

**SUPERIOR COURT
(Commercial Division)**

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF SAINT-FRANÇOIS

N° : **450-11-000167-134**

DATE : October 9th, 2015

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

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

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

Debtor /Petitioner

and

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

Monitor

**ORDER VARYING THE ORDER APPROVING THE AMENDED PLAN OF
COMPROMISE AND ARRANGEMENT**

CONSIDERING Montreal, Maine & Atlantic Canada Co.'s (the "**Petitioner**") *Motion to Vary the Order Approving the Amended Plan of Compromise and Arrangement* (the "**Motion**"), pursuant to sections 6 and 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") and the submissions of counsel present at the hearing;

GIVEN the judgment rendered on July 13, 2015 (as rectified on August 3, 2015) approving the Petitioner's Amended Plan of Compromise and Arrangement (the "**Canadian Approval Order**");

GIVEN the provisions of the CCAA and the absence of contestation;

FOR THESE REASONS, THE COURT:

[1] **GRANTS** the Motion;

[2] **DECLARES** that the notices given of the presentation of the Motion are adequate and sufficient;

[3] **ORDERS** that the Canadian Approval Order is hereby amended as more fully set out below under the heading "Amended Canadian Approval Order Conclusions"; specifically in order to add paragraphs 101.1 to 101.8;

[4] **ORDERS** the provisional execution of the present Order notwithstanding any appeal, without the necessity of furnishing any security;

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

AMENDED CANADIAN APPROVAL ORDER CONCLUSIONS:

[79] **ACCUEILLE** la requête en approbation du plan d'arrangement amendé;

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, 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 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 personal 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 after 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, 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, 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 97 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 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 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;

[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;

BARRED PERSONS AND BARRED CLAIMS

[101.1] **ORDERS** that, without limiting the Injunction and Release and without limiting paragraphs 97 to 101 set forth above, all (i) Third-Party Defendants that are not also Released Parties (collectively, the “**Non-Settling Defendants**” and, individually, a “**Non-Settling Defendant**”); (ii) Released Parties; (iii) Persons who have voted for or against the Plan ; and (iv) any other Persons that hold, have held or may hold a Claim (including a Derailment Claim), including, without limitation, Canadian Pacific Railway Company and any parent, affiliate or subsidiary thereof (collectively, the “**Barred Persons**”), are hereby permanently barred, enjoined and restrained from commencing, continuing, prosecuting, or asserting in this Court, in any federal or provincial court, or in any other court, arbitration proceeding, administrative agency, or other forum in Canada or elsewhere (each such venue, a “**Trial Court**”), any Claim (including a Derailment Claim) against any of the Released Parties, including, without limitation, any personal injury, property damage, wrongful death, indemnity, contribution, reimbursement or subrogation claim, whether based upon a contract or otherwise, against any Released Party (including, without limitation, any claim against the Released Parties, whether or not denominated as for indemnity, contribution, reimbursement, or subrogation, arising out of or related in any way to the Derailment or to the claims released pursuant to the Injunction and Release, whether arising under provincial, federal or foreign law as claims, cross-claims, counterclaims, or third-party claims (collectively, the “**Barred Claims**”). This Order is without prejudice to the position of any party as to the existence, in the absence of this Order, of any Barred Claim.¹

¹ Notwithstanding anything to the contrary in this paragraph or this Order, neither this paragraph nor this Order shall apply to any claims or Claims that the Irving Parties (as defined in their Settlement Agreement) have or may have against any one or more of their insurers.

