphasis of the law is not on form. It does not require that the draft arrangement be incorporated in the text of the petition. It may appear in schedules, in draft letters to creditors, as long as it may be indicated to the judge being asked to call of the meeting that it exists and that the main elements thereof may be described. [...]

57 This obligation not only stems from the text of the Act but it also corresponds to the requirements of a sufficiently informed exercise of the Court's discretion to convene the creditors and shareholders and, in some cases, to issue stay orders under section 11.

58 *In the absence of a description of the main elements of a draft of arrangement, certain information required to allow the Court to exercise its discretion on an informed basis are missing. These elements are required to ensure that the interests of all the concerned groups are considered. Indeed, the consequences of implementing the mechanisms of the Companies' Creditors Arrangement Act are more drastic, particularly for secured creditors and inversely involve less risk for the debtor, since unsuccessfully resorting to the Act or rejecting proposals thereunder does not entail bankruptcy. Moreover, all creditors' realization proceedings of any nature can be stayed for undetermined periods.*

59 *Using the Act implies oversight by the Court. It is for the judge to weigh from the start the business interest in submitting a proposal, the plausibility of its success, the consequences of such proposal and of stay orders issued to creditors and , the risks they have for the secured creditors. The judge must examine these various interests before creditors can be convened and the Act applied. The Act is not intended to grant grace periods to struggling debtors without any conditions or qualifications. It is designed to be an Act of reorganization of struggling businesses. As such, seized of the application to call a meeting and for a stay, the judge must be able to first assess if the business is liable to survive throughout the interim periods until approval of the compromise, then, assess whether it is reasonable to believe that the proposed agreement can be realized. To determine whether it can be realized, one of the basic conditions is to know the material terms thereof, even if such terms will be specified or amended thereafter. [...] »*

³³ *Supra*, note 9, par.56-59 (EYB 1991-63766).

[92] Despite what Mr. Kaplan states, such requirement to submit sufficient material evidence of a future plan of arrangement does not seem to have been uniformly followed by the Québec Courts. The *Re Papier Gaspésia Inc.*³⁴ case is an example in which the protection of the Act was granted without a plan of arrangements having been submitted.

³⁴ 2004 CanLII 41522 (QC C.S.).

[93] As stated by the Court of Appeal in this same case³⁵, the process for the sale of assets in this case shall be submitted for approval by the creditors:

"[14] Moreover, the call for tenders that was allowed, subject to certain conditions, by the first instance judgment is not equivalent to a pure and simple liquidation, although it could be considered as the start of the future liquidation process, which, however, could not take place if a purchaser would come forward and show an interest in relaunching the business (although this seems unlikely). In addition, to ensure the protection of the creditors' interests (including the petitioners), the trial judge orders that the terms and conditions of the call for tenders, the recommendations of acceptance or refusal of the tenders received and the plan of distributions of the sale price be submitted to the them, the whole through an amendment of the plan of arrangement already

proposed (see par. 101 of the trial judgment). Not only must the plan of arrangement be submitted to the creditors, but it must also be sanctioned by the Superior Court. If necessary, Petitioners may ensure that their rights are adequately protected (including by requesting the creation of a particular class of creditors) and may address the Court for such purpose. The Petitioner may also, which they did not fail to argue on several occasions at the hearing, vote against the arrangement if it is not suitable to them, or refer to the Court if they feel their rights will not be considered or will be ignored.”

[Citation omitted]

³⁵ *Papier Gaspésia inc., Re*, 2004 CanLII 46685 (OC C.A.), par.14.

[94] Therefore, although a plan of arrangement is not automatically required in order to obtain the protection of the Act in Québec, such a plan is still required to be put to a vote by the creditors.

The right course of action

[95] We therefore find ourselves in a situation where the application and interpretation of an Act of federal jurisdiction are materially different from province to province. Notwithstanding certain more drastic decisions, such as *Fracmaster* or *Cliffs Over Maple*, it seems to be unanimously agreed that the liquidation of assets under the *CCAA* is possible, especially since the enactment of section 36 of the *CCAA*. One may disagree with this situation but this is presently the state of the law.

[96] There are, however, fundamental differences in the application of this discretion throughout Canada, both with respect to assets that may be liquidated and to criteria that must guide the Courts in the use of its power.

[97] In finding a solution, we must keep in mind the objectives of the *CCAA* that must guide the interpretation thereof. Mr. Kaplan summarizes them as follows³⁶:

“The judicial and academic pronouncements all identify the following general policy objectives: maximization of creditor recovery, minimization of the detrimental impact upon employment and supplier, customer and other economic relationships, preservation of the tax base and other contributions the enterprise makes to its local community, and the rehabilitation of the debtor company.”

³⁶ *Supra*, note 2, p.117.

Solutions proposed by Bill Kaplan

[98] Author Bill Kaplan starts his assessment of the state of the case law by stating that the *Fracmaster* and *Cliffs Over Maple* cases did not condemn liquidations under the *CCAA*. According to him, both these material decisions mostly warn us against abusively using the *CCAA* to liquidate assets of a company and emphasize the creditors' rights that are violated when the liquidation is permitted.

[99] Kaplan however specifies that, according to him, the *Fracmaster* case is too drastic when interpreted as requiring the survival of the business for granting the protection of the Act. Kaplan does, however, see a usefulness in the decision when it suggests that a party requiring the protection of the *CCAA*, while commercial objectives at stake would be fulfilled by one of the other insolvency proceedings, such as the *BIA* for the execution of hypothecary rights, must demonstrate why the application of the *CCAA* is necessary.

[100] With respect to the creditors' vote before proceeding to a liquidation of assets, Kaplan is of the opinion that the vote is not required at all times and that it is up to the Court to determine when it is necessary. He points out that the Court's agreement is required to proceed to such a liquidation, which ensures a certain control, and that it would be detrimental to have mandatory voting in all situations since it is a long and costly process. In order to determine if a vote is required, the Court should assess to what degree the creditors are opposed to the liquidation and weigh the alternatives to a liquidation under the *CCAA*. He notes that the Court must place a greater emphasis on the creditors' rights than on the rights of other stakeholders when it is time to assess the pros and cons of a liquidation under the *CCAA* compared to the other proposed solutions.

[101] Finally, the author would like to make it a mandatory requirement that a plan of arrangement be submitted to the creditors in all cases. He adds that such a plan could be submitted to all creditors, including the ordinary creditors, even when these would not receive anything from the liquidation of assets. This measure would be more in line with the intent of the Act, which remains to obtain an arrangement with the creditors.

[102] It is important to note that the position put forward in the *Fracmaster* case does not close the door completely to the liquidation of assets under the *CCAA*. Indeed, and I am also of that opinion, the liquidation of surplus assets may and must be possible under the *CCAA* in order to improve the company's finances. The test should therefore come down to determining if the case, and not necessarily the company itself, will survive following the plan of arrangement.

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 16

[103] Bill Kaplan's solution is interesting, but it has the effect of granting a very broad discretion to the courts, which is at the very basis of the case law that is being criticized today. The *Fracmaster* approach is more drastic and has the effect of restricting the broad power of interpretation of the courts, but it is necessary in the circumstances.

[104] Although the undersigned is inclined to support the thesis that the *CCAA* and the *BIA* are two distinct regimes that apply to two types of distinct situations and serve different objectives, the amendments to the *CCAA* and the particular circumstances of the present file militate towards the possibility of allowing the liquidation of assets under the *CCAA*.

[105] All of the factors to take in consideration as mentioned in section 36 (3) *CCAA* militate in favor of the authorization of a sale of assets. Not only does this permit a higher realization than that which could be obtained by any other means, it also permits the continuation of an indispensable railway for the regional economy.

[106] The judgment rendered by the undersigned authorizing the sale of assets was rendered with the consent of all of the interested parties. There has not been an appeal of this judgment. The judgment thus has the authority of *res judicata* with respect to the sale of the assets of the company.

[107] It was also in taking into consideration the collective interests and the maintenance of employment that the court permitted the sale even if it would not have been at the best price. In the end, the best price was obtained but there was the possibility that it might not have been the case.

[108] That being said, what do we do going forward in this file?

[109] In its current state, it seems unlikely that a plan of arrangement can be filed. It is therefore of little use for the moment to foresee a costly claims process since no vote will be necessary if no plan of arrangement is proposed.

The only possibility for continuing the CCAA proceedings

[110] Many might consider that there is no longer any reason to continue the present file.

[111] On the other hand, simply reading the Service List and noting the presence of parties represented at each step of the proceedings might lead one to think that an arrangement could be possible.

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 17

[112] We have already mentioned that our colleague Martin Castonguay exceptionally ordered the stay of proceedings with respect to XL Insurance Company Ltd. This was done exceptionally and in order to avoid chaos and a race to judgment against the insurance company.

[113] We have already said, in principle, that the *CCAA* applies only to debtor companies. However, exceptionally, orders may be rendered to release certain third parties that participate in a plan of arrangement by way of monetary contributions in exchange for releases.

[114] The undersigned in the case of the plan of arrangement of the Société industrielle de décolletage et d'outillage (SIDO) sanctioned a plan of arrangement that envisaged releases to certain third parties in addition to directors.

[115] Madam Justice Marie-France Bich in a judgment dismissing a Motion for Leave to Appeal stated as follows³⁸:

³⁸2010 QCCA 403.

[32] **The releases.** Article 7.2 of the plan of arrangement approved by the first instance judge includes the following provisions :

Article 7.2 Releases

On the implementation date, the Debtor and/or the other Person identified below will benefit from the following releases and renunciations, which shall take effect at the Implementation time:

7.2.1 A total, final and definitive release of the Creditors from any Claim against the Debtor and a renunciation by the Creditors of the right to exercise any real or personal right with respect to the Claims.

7.2.2 A total, final and definitive release of the Creditors with respect to any claim, other than a claim targeted by paragraph 5.1(2) *CCAA*, that they have or could have, directly or indirectly, against the directors, officers, employees or other representatives or mandataries of the Debtor as a result of or with respect to an Affected Claim and a renunciation by the Creditors of the right to exercise any real or personal right with respect to any such claim.

7.2.3 A total, final and definitive release of the Creditors with respect to any claim that they have or may have, directly or indirectly, against DCR and Fortin, as well as their officers, directors, employees, financial consultants, legal counsels, business bankers, consultants, mandataries, as well as their respective current and former accountants from all demands, claims, actions, causes of action, counterclaims, lawsuits, debts, monies, accounts, undertakings, damages, decisions, judgments, expenses, seizures, charges and other recoveries under a claim,

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 18

obligation, demand or cause of action of any nature that a Creditor may have the right to make against DCR or Fortin.

7.2.4 A total, final and definitive release of the Creditors with respect to any claim that they have or may have, directly or indirectly, against the Debtor or the Monitor or their directors, officers, employees or other representatives or mandataries as well as their legal counsel with respect to any action taken or omission made in good faith within the scope of the Proceedings or the preparation and implementation of the Plan or of any contract, effect, release or other agreement or document created or concluded, or of any action taken or omission made in relation to the Proceedings or the Plan, it being understood that nothing in this paragraph shall limit the liability of a Person from any fault relating to an obligation expressly set out in the Plan or any agreement or other document concluded by said Person after the Determination Date or pursuant to the Plan, or with respect to any breach of the obligation of prudence towards any Person that may occur after the Implementation date. In any event, the Debtor and the Monitor and their employees, directors, officers, mandataries and respective consultants have the right to rely upon legal opinions regarding their obligations and responsibilities under the Plan; and

7.2.5 A total, final and definitive release of the Debtor from any claim that it has or may have, directly or indirectly, against its directors, officers and employees.

[...]

[37] However, before the Superior Court, based namely on the Court of Appeal judgment in *A.T.B. Financial v. Metcalfe & Mansfield Alternative Investments II Corp.*, Respondent argued that the release in favour of DCR was legal and appropriate in this case, considering that such a release has a reasonable connection with the proposed reorganisation. In the written argument submitted to the trial judge, Respondent cited the following paragraphs in the *Metcalfe* decision:

[113] At para. 71 above I recited a number of factual findings the application judge made in concluding that approval of the Plan was within his jurisdiction under the CCAA and that it was fair and reasonable. For convenience, I reiterate them here — with two additional findings — because they provide an important foundation for his analysis concerning the fairness and reasonableness of the Plan. The application judge found that :

- a) The parties to be released are necessary and essential to the restructuring of the debtor;
- b) The claims to be released are rationally related to the purpose of the Plan and necessary for it;
- c) The Plan cannot succeed without the releases;

450-11-000167-134

PAGE : 19

- d) The parties who are to have claims against them released are contributing in a tangible and realistic way to the Plan;
- e) The Plan will benefit not only the debtor companies but creditor Noteholders generally;
- f) The voting creditors who have approved the Plan did so with knowledge of the nature and effect of the releases; and that,
- g) The releases are fair and reasonable and not overly broad or offensive to public policy.

[38] It seems obvious that the trial judge estimated that the release for the benefit of DCR pursuant to Article 7.2.3 of the Plan of Arrangement fulfilled these requirements.

[39] The submissions filed by Respondent before the Superior Court and the submissions filed for the purposes hereof also cite, among others, the *Muscletech Research and Development Inc.* case, recognizing the possibility, as part of an arrangement under the CCAA to state a release in favor of a third party financing the restructuring of the debtor company. However, it is precisely the case of DCR, which shall pay a considerable amount in order to support the reorganisation of Respondent's business under the Plan of Arrangement.

[40] It is worthwhile reproducing certain paragraphs of the *Muscletech* case:

[7] With respect to the relief sought relating to Claims against Third Parties, the position of the Objecting Claimants appears to be that this court lacks jurisdiction to make any order affecting claims against third parties who are not applicants in a CCAA proceeding. I do not agree. In the case at bar, the whole plan of compromise which is being funded by Third Parties will not proceed unless the plan provides for a resolution of all claims against the Applicants and Third Parties arising out of "the development, advertising and marketing, and sale of health supplements, weight loss and sports nutrition or other products by the Applicants or any of them" as part of a global resolution of the litigation commenced in the United States. In his Endorsement of January 18, 2006, Farley J. stated:

the Product Liability system vis-à-vis the Non-Applicants appears to be in essence derivative of claims against the Applicants and it would neither be logical nor practical/functional to have that Product Liability litigation not be dealt with on an all encompassing basis.

[8] Moreover, it is not uncommon in CCAA proceedings, in the context of a plan of compromise and arrangement, to compromise claims against the Applicants and other parties against whom such claims or related claims are made. In addition, the Claims Resolution Order, which was not appealed, clearly defines Product Liability Claims to include claims against Third Parties and all of the Objecting

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 20

Claimants did file Proofs Of Claim settling out in detail their claims against numerous Third Parties.

[9] It is also, in my view, significant that the claims of certain of the Third Parties who are funding the proposed settlement have against the Applicants under various indemnity provisions will be compromised by the ultimate Plan to be put forward to this court. That alone, in my view, would be a sufficient basis to include in the Plan, the settlement of claims against such Third Parties. The CCAA does not prohibit the inclusion in a Plan of the settlement of claims against Third Parties. In Canadian Airlines Corp., Re (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.), Paperney J. stated at p. 92:

While it is true that section 5.2 of the CCAA does not authorize a release of claims against third parties other than directors, it does not prohibit such releases either. The amended terms of the release will not prevent claims from which the CCAA expressly prohibits release.

[Underlining added]

[41] Subsequently, the Superior Court of Justice of Ontario, in a decision rendered in the same case in 2007, wrote the following:

[20] A unique feature of this Plan is the Releases provided under the Plan to Third Parties in respect of claims against them in any way related to "the research, development, manufacture, marketing, sale, distribution, application, advertising, supply, production, use or ingestion of products sold, developed or distributed by or on behalf of the Applicants (see Article 9.1 of the Plan). It is self-evident, and the Subject Parties have confirmed before this court, that the Contributed Funds would not be established unless such Third Party Releases are provided and accordingly, in my view it is fair and reasonable to provide such Third Party releases in order to establish a fund to provide for distributions to creditors of the Applicants. With respect to support of the Plan, in addition to unanimous approval of the Plan by the creditors represented at meetings of creditors, several other stakeholder groups support the sanctioning of the Plan, including Iovate Health Sciences Inc. and its subsidiaries (excluding the Applicants) (collectively, the "Iovate Companies"), the Ad Hoc Committee of MuscleTech Tort Claimants, GN Oldco, Inc. f/k/a General Nutrition Corporation, Zurich American Insurance Company, Zurich Insurance Company, HVL, Inc. and XL Insurance America Inc. It is particularly significant that the Monitor supports the sanctioning of the Plan.

[21] With respect to balancing prejudices, if the Plan is not sanctioned, in addition to the obvious prejudice to the creditors who would receive nothing by way of distribution in respect of their claims, other stakeholders and Third Parties would continue to be mired in extensive, expensive and in some cases conflicting litigation in the United States with no predictable outcome.

[...]

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 21

UNOFFICIAL IN-HOUSE TRANSLATION

[23] The representative Plaintiffs opposing the sanction of the Plan do not appear to be rearguing the basis on which the class claims were disallowed. Their position on this motion appears to be that the Plan is not fair and reasonable in that, as a result of the sanction of the Plan, the members of their classes of creditors will be precluded as a result of the Third Party Releases from taking any action not only against MuscleTech but against the Third Parties who are defendants in a number of the class actions. I have some difficulty with this submission. As stated above, in my view, it must be found to be fair and reasonable to provide Third Party Releases to persons who are contributing to the Contributed Funds to provide funding for the distributions to creditors pursuant to the Plan. Not only is it fair and reasonable; it is absolutely essential. There will be no funding and no Plan if the Third Party Releases are not provided. The representative Plaintiffs and all the members of their classes had ample opportunity to submit individual proofs of claim and have chosen not to do so, except for two or three of the representative Plaintiffs who did file individual proofs of claim but withdrew them when asked to submit proof of purchase of the subject products. Not only are the claims of the representative Plaintiffs and the members of their classes now barred as a result of the Claims Bar Order, they cannot in my view take the position that the Plan is not fair and reasonable because they are not participating in the benefits of the Plan but are precluded from continuing their actions against MuscleTech and the Third Parties under the terms of the Plan. They had ample opportunity to participate in the Plan and in the benefits of the Plan, which in many cases would presumably have resulted in full reimbursement for the cost of the product and, for whatever reason, chose not to do so.

[...]

[underlining added]

[42] To the same effect, the Superior Court decision in *Charles Auguste Fortier inc. (Arrangement relatif à)*, which thoroughly deals with the question and concludes in favour of a release of the guarantor of the debtor company. This guarantor played a central role in the reorganisation of the business and, without his help, the Plan would have failed.

[43] The situation in this case is similar: DCR will inject substantial amounts into Respondent's reorganisation under the Plan of Arrangement, which will not occur if it does not receive the release provided in paragraph 7.2.3. The Application for leave to appeal and the submissions presented at the hearing do not support a conclusion that Petitioner disputes this fact, nor that it disputes the absence of another source of financing. Rather, it argues that the release has no connection with the business. With respect, this argument cannot stand and, in my opinion, it has no reasonable chance of success before this Court. The Application for leave to appeal thus cannot be granted on this basis.

[116] The Debtor admits that it wishes to continue the proceedings under the *CCAA* to ultimately obtain the release of the directors.

[117] Various class actions have been filed against the Debtor. One of the actions filed in Québec, and in which the plaintiffs' motions were postponed to February 26, involves not only the Debtor and its directors but more than 35 other defendants as well.

[118] These are the defendants that the Debtor would like to see at the table to try and reach a settlement that would be beneficial for all. Several of these defendants have been present at all stages of this case.

[119] A settlement in this case would have the benefit of avoiding, for all parties thereto, legal proceedings that could unfold over several years.

[120] In the current state of the case, it is impossible for a court to order that amounts acknowledged to be owed by *Compagnie d'Assurance XL* be paid to a creditor, rather than to another one.

[121] The only practical, economical and legally possible way to settle this case would be for third parties to enter into an arrangement that would be submitted to all creditors.

[122] Nothing will prevent the plaintiffs in the class action from continuing the proceedings against the defendants that do not participate therein, but this would allow them to participate in the distribution of insurance indemnity for a total of \$25,000,000.

450-11-000167-134

PAGE : 23

[123] Obviously, for this thing to be successful, third parties will have to contribute substantial amounts. The class action plaintiffs cannot be allocated any insurance amounts since they are not entitled thereto. There are other victims, not only the class action plaintiffs. Those other victims have as much right to the benefit of the insurance as the class action plaintiffs. Another fact to be considered is that the Government of Québec, through its attorneys, has indicated since the start that it wishes that the insurance amount be given to the victims. This wish was mentioned at various hearings but does not bind anybody for the time being. The Government's attorney also declared that his definition of victims is not the same as the Court's. Indeed, an insurance company that may have indemnified a merchant for the loss of a building or for the loss of sales is also a victim of the railway tragedy. Legally, such insurance company would be totally in its right to receive a part of the \$25,000,000 XL Insurance proceeds.

[124] The Government of Québec may very well prefer the individual victims, but that does not bind XL Insurance.

[125] Of course, if the Province of Québec has a claim of \$200,000,000 and succeeds in recovering amounts, it may use them as it sees fit.

[126] That \$200,000,000 in fact appears conservative. If the Province recovers amounts, it may use them as it sees fit.

[127] For the time being, we are in a situation where there are no assets to be shared by the creditors. It is therefore useless to establish a very expensive claims process. Indeed, who would finance such a process? The Petitioners in the class action and the Government of Québec also cannot behave as if they were the sole creditors of MMA. One could easily believe that the value of the other claims also exceeds hundreds of millions of dollars. But the creditors are independent amongst themselves. If they decide that a class of creditors shall receive amounts while other creditors would have been entitled to receive such amounts but decide to waive these amounts, they are entitled to do it. They may be entitled thereto, but the means to quickly achieve this objective are limited. For the time being, the proceedings underway could lead to such a settlement, provided that a plan is filed and accepted by the creditors. We cannot consider a proposal in bankruptcy under the *BIA* as the process would be too expensive in the current state of the case. The *CCAA* also has the benefit of being more flexible. The only possible and quick solution is therefore the one proposed by the Debtor. Third parties must participate in developing a proposal. A monetary contribution is essential to participate. If an acceptable plan is proposed, the creditors may accept it and may decide on classes of creditors who may participate in the distribution. They could also agree that third parties be released.

[128] If the Court lifts the stay of proceedings against XL Insurance, there will be chaos and a race to obtain judgments.

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 24

[129] The attorney for XL already mentioned to the Court, based on his interpretation of the contract, the insurer must pay the indemnities on a first-come, first-serve basis.

[130] Numerous actions could then be brought against the Debtor and the insurance company, which would no longer be required to pay once an amount of \$25,000,000 has been disbursed.

[131] It is unrealistic to think that a judgment could be obtained in a class action before judgment is rendered in the ordinary lawsuits filed, especially when the Defendants admit their liability.

[132] The Court does not see how proceedings before other courts could be stayed pending the result of the class action. No one is required to take part in such recourse.

[12] Following that judgment, a negotiation process began with potentially liable third parties. It is these negotiations that allowed for the creation of an indemnity fund in the amount of 430 million dollars to indemnify the victims of the railway tragedy, who, we cannot forget, are all creditors of the Debtor.

[13] All the Defendants that are being sued in a class action brought in Québec agree to take part in the indemnity fund, with the exception of the Opponent, Canadian Pacific Railway Company (CP).

[14] The Honorable Martin Bureau, S.C.J. granted the Motion for Leave to file a class action against CP and World Fuel Services, which later joined the group contributing to the indemnity fund.

[15] CP is refusing to participate in the fund, arguing that it is not responsible for the railway tragedy. It is absolutely entitled to do so.

[16] However, for the reasons set out hereafter, it is obvious that the sole objective of CP's challenge is to defeat the proposed Plan of Arrangement or to obtain a strategic negotiating advantage that would provide it with even more rights than it would have if the parties had simply decided to settle the class action out of court. We will come back to this point.

[17] In its submissions, CP raises the following questions:

- a) Does section 4 of the CCAA grant a Court sitting under the CCAA the jurisdiction to sanction a « Plan » that does not propose a transaction or an arrangement between a debtor under the CCAA and its creditors?

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 25

- b) If the Court answers the question raised in (a) in the affirmative, does it have jurisdiction under the CCAA to sanction a release in favour of a solvent third party that is not “reasonably related to the restructuring” of the Debtor under the CCAA?
- c) If the Court answers the question raised in (b) in the affirmative, does it have jurisdiction under the CCAA to sanction a « Plan » containing releases in favor of third parties without any connection with the settlement of all claims against the insolvent Debtor, that is that the claims against the Debtor are not covered by the Plan and that such Plan does not grant any advantage to the Debtor?
- d) Does an affirmative answer to question (b) or question (c) constitute a valid constitutional interpretation of the Court’s jurisdiction to sanction a plan of compromise or arrangement under the CCAA?
- e) If the Court answers all the preceding questions in the affirmative, is the plan and the partial settlement agreements which are an integral part thereof, reasonable, fair and equitable for all parties concerned, including the entities that are not parties to the settlement?

[18] On March 31, 2015, MMAC files a Plan of Compromise and Arrangement, which states as follows at section 2.1:

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.

[19] The Monitor’s *Nineteenth Report on Petitioner’s Plan of Arrangement* dated May 14, 2015 states the context in which the Plan was put forward by MMAC, and more specifically, its underlying purpose.

- Paragraphs 11 and 13 of the Nineteenth Report:

11. In order to compensate creditors for damages suffered as a result of the Derailment, it was clear to all concerned from the outset that this could only be accomplished through contributions from potentially liable third parties ("Third Parties") in exchange for full and final releases in respect of all litigation relating to the Derailment.

450-11-000167-134

PAGE : 26

[—]

13. The Plan is the result of many months of multilateral discussions between the Petitioner's counsel, the Monitor and its counsel, the Trustee, Petitioner's principal stakeholders, namely the Province of Quebec ("Province"), the Class Representatives, the attorneys for derailment victims in the Chapter 11 case ("US Legal Representatives") and the attorney for the Official Victims Committee (in the Chapter 11 ("Official Committee") (collectively the "Major Stakeholders") and the Third Parties, the purpose of which was to negotiate contributions by the Third Parties to a Settlement Fund to be distributed to derailment victims. [...]

[Underlining added]

[20] CP submits that the sole purpose of the Plan is therefore irrefutable: *the settlement of the victims' claims against potentially liable third parties*, and that the Plan does not in any way address MMAC's restructuring.

[21] This is incorrect. If one follows CP's logic, the restructuring of the business would be required to occur after the Plan is approved by the creditors.

[22] However, the restructuring is often completed before the Plan is approved by the creditors. This is what happened in this case.

[23] Here, the railway is saved, jobs are saved and all industries and the municipalities serviced by the railway have assurances that service will continue.

[24] It is not because some of the initial objectives have been met that this success is to be ignored.

[25] Without the benefit of the CCAA, the railway tracks could very well have been sold as scrap metal. This second catastrophe was avoided.

[26] In consideration for the respective contributions to the indemnity fund, the released parties will have very broad « Releases and Injunctions ».

[27] MMAC is not a released party under the Plan.

[28] More specifically, paragraph 5.1 of the Plan provides for the execution (i) of very broad releases in favour of the Released Parties, and (ii) of injunctions preventing any future claim against the Released Parties:

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)

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 27

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."

[Our underlining]

[29] In addition to the foregoing, paragraph 5.3 of the Plan expressly states that any claim against third party defendants:

- “(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.”

Moreover, paragraph 5.3 of the Plan repeats that no person can assert a claim against any of the Released Parties.

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

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 28

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.

[30] Finally, paragraph 3.3 of the Plan expressly states that certain claims are not covered by the Plan:

“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

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 29

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".

[Our underlining]

[31] This is what leads CP to state that:

The Plan « does not compromise, release, cancel or bar, nor has any consequence relating to » the claims against MMAC, that is that the claims

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 30

against MMAC are not covered by the Plan. MMAC is not undergoing a restructuring.

[32] In addition, CP submits the following:

- a) The claims of all “victims” and even possibly of the Released Parties may be maintained or new recourses may be instituted both in Canada and in the United States against the entities that are not parties to the settlement, including CP;
- b) The class action plaintiffs may continue their legal action against Defendants CP and World Fuel Services with the added benefit that such Defendants thereby “inherit” MMAC’s liability, while they are prevented from claiming any contribution or indemnity from the Released Parties!

[33] Indeed, that is CP’s main argument. What it finds wrong with the Plan is that CP is now the only one targeted in the class action. It also argues that, since it is not released under the Plan, it would be sued by all persons having sustained damages following the derailment. It also argues that it would have to assume the portion of liability that should be borne by MMA. We will come back to this.

[34] CP properly summarizes the criteria for the exercise of the Court’s judicial discretion concerning the approval of a plan when it states:

- a) The Plan shall be in strict compliance with all statutory requirements and previous orders of the Court;
- b) All materials filed and proceedings carried out shall be examined to determine if any measure taken or deemed to have been taken is prohibited under the CCAA;
- c) The Plan must be fair and reasonable.¹

[35] CP submits that the Plan is illegal and goes beyond what is authorized by the CCAA.

[36] It is true that, at the stage of the hearing on sanction, the Court must ensure that the process conducted under the CCAA respected the Act and that nothing in the proposed Plan is contrary thereto².

¹ *Dairy Corporation of Canada Limited (Re)*, (1934) O.R. 436, paragr. 1, 4; *Northland Properties Limited*, (1998) 73 C.B.R. (N.S. 175), paragr. 24 et 29; *Olympia & York Developments Ltd. (Re)*, (1993) 17 C.B.R. (3^d) 1 (Ont. Gen. Div.), paragr. 1; *Canadian Airlines Corp. (Re)*, 2000 ABQB 442, paragr. 60; *Uniforêt Inc., Re (Trustee of)*, 2002 CanLII 24468, paragr. 14.

² *Olympia & York Developments Ltd. (Re)*, (1993) 17 C.B.R. (3d) 1 (Ont. Gen. Div.), paragr. 23-26;

450-11-000167-134

PAGE : 31

[37] CP submits that a compromise or an arrangement necessarily involves the reorganisation of the Debtor's business.

[38] However, CP disregards the fact that, as already mentioned, the reorganisation of the Debtor's business already took place more than a year ago.

[39] On the other hand, CP states:

“In any event, upon the sale of all assets of MMAC to RAH, the “secondary objective” consisting in maximising the value of MMAC's assets was accomplished and the application of the CCAA could therefore no longer accomplish a legitimate objective; indeed, all MMAC's business, with the exception of its liabilities, had been completely and finally liquidated.”

[40] Once again, CP seems to submit that, since the assets are sold, the Court should end the process under the CCAA.

[41] Such claim has no legal basis and was indeed addressed in a judgment³ by the undersigned that did not give rise to any complaint from anyone.

[42] We must recall that CP's representatives participated in all hearings presided over by the undersigned.

[43] CP alternatively submits that the Court does not have jurisdiction to sanction the releases and injunctions provided in favor of the Released Parties.

[44] In addition to having been addressed by a decision from the undersigned in this case, the Court believes that it is now well established that the Courts may, under the CCAA, sanction plans of arrangement providing for releases in favour of third parties.

[45] In the *Metcalfe*⁴ case, the Court of Appeal of Ontario states the criteria to be applied in determining if the granting of releases in favour of third parties may be approved:

[113] At para. 71 above I recited a number of factual findings the application judge made in concluding that approval of the Plan was within his jurisdiction under the CCAA and that it was fair and reasonable. For convenience, I reiterate them here — with two additional findings — because they provide an important foundation for his analysis concerning the fairness and reasonableness of the Plan. The application judge found that:

³ See judgment dated February 17, 2014, p. 22-29, paragr.113-123.

⁴ *Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587

450-11-000167-134

PAGE : 32

- a) The parties to be released are necessary and essential to the restructuring of the debtor;
- b) The claims to be released are rationally related to the purpose of the Plan and necessary for it;
- c) The Plan cannot succeed without the releases;
- d) The parties who are to have claims against them released are contributing in a tangible and realistic way to the Plan;
- e) The Plan will benefit not only the debtor companies but creditor Noteholders generally;
- f) The voting creditors who have approved the Plan did so with knowledge of the nature and effect of the releases; and that,
- g) The releases are fair and reasonable and not overly broad or offensive to public policy.

[46] In that case, Justice Blair came to the conclusion that the releases sought in favour of third Parties were justified. He also concludes that the releases must be reasonably connected to the Plan:

[63] There is nothing to prevent a debtor and a creditor from including in a contract between them a term providing that the creditor release a third party. The term is binding as between the debtor and creditor. **In the CCAA context, therefore, a plan of compromise or arrangement may propose that creditors agree to compromise claims against the debtor and to release third parties, just as any debtor and creditor might agree to such a term in a contract between them.** Once the statutory mechanism regarding voter approval and court sanctioning has been complied with, the plan --including the provision for releases -- becomes binding on all creditors (including the dissenting minority).

[...]

[66] Certain creditors argued that the court could not sanction the plan because it did not constitute a "compromise or arrangement" between T&N and the EL claimants since it did not purport to affect rights as between them but only the EL claimants' rights against the EL insurers. **The court rejected this argument. Richards J. adopted previous jurisprudence -- cited earlier in these reasons -- to the effect that the word "arrangement" has a very broad meaning and that, while both a compromise and an arrangement involve some "give and take", an arrangement need not involve a compromise or be confined to a case of dispute or difficulty (paras. 46-51).**

[...]

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 33

[69] In keeping with this scheme and purpose, I do not suggest that any and all releases between creditors of the debtor company seeking to restructure and third parties may be made the subject of a compromise or arrangement between the debtor and its creditors. Nor do I think the fact that the releases may be "necessary" in the sense that the third parties or the debtor may refuse to proceed without them, of itself, advances the argument in favour of finding jurisdiction (although it may well be relevant in terms of the fairness and reasonableness analysis).

[70] The release of the claim in question must be justified as part of the compromise or arrangement between the debtor and its creditors. In short, there must be a reasonable connection between the third-party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third-party release in the plan. This nexus exists here, in my view.

[47] In the *Muscletech*⁵ case, the Superior Court of Ontario also approves the granting of releases to third parties having financed a plan of liquidation. Although it is of the opinion that it is premature to object to the contemplated releases (which objection should be raised at an eventual hearing on the motion for sanction), the Honorable Justice Ground nonetheless concludes that the CCAA allows this type of release:

[7] With respect to the relief sought relating to Claims against Third Parties the position of the Objecting Claimants appears to be that this court lacks jurisdiction to make any order affecting claims against third parties who are not applicants in a CCAA proceeding. I do not agree. In the case at bar, the whole plan of compromise which is being funded by Third Parties will not proceed unless the plan provides for a resolution of all claims against the Applicants and Third Parties arising out of "the development, advertising and marketing, and sale of health supplements, weight loss and sports nutrition or other products by the Applicants or any of them" as part of a global resolution of the litigation commenced in the United States. In his Endorsement of January 18, 2006, Farley J. stated:

"the Product Liability system vis-à-vis the Non-Applicants appears to be in essence derivative of claims against the Applicants and it would neither be logical nor practical/functional to have that Product Liability litigation not be dealt with on an all encompassing basis."

[...]

[9] It is also, in my view, significant that the claims of certain of the Third Parties who are funding the proposed settlement have against the Applicants under various indemnity provisions will be compromised by

⁵ *Muscletech Research and Development Inc., Re*, 2006 CanLII 34344 (ON SC).

450-11-000167-134

PAGE : 34

the ultimate Plan to be put forward to this court. That alone, in my view, would be a sufficient basis to include in the Plan, the settlement of claims against such Third Parties. The CCAA does not prohibit the inclusion in a Plan of the settlement of claims against Third Parties.

[...]

[11] In any event, it must be remembered that the Claims of the Objecting Claimants are at this stage unliquidated contingent claims which may in the course of the hearings by the Claims Officer, or on appeal to this court, be found to be without merit or of no or nominal value. **It also appears to me that, to challenge the inclusion of a settlement of all or some claims against Third Parties as part of a Plan of compromise and arrangement, should be dealt with at the sanction hearing when the Plan is brought forward for court approval and that it is premature to bring a motion before this court at this stage to contest provisions of a Plan not yet fully developed.**

[48] In this case, the releases sought are an essential condition to the viability of the Plan since the Released Parties are the only ones financing the Plan. This weighs strongly in favour of the fair and reasonable nature of the releases sought:

[23] [...] As stated above, in my view, it must be found to be fair and reasonable to provide Third Party Releases to persons who are contributing to the Contributed Funds to provide funding for the distributions to creditors pursuant to the Plan. **Not only is it fair and reasonable; it is absolutely essential. There will be no funding and no Plan if the Third Party Releases are not provided.**⁶⁶

[49] Alternatively, CP also submits that the Plan may not be used as a tool to settle disputes between solvent third parties without granting a release to MMAC. This subsidiary argument is in line with CP's argument that the Plan negatively impacts its rights.

[50] Indeed, CP submits the following :

Since CP's liability is, among others, sought on a solidary basis in the class action, and since CP is not a Released Party under the Plan, its rights shall be directly and considerably affected.

[51] CP submits *inter alia* that the partial settlement of multi-party litigation must be at least a neutral event for the defendants that are not parties to the settlement.

⁶⁶ *Muscletech Research and Development Inc. (Re)*, 2007 CanLII 5146
Voir aussi : *Sino-Forest Corporation (Re)*, 2012 ONSC 7050, paragr. 74 (autorisation d'appeler refusée, 2013 ONCA 456)

450-11-000167-134

PAGE : 35

[52] It submits that the Plan does not grant CP the ordinary protections it would receive under the partial settlement of a class action in civil law.

[53] As already mentioned, nothing will prevent CP from defending itself in any action brought against it. If it is not liable, the action will be dismissed.

[54] If it claims that the damages were caused by a third party, it may submit this argument even if such third party is not involved in the proceedings.

[55] In fact, there would even be an advantage for CP as it may continue to argue that the tragedy is everybody's fault, except its own.

[56] Indeed, the Supreme Court recently reminded us of the following⁷

[138] In our opinion, the Court of Appeal was also right to intervene on the issue of damages. There was an overriding error in the trial judge's analysis. She failed to take into account the requirement that the liability be apportioned solidarily, and to establish the amounts being awarded on the basis of the actual liability of each of the solidary debtors. As the Court of Appeal noted, [translation] "to every extent that more than one solidary debtor could be liable for the heads of claim, Mr. Hinse's releases made it necessary to examine the causal faults and apportion liability": para. 189. Mr. Hinse should have borne the shares of the solidary debtors he had released: arts. 1526 and 1690 C.C.Q.

[139] The trial judge addressed the issue of damages as if the Minister were the only party to commit a fault and as if the damage sustained by Mr. Hinse was due solely to the Minister's [translation] "institutional inertia": paras. 75-77. Indeed, rather than fixing the damages amounts that could be specifically attributed to the AGC, she simply relied on Mr. Hinse's claims:

[translation] Furthermore, since, following the transaction entered into between the AGQ and Hinse, the latter amended his proceeding so as to claim from the AGC only the portion he had attributed to [the AGC] on the basis of the various heads of damage he raised, the Court will examine, for the purpose of this proceeding and in compliance with the provisions quoted above, only the applications that are in line with this new reality and that concern solely the AGC. [para. 22]

⁷ ⁷ *Hinse c. Canada (Procureur général)*, 2015 CSC 35.

450-11-000167-134

PAGE : 36

[140] Thus, except in the case of the punitive damages, the trial judge awarded the amounts being claimed on the assumption that Mr. Hinse had correctly limited them to the amounts that solely concerned the AGC. However, the apportionment of the liability of Mr. Hinse's various co-debtors had to be determined on the basis of the seriousness of each one's fault: art. 1478 C.C.Q. The trial judge could not simply rely on the apportionment suggested by Mr. Hinse; her role as the arbiter of damages required that she herself fix each debtor's share of the liability.

[141] In addition to this overriding error, which skews the amounts awarded under all the heads of damages, the grounds for each of those amounts were also flawed.

(1) Pecuniary Damage

[142] Poulin J. ordered the AGC to pay a total of \$855,229.61 in respect of pecuniary damage. This amount seems excessive, given that the AGC had already paid \$1,100,000 under this head pursuant to the transaction entered into with Mr. Hinse. At the very least, the onus was on Mr. Hinse to show that the payments concerned distinct heads of compensation. He did not do so. Moreover, when the amounts awarded are broken down, it is clear that there was no justification for the amounts being claimed.

[57] In short, if CP is not liable, the action shall be dismissed against it.

[58] If it is liable, and third parties also liable were released, CP will be released from the portion of liability attributable to the solidary debtors that were released.

[59] In fact, what would be unfair would be to allow CP to benefit from a release while it did not financially contribute to the Plan, contrary to the other co-defendants.

[60] CP also submits that it should be released from its pro rata share of liability with MMA.

[61] It is certainly not within the jurisdiction of the undersigned judge to make that decision.

[62] The judge presiding over the proceedings against CP will make that decision.

[63] With respect to the constitutional question raised in CP's outline of arguments and for which notices under section 95 CCP were sent, the Court acknowledges CP's lack of emphasis on this argument at the hearing.

[64] The Court adopts the arguments set out by the Attorney General of Canada when it states:

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 37

4. On May 15, 2015, the AGC received a notice from Canadian Pacific Railway Company (CP) under section 95 of *Code of Civil Procedure (CCP)*.
5. CP does not challenge the constitutional validity of the *Companies' Creditors Arrangement Act ("CCAA")* or any of its provisions.
 - *Submission Plan in support of Canadian Pacific Railway Company's objection to the Plan of Arrangement*, para. 110.
6. Rather, CP argues that the sanction by the Court of MMAC's Plan under the CCAA would massively and unlawfully encroach upon the provincial legislatures' jurisdiction with respect to property and civil rights.
7. In the absence of argument from CP with respect to constitutional applicability or validity of the *CCAA*, the notice under the CCP was not required.
8. We must also recall that the constitutional validity of a law depends on its true nature and whether such nature is related to a matter falling under the jurisdiction of the legislature that adopted it. The true nature of a law is established pursuant to the purpose of the act and its legal effects. However, the constitutional validity of a law does not depend on the effects it may produce in a particular case.
 - *Canadian Western Bank c. Alberta*, [2007] 2 S.C.R. 3, para. 25-27 (MMAC's authorities, Tab 44).
9. Also, and even though this is not the case here, the existence of a conflict between a federal law and a provincial law is not relevant to the constitutional validity of the law. The existence of a conflict of law could be relevant pursuant to the doctrine of federal paramountcy — but such doctrine would have the effect of rendering the provincial law inoperative to the extent that it is inconsistent with the federal law.
 - Peter HOGG, *Constitutional Law of Canada*, Se éd., vol.1, feuilles mobiles, Thomson/Carswell, p. 16-1 - 16-3 (PGC's authorities, Tab 1)
10. By its true and dominant nature, the *CCAA* is insolvency legislation. Its purpose and effects favour the conclusion of fair and reasonable compromises and arrangements, all while taking into consideration the interests of the debtor company, its creditors, other interested parties and the public interest.
 - *Century Services Inc. v. Canada (Attorney General)*, [2010] 3 SCR 379, 2010 CSC 60, paragr. 60 (MMAC's authorities, Tab14)
11. As such, the *CCAA* stems clearly from bankruptcy and insolvency, an area of jurisdiction that is clearly attributed to Parliament by paragraph 91(21) of the *Constitutional Act of 1867*.

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 38

- *Reference re constitutional validity of the Compagnies Creditors Arrangement Act* (Dom.) [1934] S.C.R. 659, p. 660 (MMAC's authorities, Tab 46)

12. There is no doubt that the *CCAA* cannot be held to be unconstitutional simply because the exercise of the court's jurisdiction thereunder produces effects on the property and civil rights of the parties involved and that jurisdiction over same is otherwise reserved for provincial legislatures.

- *Canadian Western Bank c. Alberta*, [2007] 2 S.C.R. 3, paragr. 28 (MMAC's authorities, Tab 44)

« The fundamental corollary to this approach to constitutional analysis is that legislation whose pith and substance falls within the jurisdiction of the legislature that enacted it may, at least to a certain extent, affect matters beyond the legislature's jurisdiction without necessarily being unconstitutional. »

13. Otherwise, the efficiency of the *CCAA* would be completely compromised.

- Peter HOGG *Constitutional Law of Canada*, 5e ed., vol. 1, loose leaves, Thomson/Carswell, p. 25-3 (MMAC's authorities, Tab 45)

14. The *CCAA* is constitutional, even to the extent that the powers that it grants the courts allows for the approval of plans that grant releases to third parties.

- *Metcalfe & Mansfield Alternative Investments II Corp.*, (Re), 2008 ONCA 587, par. 104 (MMAC's authorities, Tab 24)

15. On the other hand, the Privy Council confirmed the constitutional validity of an act of Parliament, derived from its jurisdiction regarding bankruptcy and insolvency, allowing farmers to enter into plans of arrangement with their creditors without such farmers being released from their debts.

- *Farmers' Creditors Arrangement Act (FCAA)*, [1937] A.C. 391, p. 403-404 (MMAC's authorities, Tab 49), confirming *Reference re legislative jurisdiction of Parliament of Canada to enact the Farmers' Creditors Arrangement Act, 1934, as amended by the Farmers' Creditors Arrangement Act Amendment Act, 1935*, [1936] S.C.R. 384, p. 398 (MMAC's authorities MMAC, Tab 48)

16. As a result, the *CCAA* is *intra vires* of parliament even insofar as it allows the Courts to sanction a plan of arrangement whereby the debtor company is not released.

17. The remedial and flexible nature of the *CCAA* allows the Courts to issue innovative orders to the extent that they are issued in conformity with the Act, which is the case here.

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 39

18. In fact, a plan of arrangement that grants releases to third parties and not to the principal debtor was already endorsed by the Federal Court of Australia.

- *Lehman Brothers Australia Ltd. In the matter of Lehman Brothers Australia Ltd ((in liq) No2)*, [2013] FCA 965, par. 34-57 (Australia) (MMAC's authorities, Tab 52)

19. It should also be noted that constitutional doctrine acknowledges that, "the task of maintaining the balance of powers in practice falls primarily to governments, and constitutional doctrine must facilitate, not undermine what this Court has called "co-operative federalism"."

- *Canadian Western Bank vs. Alberta*, [2007] 2 S.C.R. 3, par. 24 (MMAC's authorities)

20. In the circumstances, the notice of constitutional question served by CP upon the attorneys general does not apply and must therefore be dismissed.

[65] In short, the undersigned not only believes that the proposed plan is fair and reasonable but to accept the arguments presented by CP would undermine public confidence in the courts.

[66] Indeed, for over two years, the victims of the terrible Lac-Mégantic tragedy have submitted themselves to the judicial process. For two years, all actions in this case were focused on the presentation of the plan of arrangement that was then unanimously accepted by the Debtor's creditors.

[67] Although judicial resources are limited, considerable resources were employed so that Lac-Mégantic's victims could find justice.

[68] Attorneys and citizens of the districts of Mégantic, Saint-François and Bedford were aware that the considerable judicial resources used in the Lac-Mégantic case meant that those resources were not available to them.

[69] The use of these judicial resources thus delayed other cases.

[70] Killing the plan of arrangement today for the sole benefit of a third party against which a class action has been authorized, while that same third party has been involved in the proceedings from the start, would be unfair and unreasonable.

[71] A final comment should be made. The Petitioner filed under seal the settlement agreements entered into between the potentially liable third parties. A judgment was rendered by the undersigned on CP's request to review such agreements.

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 40

[72] CP was authorized to review redacted versions of the agreements. Therefore, it does not know the amounts contributed by liable third parties, except with respect to Irving Oil and World Fuel Services, which both made their contributions public.

[73] From the bench, the Court questioned whether it should review the individual contributions made by every third party contributing to the indemnity fund while CP would have no knowledge of those amounts.

[74] Indeed, the rules of *audi alteram partem* and of public hearings may not be respected if the Court considers evidence that is not available to one of the parties that opposes the relief sought.

[75] It is for this reason that the Court did not review the contributions made by the parties that contributed to the indemnity fund.

[76] The Court appreciates that the total contribution of \$430M is reasonable in this case.

[77] Moreover, the Court was informed throughout the process of all steps taken by MMA. The Court designated attorneys to represent the victims of the Lac-Mégantic tragedy and these attorneys were involved in the negotiation of the indemnity fund. The government of Québec also took part in this negotiation.

[78] Because the Court knows the final amount that will be paid from the indemnity fund, it does not need to know the exact amount contributed by each party. The Court considers that the settlement that was unanimously accepted by the creditors is reasonable.

WHEREFORE, THE COURT:

[79] GRANTS the Motion for approval of the Amended Plan of Arrangement;

DEFINITIONS

[80] **ORDERS that capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Amended Plan of Compromise and Arrangement of the Petitioner dated June 8, 2015 and filed in the court record on June 17, 2015, a copy of which is attached hereto as Schedule "A" (the "Plan") or in the Creditors' Meeting Order granted by the Court on May 5, 2015 (the "Meeting Order"), as the case may be;**

SERVICE AND MEETING

[81] **ORDERS AND DECLARES that that the Notification Procedures set out in paragraphs 61 to 66 of the Meeting Order have been duly followed and that there has been valid and sufficient notice of the Creditors' Meeting and service, delivery and notice of the Meeting Materials including the Plan and the Monitor's Nineteenth Report dated May 14, 2015, for the purpose of the Creditors' Meeting,**

450-11-000167-134

PAGE : 41

which service, delivery and notice was effected by (i) publication on the Monitor's Website, (ii) sending to the Service List, (iii) mailing of the documents set out in paragraph 64 of the Meeting Order to all known Creditors, by prepaid regular mail, courier, fax or email, at the address appearing on a Creditor's Proof of Claim, and (iv) publication of the Notice to Creditors in the Designated Newspapers, and that no other or further notice is or shall be required;

[82] **ORDERS AND DECLARES** that the Creditors' Meeting was duly called, convened, held and conducted in accordance with the CCAA and the Orders of this Court in these proceedings, including without limitation the Meeting Order;

SANCTION OF THE PLAN

[83] **ORDERS AND DECLARES** that :

- a) the Petitioner is a debtor company to which the CCAA applies, and the Court has jurisdiction to sanction the Plan;
- b) the Plan has been approved by the required majority of Creditors with Voting Claims in conformity with the CCAA and the Meeting Order;
- c) the Petitioner has complied in all respects with the provisions of the CCAA and all the Orders made by this Court in the CCAA Proceedings;
- d) the Court is satisfied that the Petitioner has neither done nor purported to do anything that is not authorized by the CCAA; and
- e) the Petitioner, Creditors having Government Claims, the Class Representatives, and the Released Parties have each acted in good faith and with due diligence, and the Plan (and its implementation) is fair and reasonable, and in the best interests of the Petitioner, the Creditors, the other stakeholders of the Petitioner and all other Persons stipulated in the Plan;

[84] **ORDERS AND DECLARES** that the Plan and its implementation, are hereby sanctioned and approved pursuant to Section 6 of the CCAA;

PLAN IMPLEMENTATION

[85] **DECLARES** that the Petitioner and the Monitor are hereby authorized and directed to take all steps and actions, and to do all such things, as determined by the Monitor and the Petitioner, respectively, to be necessary or appropriate to implement the Plan in accordance with its terms and as contemplated thereby, and to enter into, adopt, execute, deliver, implement and consummate all of the steps, transactions and agreements, including, without limitation, the Settlement Agreements, as

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 42

required by the Monitor or the Petitioner, respectively, as contemplated by the Plan, and all such steps, transactions and agreements are hereby approved;

[86] **ORDERS** that as of the Plan Implementation Date, the Petitioner, represented by the Trustee, the sole shareholder of the Petitioner, shall be authorized and directed to issue, execute and deliver any and all agreements, documents, securities and instruments contemplated by the Plan, and to perform its obligations under such agreements, documents, securities and instruments as may be necessary or desirable to implement and effect the Plan, and to take any further actions required in connection therewith;

[87] **ORDERS** that the Plan and all associated steps, compromises, transactions, arrangements, releases, injunctions, offsets and cancellations effected thereby are hereby approved, shall be deemed to be implemented and shall be binding and effective in accordance with the terms of the Plan or at such other time, times or manner as may be set forth in the Plan, in the sequence provided therein, and shall enure to the benefit of and be binding upon the Petitioner, the Released Parties and all Persons affected by the Plan and their respective heirs, administrators, executors, legal persona) representatives, successors and assigns;

[88] **ORDERS**, subject to the terms of the Plan, that from and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults of the Petitioner then existing or previously committed by the Petitioner, or caused by the Petitioner, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, lease, guarantee, agreement for sale, deed, licence, permit or other agreement, written or oral, and any and all amendments or supplements thereto, existing between such Person and the Petitioner arising directly or indirectly from the filing by the Petitioner under the CCAA and the implementation of the Plan and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under any such agreement shall be deemed to have been rescinded and of no further force or effect, provided that nothing shall be deemed to excuse the Petitioner from performing its obligations under the Plan or be a waiver of defaults by the Petitioner under the Plan and the related documents;

[89] **ORDERS** that from and alter the Plan Implementation Date, and for the purposes of the Plan only, if the Petitioner does not have the ability or the capacity pursuant to applicable law to provide its agreement, waiver, consent or approval to any matter requiring its agreement, waiver,

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 43

consent or approval under the Plan, such agreement, waiver, consent or approval may be provided by the Trustee, or that such agreement, waiver, consent or approval shall be deemed not to be necessary;

- [90] **ORDERS** that upon fulfillment or waiver of the conditions precedent to implementation of the Plan as set out and in accordance with Article 6 of the Plan, the Monitor shall deliver the Monitor's Certificate, substantially in the form attached as Schedule "B" to this Order, to the Petitioner in accordance with Article 6.1 of the Plan and shall file with the Court a copy of such certificate as soon as reasonably practicable on or forthwith following the Plan Implementation Date and shall post a copy of same, once filed, on the Monitor's Website;

DISTRIBUTIONS BY THE MONITOR

- [91] **ORDERS** that on the Plan Implementation Date, the Monitor shall be authorized and directed to administer and finally determine the Affected Claims of Creditors and to manage the distribution of the Funds for Distribution in accordance with the Plan and the Claims Resolution Order;

- [92] **ORDERS AND DECLARES** that all distributions to and payments by or at the direction of the Monitor, in each case on behalf of the Petitioner, to the Creditors with Voting Claims under the Plan are for the account of the Petitioner and the fulfillment of its obligations under the Plan including to make distributions to Affected Creditors with ~~Proven~~ Claims;

- [93] **ORDERS AND DECLARES** that, notwithstanding:

- a) the pendency of these proceedings and the declarations of insolvency made therein;
- b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., c. B-3, as amended (the "**BIA**") in respect of the Petitioner and any bankruptcy order issued pursuant to any such application; and
- c) any assignment in bankruptcy made in respect of the Petitioner;

the transactions contemplated in the Plan, the payments or distributions made in connection with the Plan and the Settlement Agreements contemplated thereby, whether before or after the Filing Date, and any action taken in connection therewith, including, without limitation, under this Order shall not be void or voidable and do not constitute nor shall they be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other challengeable transaction under the BIA, article 1631 and following of the Civil Code or any other applicable federal or provincial legislation,

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 44

and the transactions contemplated in the Plan, the payments or distributions made in connection with the Plan and the Settlement Agreements contemplated thereby, whether before or after the Filing Date, and any action taken in connection therewith, do not constitute conduct meriting an oppression remedy under any applicable statute and shall be binding on an interim receiver, receiver, liquidator or trustee in bankruptcy appointed in respect of the Petitioner;

APPROVAL OF SETTLEMENT AGREEMENTS

- [94] **ORDERS AND DECLARES** that (i) the Petitioner has entered into the Settlement Agreements in exchange for fair and reasonable consideration; (ii) each Settlement Agreement is a good faith compromise, in the best interests of the Petitioner, the Creditors, the other stakeholders of the Petitioner and all other Persons stipulated in the Plan; (iii) each Settlement Agreement is fair, equitable and reasonable and an essential element of the Plan and (iv) each of the Settlement Agreements be and is hereby approved;
- [95] **ORDERS** that the Settlement Agreements shall be sealed and shall not form part of the public record, subject to further Order of this Court;
- [96] **ORDERS AND DIRECTS** the Monitor to do such things and take such steps as are contemplated to be done and taken by the Monitor under the Plan. Without limitation: (i) the Monitor shall hold the Indemnity Fund to which the Settlement Funds will be deposited; and (ii) hold and distribute the Funds for Distribution in accordance with the terms of the Plan and the Claims Resolution Order;

RELEASES AND INJUNCTIONS

- [97] **ORDERS AND DECLARES** that the compromises, arrangements, releases, discharges and injunctions contemplated in the Plan, including those granted by and for the benefit of the Released Parties, are integral components thereof and are necessary for, and vital to, the success of the Plan and that all such releases, discharges and injunctions are hereby sanctioned, approved, binding and effective as and from the Effective Time on the Plan Implementation Date. For greater certainty, nothing herein or in the Plan shall release or affect any rights or obligations provided under the Plan;
- [98] **ORDERS** that, without limiting anything in this Order, including without limitation, paragraph 19 hereof, or anything in the Plan, any Claim that any Person (regardless of whether or not such Person is a Creditor 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

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 45

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, is hereby permanently and automatically released and the enforcement, prosecution, continuation or commencement thereof is permanently and automatically enjoined and forbidden. Any and all Claims against the Released Parties are permanently and automatically compromised, discharged and extinguished, and 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;

- [99] **ORDERS** that 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, with the exception of any claims preserved pursuant to Section 5.3 of the Plan against any Third Party Defendants that are not also Released Parties, 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, 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 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;

- [100] **ORDERS** that notwithstanding the foregoing, the Plan Releases and Injunctions as provided in this Order (i) shall have no effect on the rights and obligations provided by the "Entente d'assistance financière décollant

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 46

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;

[101] **ORDERS** that, without limitation to the Meeting Order and Claims Procedure Order, any holder of a Claim, including any Creditor, who did not file a Proof of Claim before the applicable Bar Date shall be and is hereby forever barred from making any Claim against the Petitioner and Released Parties and any of their successors and assigns, and shall not be entitled to any distribution under the Plan, and that such Claim is forever extinguished;

CHARGES

[102] **ORDERS** that, subject to paragraphs 25 and 27 hereof, upon the Plan Implementation Date, all CCAA Charges against the Petitioner or its property created by the Initial Order or any subsequent orders (as defined in the Initial Order, the "**CCAA Charges**") shall be terminated, discharged and released;

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 47

UNOFFICIAL IN-HOUSE TRANSLATION

- [103] **ORDERS** that, notwithstanding paragraph 24 hereof, the Canadian Professionals and U.S. Professionals are entitled to the Administration Charge set out in Article 7 of the Plan as security for the payment of the fees and disbursements of the Canadian Professionals and U.S. Professionals;
- [104] **DECLARES** that the Canadian Professionals and U.S. Professionals, as security for the professional fees and disbursements owed or to be owed to them in connection with or relating to the CCAA Proceeding including the Plan and its implementation, be entitled to the benefit of and are hereby granted a charge and security in the Settlement Funds, to the exclusion of the XL Indemnity Payment, to the extent of the aggregate amount of \$20,000,000.00, plus any applicable sales taxes for the Canadian Professionals (defined in the Plan as the Administration Charge Reserve). 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 (collectively "**Encumbrances**") affecting the Settlement Funds, to the exclusion of the XL Indemnity Payment, if any;
- [105] **ORDERS** that the Petitioner shall not grant any Encumbrances in or against the Settlement Funds that rank in priority to, or *pari passu* with, the Administration Charge unless the Petitioner obtains the prior written consent of the Monitor and the prior approval of the Court.
- [106] **DECLARES** that the Administration Charge shall immediately attach to the Settlement Funds, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
- [107] **DECLARES** that the Administration Charge and the rights and remedies of the beneficiaries of same, 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 or other arrangement which binds the Petitioner (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

450-11-000167-134

PAGE : 48

- a) the creation of the Administration Charge 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 Administration Charge 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 Administration Charge;

UNOFFICIAL IN-HOUSE TRANSLATION

- [108] **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 Settlement Funds made by the Monitor pursuant to the Plan and the granting of the Administration Charge, 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;
- [109] **DECLARES** that the Administration Charge shall be ~~valid and enforceable~~ as against all Settlement Funds, subject to the Administration Charge Reserve, and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioner, for all purposes;
- [110] **ORDERS** that, notwithstanding any of the terms of the Plan or this Order, the Petitioner shall not be released or discharged from its obligation in respect of the Unaffected Claims, including, without limitation, to pay the fees and expenses of the Canadian Professionals and the U.S. Professionals;

STAY OF PROCEEDINGS

- [111] **EXTENDS** the Stay Period (as defined in the Initial Order and as extended from time to time) to and including December 15, 2015;
- [112] **ORDERS** that all orders made in the CCAA Proceedings shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by, or inconsistent with, this Order,

450-11-000167-134

PAGE : 49

450-11-000167-134

PAGE : 50

the Meeting Order, the Claims Resolution Order or any further Order of this Court;

THE MONITOR

[113] **ORDERS** that all of the actions and conduct of the Monitor disclosed in the Monitor's Reports are hereby approved, and **DECLARES** that the Monitor has satisfied all of its obligations up to and including the date of this Order;

[114] **ORDERS** that, effective upon the Plan Implementation Date, any and all claims against (a) the Monitor in connection with the performance of its duties as Monitor of the Petitioner up to the Plan Implementation Date, (b) the Released Parties in connection with any act or omission relating to the negotiation, drafting or execution of their respective Settlement Agreements, or the negotiation, solicitation or implementation of the Plan, (c) Creditors having Government Claims in connection with the negotiation, solicitation and implementation of the Plan, and (d) the Class Representatives in connection with the negotiation, solicitation and implementation of the Plan shall, in each case, be and are hereby stayed, extinguished and forever barred and neither the Monitor, the Released Parties, Creditors having Government Claims nor the Class Representatives shall have any liability in respect thereof except for any liability arising out of gross negligence or willful misconduct on the part of any of them, provided however that this paragraph shall not release (i) the Monitor of its remaining duties pursuant to the Plan and this Order (the "**Remaining Duties**") or (ii) the Released Parties from their remaining duties pursuant to their respective Settlement Agreements;

[115] **ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court on notice to the Monitor and upon such terms as may be determined by the Court;

[116] **DECLARES** that the protections afforded to Richter Advisory Group Inc., as Monitor and as officer of this Court, pursuant to the terms of the Initial Order and the other Orders made in the CCAA Proceedings shall not expire or terminate on the Plan Implementation Date and, subject to the terms hereof, shall remain effective and in full force and effect;

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 50

UNOFFICIAL IN-HOUSE TRANSLATION

- [117] **DECLARES** that the Monitor has been and shall be entitled to rely on the books and records of the Petitioner and any information provided by the Petitioner without independent investigation and shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information;
- [118] **DECLARES** that any distributions under the Plan and this Order shall not constitute a "distribution" and the Monitor shall not constitute a "legal representative" or "representative" of the Petitioner for the purposes of section 14 of the Tax Administration Act (Québec) or any other similar provincial or territorial tax legislation (collectively the "**Tax Statutes**") given that the Monitor is only a disbursing agent of the payments under the Plan, and the Monitor in making such payments is not "distributing", nor shall be considered to "distribute" nor to have "distributed", such funds for the purpose of the Tax Statutes, and the Monitor shall not incur any liability under the Tax Statutes in respect of it making any payments ordered or permitted hereunder or under the Plan, and is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of payments made or to be made under the Plan or this Order and any claims of this nature are hereby forever barred;
- [119] **DECLARES** that the Monitor shall not, under any circumstances, be liable for any of the Petitioner's tax liabilities regardless of how or when such liability may have arisen;
- [120] **DECLARES** that neither the Monitor, the Released Parties, Creditors having Governmental Claims nor the Class Representatives shall incur any liability as a result of acting in accordance with the Plan and the Orders, including without limitation, this Order, other than any liability arising out of or in connection with the gross negligence or willful misconduct of any of them;
- [121] **ORDERS** that upon the completion by the Monitor of its Remaining Duties, including, without limitation, distributions made by or at the direction of the Monitor in accordance with the Plan, the Monitor shall file with the Court the Monitors Plan Completion Certificate, substantially in the form attached as Schedule "C" to this Order (the "**Monitor's Plan Completion Certificate**") stating that all of the Monitor's Remaining Duties have been completed and that the Monitor is unaware of any claims with respect to its performance of such Remaining Duties, and upon the filing of the Monitor's Plan Completion Certificate, Richter Advisory Group Inc. shall be deemed to be discharged from its duties as Monitor of the Petitioner in the CCAA Proceedings and released from any

450-11-000167-134

PAGE : 51

and all claims relating to its activities as Monitor in the CCAA Proceedings;

[122] **ORDERS AND DECLARES** that the Monitor and the Petitioner, and their successors and assigns, as necessary, are authorized to take any and all actions as may be necessary or appropriate to comply with applicable tax withholding and reporting requirements. All amounts withheld on account of taxes shall be treated for all purposes as having been paid to the Affected Creditors in respect of which such withholding was made, provided such withheld amounts are remitted to the appropriate governmental authority;

GENERAL

[123] **DECLARES** that the Monitor or the Petitioner may, from time to time, apply to this Court for any advice, directions or determinations concerning the exercise of their respective powers, duties and rights hereunder or in respect of resolving any matter or dispute relating to the Plan, the Claims Resolution Order or this Order, or to the subject matter thereof or the rights and benefits thereunder, including, without limitation, regarding the distribution mechanics under the Plan;

[124] **DECLARES** that any other directly affected party that wishes to apply to this Court, including with respect to a dispute relating to the Plan, its implementation or its effects, must proceed by motion presentable before this Court after a 10-day prior notice of the presentation thereof given to the Petitioner and the Monitor in accordance with the Initial Order;

[125] **DECLARES** that the Monitor is 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 an order recognizing the Plan and this Order and confirming that the Plan and this Order are binding and effective in such jurisdiction and that the Monitor is the Petitioner's foreign representative for those purposes;

[126] **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, including the registration of this Order in any office of public record by any such court or administrative body or

by any Person affected by the Order;

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 52

[127] **ORDERS** that Schedule **B** to the Amended Plan and the Settlement agreements included therein, save and except for the XL Settlement Agreement, be filed under seal, the whole subject to further Order of this Court;

[128] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security;

[129] **THE WHOLE** with costs against the Canadian Pacific Railway Company.

(S) Gaétan Dumas

GAÉTAN DUMAS, S.C.J.

Me Patrice Benoit
Me Alexander Bayus
Gowling Lafleur Henderson LLP
For Montréal, Maine & Atlantic Canada Co.

Me Sylvain Vauclair
Woods LLP
For Richter Groupe Conseil inc.
(Richter Advisory Group inc.)

Me Alain Riendeau
Me Enrico Forlini
Me André Durocher
Me Brandon Farber
Fasken Martineau Dumoulin
For Canadian Pacific Railway Company

Date of hearing : June 17, 2015

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 1

SCHEDULE "B"

MONITOR'S PLAN IMPLEMENTATION DATE CERTIFICATE

CANADA

SUPERIOR COURT

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

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

No. : 500-11-

**IN THE MATTER OF THE PLAN OF COMPROMISE
OF:**

●

Petitioner

-and-

●

Monitor

CERTIFICATE OF THE MONITOR OF ● (Plan Implementation)

All capitalized terms not otherwise defined herein have the meanings ascribed thereto in the Plan of Compromise and Arrangement of ● pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, dated ● (as may be amended, restated, supplemented and/or modified in accordance with its terms, the "**Plan**").

Pursuant to section ● of the Plan, ● (the "**Monitor**"), in its capacity as Court-appointed Monitor of **[DEBTOR]**, delivers this certificate to **[DEBTOR]** and hereby certifies that all of the conditions precedent to implementation of the Plan as set out in section ● of the Plan have been satisfied or waived by ●. Pursuant to the Plan, the **[Plan Implementation Date]** has occurred on this day. This Certificate will be filed with the Court and posted on the Monitor's Website.

DATED at the City of Montréal, in the Province of Québec, this ____ day of _____ ●

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 2

● , in its capacity as the Court-appointed
Monitor of [DEBTOR]

Per: _____

Name:

Title:

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 3

SCHEDULE "C"
MONITOR'S PLAN COMPLETION CERTIFICATE

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division
(Sitting as a court designated pursuant to the
Companies' Creditors Arrangement Act,
IN THE MATTER OF THE PLAN OF COMPROMISE
OF:

●

Petitioner

-and-

●

Monitor

CERTIFICATE OF THE MONITOR
(Plan Completion)

RECITALS:

- A. Pursuant to an Order of the Honourable ● of the Québec Superior Court (Commercial Division) (the "Court") dated ● , ● was appointed as the Monitor (the "Monitor") of [DEBTOR].
- B. Pursuant to an Order of the Honourable ● of the Court dated ● (the "Sanction Order"), the Court sanctioned and approved the Plan of Compromise of ● pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended, dated ● (as may be amended, restated, supplemented and/or modified in accordance with its terms, the "Plan").

UNOFFICIAL IN-HOUSE TRANSLATION

450-11-000167-134

PAGE : 4

- C. Pursuant to the Sanction Order, the Court ordered that upon the completion by the Monitor of its Remaining Duties, including, without limitation, distributions to be made by or at the direction of the Monitor in accordance with the Plan, the Monitor shall file with the Court a certificate stating that all of the Remaining Duties have been completed and that the Monitor is unaware of any claims with respect to its performance of such Remaining Duties, and upon the filing of such certificate, ● shall be deemed to be discharged from its duties as Monitor of ● in the CCAA Proceedings and released from any and all claims relating to its activities as Monitor in the CCAA Proceedings.
- D. All capitalized terms not otherwise defined herein shall have the meaning set out in the Sanction Order.

Pursuant to paragraph ● of the Sanction Order, ● in its capacity as Court-appointed Monitor of ● (the "Monitor") hereby certifies that the Monitor has completed its Remaining Duties, including, without limitation, distributions to be made by or at the direction of the Monitor in accordance with the Plan and that the Monitor is unaware of any claims with respect to its performance of such Remaining Duties.

DATED at the City of Montréal, in the Province of Québec, this _____ day of _____

●

●, in its capacity as the Court-appointed Monitor of ●

Per: _____

Name:

Title:

UNOFFICIAL IN-HOUSE TRANSLATION

UNOFFICIAL TRANSLATION

EXHIBIT
C

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS

No: 450-11-000167-134

DATE: May 5, 2015

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

IN THE MATTER OF THE PLAN OF COMPROMISE OF:

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

Debtor/Petitioner

-and-

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

Monitor

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

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

UNOFFICIAL TRANSLATION

- [5] A fund in the amount of over \$300,000,000 has now been created, which has allowed for the filing of a plan that may acceptable to creditors, who will be presented with said plan at a creditors' meeting to be held on June 9, 2015.
- [6] The motion to convene the creditors' meeting was to be a simple formality because all appeared to consent.
- [7] In fact, the orders to be rendered are relatively standard for this type of file.
- [8] However, at the hearing of the motion, Mtre Luc Despins, a U.S. attorney representing the official committee of victims in the Chapter 11 case, drew the court's attention to paragraph 38 of the proposed draft order, which reads as follows:

[38] ORDERS that, notwithstanding anything in this Order to the contrary, the allowance and valuation of claims for voting purposes with respect to the plan of liquidation filed in the Bankruptcy Case (the "U.S. Plan") shall be determined solely in accordance with the U.S. Plan and any orders entered in such case with respect to the U.S. Plan, and the allowance of (including any objections to) for distributions, and distributions with respect to, Derailment Wrongful Death Claims (as defined in the U.S. Plan) shall be solely in accordance with the terms of the U.S. Plan;

- [9] Mtre Despins advises the court that certain U.S. attorneys have had mandates executed by the representative of the 47 victims who perished during the derailment.
- [10] These mandates, signed in Lac-Mégantic, Québec, appear to state that the U.S. attorneys would receive an amount representing 40% of any amount collected following actions filed in the United States.
- [11] Mtre Despins was concerned about the fact that paragraph 38 of the draft order could deprive the court of jurisdiction in the event that disputes would arise regarding the payment of fees that may appear disproportionate to the services rendered.
- [12] Since the beginning of this file, the court has very openly expressed to counsel that it believes the best way to resolve this matter is with the contributions of third parties in exchange for releases and by the certification of the Canadian class action for settlement purposes. This was, in the opinion of the court, the most efficient way to settle this matter.
- [13] However, the court consistently stated to counsel that their fees would be subject to court approval.
- [14] In fact, in Québec, the attorneys for the class action must have their fees approved by the judge who certifies the class action and renders a judgment on the distribution of the amounts awarded by judgment.
- [15] That said, we learned today that victims who have been attributed a fund in the amount of \$77,205,000 could see that amount slashed by 40%, which would be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR THESE REASONS, THE COURT:

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

Service

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

² Paragraph 38 becomes paragraph 75 of the present order.

Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Interpretation

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

CCAA Plan

[42] **ORDERS** that:

the Plan is hereby accepted for filing; and

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

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

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

Value of Claims for Voting Purposes

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

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

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

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

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

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

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

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

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

Creditors' Meeting

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

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

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

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

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

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

Notification Procedure

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

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

- [64] **ORDERS** that, in addition to the publications referred to in paragraphs 61 and 62 hereof, the Monitor shall send the following to all known Creditors, by prepaid regular mail, courier, fax or email, at the address appearing on a Creditor's Proof of Claim by no later than 5:00 p.m. (Montréal time) on or about May 21, 2015:
- (a) a copy of the Notice to Creditors (in English and French);
 - (b) the Plan (in English and French);
 - (c) a copy of the form of voting letter and Proxy (in English and French) for Creditors not represented by the Class Representatives, substantially in the form attached hereto as Schedule B;
 - (d) the Monitor's report on the Plan (in English and French)
 - (e) a copy of the present Order (in English and French);
 - (f) a letter advising that a copy of the U.S. Plan may be obtained from the Monitor's Website;
- [65] **ORDERS** that publication of a copy of the Notice to Creditors in the manner set out in paragraph 61, and publication of the Meeting Materials in accordance with paragraph 62 hereof, shall constitute good and sufficient service of the Meeting Materials on all Persons who may be entitled to receive notice thereof, or of these proceedings, or who may wish to be present in person or by proxy at the Creditors' Meeting, or who may wish to appear in these proceedings, and no other form of notice or service need be made on such Persons, and no other document or material need be served on such Persons in respect of these proceedings;
- [66] **ORDERS** that if the holder of a Claim or any subsequent holder of the whole of a Claim who has been acknowledged by the Monitor as the Creditor in respect of such Claim, transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person or Persons, such transfer or assignment shall not create a separate Claim or Claims and such Claim shall continue to constitute and be dealt with as a single Claim notwithstanding such transfer or assignment, and the Monitor and the Petitioner shall in each such case not be bound to recognize or acknowledge any such transfer or assignment and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last holding such Claim in whole as the Creditor in respect of such Claim, provided such Creditor may by notice in writing to the Monitor direct that subsequent dealings in respect of such Claim, but only as a whole, shall be with a specified Person and in such event, such Creditor, such transferee or assignee of the Claim as

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

Notices and Communications

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

If to the Petitioner

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

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

If to the Monitor:

Richter Advisory Group
1981 McGill College Avenue, 11th Floor
Montréal, Québec H3A 0G6

Attention: Mr. Gilles Robillard (grobillard@richter.ca)
Attention: Mr. Andrew Adessky (aadessky@richter.ca)
Fax: 514-934-3504

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

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

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

Sanction Hearing

- [69] **ORDERS** that the Monitor shall report to this Court no later than two (2) Business Days after the Creditors' Meeting with respect to:
- (a) the results of the voting to approve the Plan;
 - (b) any other matter which the Monitor considers relevant in view of the Sanction Hearing;

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

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

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

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

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

Aid and Assistance of Other Courts

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

General Provisions

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

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

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

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

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

Sherbrooke, _____

Honourable Gaétan Dumas, J.S.C.