[101.2] **ORDERS** that, in the event that any Person asserts any Claim (including any Derailment Claim), or any other claim, obligation, suit, judgment, damage, debt, right, remedy, cause of action, avoidance power or right, liability of any nature whatsoever, or legal or equitable remedy against any Person arising from or related to the Derailment, regardless of whether such claim, cause of action, right, or legal or equitable remedy may be asserted pursuant to the CCAA or any other applicable law or contract, including, without limitation, any claim for personal injury, property damage, wrongful death, indemnity (including contractual indemnity), contribution, reimbursement or subrogation relating in any way to the Derailment (collectively, the “**Derailment-Related Causes of Action**”) and which results in a a determination by a Trial Court (including, without limitation, by a jury impaneled by such Trial Court) that a Barred Person who is a Non-Settling Defendant is liable in damages (the “**Initial Damages Determination**”) to a Person, including, without limitation, a holder of a Derailment Claim, asserting a Derailment-Related Cause of Action against such Non-Settling Defendant (a “**Plaintiff**”), then, prior to final entry of any judgment, order or arbitration award with respect to such Initial Damages Determination in such Derailment-Related Cause of Action, the Plaintiff shall provide notice and a copy of this Order to the Trial Court. In such case, for purposes of the Contribution/Indemnity Credit described below, such Trial Court (including, without limitation, a jury impaneled by such Trial Court) shall determine whether the Derailment-Related Cause of Action gives rise to Barred Claims on which any Released Party would have been liable to the Barred Persons in the absence of this Order. Notwithstanding any finding referred to in section 10.7 of the U.S. Plan, the Trial Court, prior to final entry or final award of any verdict, judgment, order or arbitration award (the “**Judgment**”), shall determine any such Judgment against such Barred Person by reducing the Initial Damages Determination by an amount equal to the “**Judgment Reduction Amount,**” which shall equal the greatest of:

- (a) The “**Settlement Credit,**” which shall be an available alternative regardless of whether the Trial Court determines that there is any liability on the part of any Released Parties and shall mean the Distribution received or to be received by such Plaintiff pursuant to the Plan or the U.S. Plan, including by way of payment by the WD Trust (as defined in the U.S. Plan) (the “**Distribution**”); provided, however, that the Settlement Credit shall be limited to the amount of the Distribution received or to be received by the Plaintiff with respect to the type of Derailment Claim asserted by Plaintiff against the Barred Person, so that, for example, the

Barred Person shall not receive a Settlement Credit for Distributions received by Plaintiff for a personal injury claim if the claim against the Barred Person is for property damage.

- (b) The “Insurance Credit,” which shall mean the amount of coverage, if any, the Trial Court determines would have been recoverable to such Barred Person under any insurance policies owned by the MMAC or MMA on account of such Plaintiff’s Claim but for the operation of the Order; or
- (c) The “Contribution/Indemnity Credit,” which shall mean, in the event the Trial Court determines that the Barred Person could establish a valid indemnity or contribution claim against a Released Party but for the operation of this Order, an amount equal to the value, as determined by the Trial Court, of all contribution or indemnification claims (whether equitable or contractual), if any, that the Trial Court determines such Barred Person would be entitled to as against one or more Released Parties but for operation of the Order, which shall be equal to the aggregate proportionate shares of liability, if any, of the Released Parties, plus the contractual indemnification for which the Barred Person would, in the absence of this Order, be entitled to recover, as determined by the Trial Court at the time of entry of any judgment against any Barred Person, *provided however*, that any Contribution/Indemnity Credit with respect to MMAC and/or MMA, shall be allocated among the Plaintiff, the Barred Person and/or Released Parties other than MMAC and/or MMA determined to be liable, in whole or in part, by the Trial Court, such allocation (a) to the extent the Trial Court is located in the United States, shall be in accordance with the holding in, and methodology adopted by, *Austin v. Raymark Indus.*, 841 F.2d 1184 (1st Cir. 1988)(*Austin*); or (b) to the extent the Trial Court is in Canada, shall be in accordance with applicable provincial law (*provided, however*, that such reference to *Austin* and/or such provincial law shall govern only with respect to the allocation of the proportionate liability of MMAC and/or MMA, and shall have no effect on the scope of the Contribution/Indemnity Credit (including, without limitation, that it extends to claims for contractual indemnity, if any.) Without limiting the foregoing, if a Barred Person holds both contribution and indemnity claims against the same Released Party, the value of such claims shall not be combined to determine the amount of the Contribution/Indemnity Credit unless such Barred Person could

simultaneously recover, in the absence of this Order, under both such contribution and indemnity claims as a matter of law. Notwithstanding the foregoing, nothing in this provision is intended to dictate the procedure in the Trial Court for determination of the Judgment Reduction Amount pursuant to and consistent with this provision, provided, however, in cases tried in the United States, the trial judge (or equivalent arbitrator, tribunal or panel) shall in the first instance determine the allocation of the proportionate liability of MMAC and/or MMA in accordance with *Austin*.

[101.3] **ORDERS** that, for the avoidance of doubt, and notwithstanding anything to the contrary, nothing in paragraphs 101.1 and 101.2 shall in any way modify or affect the releases and/or injunctions in favor the Released Parties as set forth in paragraphs 97 through 101, inclusive, of this Order, and nothing set forth herein shall be interpreted as providing that any Released Parties have any liability to any Person for any Claims (including Derailment Claims). Furthermore, after this Order becomes a Final Order, the Trustee is ordered to use his best efforts to ensure that any Claims (including Derailment Claims) against any Released Parties are promptly dismissed with prejudice.

[101.4] **ORDERS** that nothing herein shall prejudice or operate to preclude the right of any Non-Settling Defendant to (a) provide notice of this Order to any Trial Court hearing a Derailment-Related Cause of Action at any point, (b) raise any issues, claims or defenses regarding the Judgment Reduction Amount, including, without limitation, the contractual liability and/or relative or comparative fault of any Person, including any Released Party, in any court or tribunal hearing any Derailment-Related Cause of Action in accordance with applicable law or procedure; or (c) take discovery of Released Parties in accordance with applicable law or procedure, *provided, however*, that nothing herein shall in any way modify or affect the releases or injunctions in favor of the Released Parties as set forth in paragraphs 97 through 101, inclusive, of this Order. For the avoidance of doubt, nothing herein shall (x) be deemed to entitle a Plaintiff to more than a single satisfaction with respect to any Derailment-Related Cause of Action or (y) prejudice or operate to preclude the rights of any Barred Person to assert any claims or causes of action against any Released Party as set forth above that are unrelated to the Derailment and do not constitute Claims (including Derailment Claims).

- [101.5] **ORDERS** that the judgment reduction and related provision in paragraphs 101.1 and 101.2 are the bases upon which CP has agreed to withdraw, with prejudice, its objections to the U.S. Plan and its appeal of the Chapter 15 Recognition and Enforcement Order entered by the Bankruptcy Court on August 26, 2015, as well as to withdraw, with prejudice, its pleading seeking leave to appeal the Canadian Approval Order. Accordingly, to the extent there is any inconsistency between the judgment reduction and related provisions of paragraphs 101.1 and 101.2, on the one hand, and the Plan or other provisions of this Order, on the other, paragraphs 101.1 and 101.2 shall govern as to judgment reduction provided, further, that nothing in this paragraph – shall be deemed or construed to limit, modify or affect the Injunction and Release.
- [101.6] **ORDERS** that if any Plaintiff enters into a settlement with any Person with respect to one or more causes of action based upon, arising from, or related to the Barred Claims or any transaction underlying any Barred Claim, then such Plaintiff shall cause to be included, and in all events, the settlement shall be deemed to include, a dismissal, release and waiver of any Barred Claims with respect to such settlement.
- [101.7] **ORDERS** that each Plaintiff is hereby enjoined and restrained from seeking relief or collecting judgments against any Non-Settling Defendant in any manner that fails to conform to the terms of this Order, including, without limitation, the Judgment Reduction Amount provision set forth at paragraph 101.2 herein.
- [101.8] **ORDERS** that this Court shall retain jurisdiction with respect to all matters concerning this Order, including, without limitation, hearing a petition for relief by a Barred Person or any other party in interest in the event that a court or tribunal hearing the Derailment-Related Cause of Action fails to apply the judgment reduction provisions of this Order. However, to the extent that any of the Released Parties have made or make any oral or written submissions in support of this Order, those Released Parties shall not be considered to have submitted to personal jurisdiction in this Court based upon such submissions.

CHARGES

- [102] **ORDERS** that, subject to paragraphs 103 and 105 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;
- [103] **ORDERS** that, notwithstanding paragraph 102 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 :

- 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;

[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, 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;
- [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 Monitor's 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 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;
- [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] **LE TOUT** avec dépens contre la compagnie de chemin de fer Canadien Pacifique.

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

Hearing date : October 8, 2015

SCHEDULE "B"

MONITOR'S PLAN IMPLEMENTATION DATE CERTIFICATE

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-

SUPERIOR COURT

Commercial Division

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

IN THE MATTER OF THE PLAN OF COMPROMISE
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 _____,

●.

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

Per:

Name:

Title:

SCHEDULE "C"
MONITOR'S PLAN COMPLETION CERTIFICATE

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-

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

**IN THE MATTER OF THE PLAN OF COMPROMISE
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**").

- 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: