

CANADA

**SUPERIOR COURT**  
(Commercial Division)

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PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

N°: 500-11-045094-139

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

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

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

**PETITIONER**

and

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

**PROPOSED MONITOR**

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**AMENDED PETITION FOR THE ISSUANCE OF AN INITIAL ORDER**  
**(Sections 4, 5 and 11 of the *Companies' Creditors Arrangement Act*,**  
**R.S.C. 1985, c. C-36 ("CCAA"))**

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**TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE  
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER  
RESPECTFULLY SUBMITS THE FOLLOWING:**

**I. INTRODUCTION**

1. Montreal Maine & Atlantic Canada Co ("**MM&A**" or the "**Petitioner**") is insolvent and is a company to which the CCAA applies, as set forth below;
2. The Petitioner provides services as a shortline freight railway carrier operating various rail lines in the province of Québec. It is a subsidiary of Montreal Maine & Atlantic Railway Ltd. ("**MM&AR**"), a Delaware corporation whose head office is located in the State of Maine and who operates lines *inter alia* in the States of Maine and Vermont;
3. The Petitioner urgently requires a stay of proceedings from its creditors and from the numerous claims made or anticipated to be made against it, including a class action law suit commenced in the province of Québec against it, MM&AR, their joint liability insurer

(the "**Liability Insurer**") and other defendants (said proceedings not having yet been served upon the Petitioner) and several letters of demand, including from the municipality of Lac-Mégantic with respect to losses or amounts incurred associated with a tragic train derailment which intervened on July 6<sup>th</sup>, 2013 in Lac-Mégantic, Québec, the whole as more fully set forth below. Proceedings have also been instituted against MM&AR and other third parties in the United States of America. MM&AR, together with the Petitioner and other members in its corporate group are collectively referred to herein as the "**Petitioner's Corporate Group**" and are listed in Schedule "A" hereto. The members of Petitioner's Corporate Group, and their respective directors, officers and employees and the Liability Insurer who are defendants to one or more of the proceedings referred to above are listed in Schedule "B" hereto and are collectively referred to herein as the "**Non-Petitioner Defendants**";

4. The claims and potential claims referred to above are related to the potential liability of the Petitioner and/or others (i) towards persons and legal persons having sustained losses as a result of the tragic train derailment that occurred in Lac-Mégantic, Québec (collectively, the "**Personal Claimants**" and the claims and potential claims held by the Personal Claimants collectively, the "**Personal Claims**"), as set forth more fully below, and (ii) towards governmental or environmental authorities and others (collectively, the "**Environmental Claimants**") with respect to environmental claims and potential environmental claims associated with said derailment (collectively, "**Environmental Claims**") and towards other claimants with respect to other claims or potential claims associated with the derailment. The Personal Claimants, the Environmental Claimants and the claimants with respect to other claims and potential claims related to said derailment are referred to herein as, the "**Train Derailment Claimants**" and the Personal Claims, the Environmental Claims and the other claims and potential claims related to said derailment are collectively referred to herein as the "**Train Derailment Claims**";
5. While Petitioner holds insurance covering certain of the Train Derailment Claims and the defense costs of Petitioner and MM&AR, as the amount of said Train Derailment Claims is ever increasing, it has become evident that in the event of a determination that Petitioner and/or MM&AR are liable and that the Train Derailment Claims are valid, the amount of the insurance coverage will not be sufficient to cover all of the Train Derailment Claims;
6. The protection sought by the Petitioner hereunder is for the purpose of implementing a successful plan of compromise or arrangement of the Train Derailment Claims and any other indebtedness of the Petitioner and providing the Petitioner with the necessary forum to:
  - a) Set up a claims process to address and settle the various claims and potential claims against it;
  - b) Negotiate with its Liability Insurer and other insurers payment of the insurance indemnities for the benefit of the Train Derailment Claimants and other claimants who may be entitled to such indemnity;
  - c) Preserve and maximize the value of the business in order to realize the maximum value for its various stakeholders, including potentially the Personal Claimants, the Environmental Claimants and other claimants and creditors;

7. Concurrently with the present proceedings, it is expected that the Petitioner's parent, MM&AR, will be commencing proceedings under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court, pursuant to which recognition in Canada of the automatic statutory stay of proceedings resulting therefrom may be sought. In addition, if the relief requested herein is granted, a petition under Chapter 15 of the U.S. Bankruptcy Code may be filed seeking recognition of these proceedings in the United States and seeking the assistance of the relevant U.S. Courts in enforcing this Court's Order;

## II. THE PETITIONER'S CORPORATE STRUCTURE AND BUSINESS

### i) **Corporate Background**

8. The Petitioner is incorporated under the laws of the province of Nova Scotia, namely the *Companies Act*, R.S., c. 81 ("NSCA") as an unlimited liability company. It was incorporated on May 6, 2002 and has its registered office in said province, located at 1959, Upper Water Street, Suite 800, in the City of Halifax. However, it does not operate in the province of Nova Scotia, nor does it hold any assets in said province;
9. All of the Petitioner's assets and operations are in the province of Québec. It has been registered in the province of Québec pursuant to *An Act respecting the legal publicity of enterprises*, R.S.Q., c. P-44.1 ("LPEA") since November 14, 2002;
10. Since its registration in the province of Québec pursuant to the LPEA, it has had and has a place of business at its *fondé de pouvoir's* office in Montreal (the *fondé de pouvoir* being the undersigned attorneys). It also has a place of business at 191 Victoria Street in Farnham, Québec;
11. As indicated above, the Petitioner operates as a shortline freight railway carrier within the province of Québec and holds a Certificate of fitness under the *Canada Transportation Act*, S.C. 1996, c. 10 ("CTA"). MM&AR operates as a railway carrier in the United States;
12. The Petitioner as stated above is a company to which the CCAA applies. Petitioner is not constituted as a railway by charter or under special legislation (such as under railway acts). It is constituted as an "ordinary" company under the NSCA, as stated above (additionally, the *Railways Act* of Nova Scotia, SNS 1993, c. 11 (the purpose of which is to ensure the safe operation of railways in the province of Nova Scotia) likely only applies to companies which operate or intend to operate, railways within the province of Nova Scotia, thus said statute does not apply to the Petitioner);
13. While the CCAA, as the *Bankruptcy and Insolvency Act* ("BIA") and the *Winding Up and Restructuring Act* ("WURA"), excludes "railway companies" from the definition of "company", historically, these statutes referred to railway companies created and governed by specific railway legislation or by charter. Accordingly, they do not exclude a company incorporated by ordinary corporate legislation that may operate as a freight railway carrier such as in the case of the Petitioner;

### ii) **Business and Structure**

14. The Petitioner is a subsidiary of MM&AR, who in turn is a subsidiary of Montreal Maine & Atlantic Corporation, a Delaware corporation having its head office in the State of Maine

- in the United States (the chart illustrating the corporate structure of the Petitioner's Corporate Group being filed in support hereof as Schedule "A");
15. Petitioner operates rail lines in corridors in the province of Québec extending from Saint-Jean to Farnham, from Bedford to Sainte-Rosalie, as well as from Farnham through Lac-Mégantic to the U.S. border, where it joins the lines of MM&AR. The transportation of products via the States of Vermont and Maine is effected via MM&AR;
  16. In effect, Petitioner with its parent, MM&AR, operate in an integrated, international shortline freight railroad system (the "**MMA System**") that has 510 route miles of track in Maine, Vermont and Quebec. The MMA System is a substantial component of the transportation system of Northern Maine, Northern New England, Quebec and New Brunswick. Main-line operations in the MMA System are conducted regularly between Millinocket and Searsport, Maine, and from Brownville Junction, Maine to Montreal, Quebec. Service is also provided between Farnham, Quebec and Newport, Vermont to connect with the northeastern U.S. westbound trains to Montreal. As a whole, the System provides:
    - a) the shortest rail transportation route between Maine and Montreal and a critical rail artery between Saint John, New Brunswick and Montreal;
    - b) strategic links to the Canadian Pacific Railroad, the Canadian National Railroad, and Guilford Rail System and beyond to the North American rail system;
    - c) outlets for major producers of paper, lumber, wood and agricultural products in eastern and northern Maine; and
    - d) in-bound transportation for chemicals and other products used by paper producers and consumers in Maine.
  17. The Petitioner and MM&AR while separate companies have fully integrated business operations and accounting. Accordingly, they share part of the expenses and costs related to the management of both companies, including costs related to the head office of MM&AR (where the management personnel shared by both companies is located) in a proportion of 60% being assumed by MM&AR and 40% by the Petitioner;
  18. Each company assumes its own particular expenses (specifically incurred by the entity for its own operations). As a result, the Petitioner is responsible for the purely "Canadian" expenses, such as the payment of its employees, its Canadian providers and suppliers, the building in Farnham, its fuel consumption in Canada, etc.;
  19. The greater part of the income is collected in the United States by MM&AR and the latter provides to the Petitioner the funding for the Petitioner's expenses;
  20. In practice, as MM&AR receives the income, it transfers to a bank account of the Petitioner, held at the Canadian Imperial Bank of Commerce in Toronto, the portion of funds required to pay the expenses of the Petitioner. Additionally, the Petitioner at times collects directly certain payments; however, these amounts are not significant compared to those that are collected by its parent company in the U.S.;

### III. EVENTS LEADING TO THE PRESENT PETITION

21. The Petitioner and its U.S. parent are currently facing significant challenges as a result of the tragic train derailment that occurred in the early hours of July 6, 2013 in the municipality of Lac-Mégantic, province of Québec, and that involved the derailment of a freight train operated by the Petitioner and consisting mainly of 72 tank cars, each carrying petroleum crude oil and 5 locomotive units (the "**Derailment**");
22. The transportation of the crude oil had begun in New Town, North Dakota, by Canadian Pacific Railway ("**CP**") who transported it to the Saint-Luc Interchange Yard, in Greater Montreal, Quebec, from where the transportation was continued by the Petitioner. The crude oil was to have been transported via Petitioner's line and thereafter transported by MM&AR in the State of Maine, with its ultimate destination being Saint John, New Brunswick (the transportation by railway in New Brunswick was to have been handled by another railway line);
23. While investigations are still ongoing, it is known that following the Derailment, fire and explosions ensued and a great number of lives were lost (established by the authorities at 47 people), injuries were suffered and destruction of and damage to property occurred. Other significant and important damages include the closing of or interruption of businesses and environmental damage that is still being assessed. Evacuations (of approximately 2 000 persons) from the area where the Derailment and explosions occurred were ordered and many evacuees to date have still not been able to return to their premises, either because of the destruction of their premises or by order of the authorities due to risks associated with contamination or other;
24. Following the tragic events, claims were made either verbally or through letters of demand or proceedings against *inter alia* the Petitioner and corporate members of its group, including MM&AR and the Liability Insurer and continue to be made against them, in Québec and in the United States or both, as set forth below;
25. To date, the claims include the following:
  - a) A class action ("**Class Action**") instituted against the Petitioner, MM&AR, the Liability Insurer and others in the Superior Court of Québec, district of St-François, on behalf of victims of the Derailment, seeking, *inter alia*, to have the Petitioner and other defendants declared solidarily liable for the damages suffered by each member of the class and to pay a sum to be determined in compensation of the damages suffered. A copy of the Class Action is attached herewith as **Exhibit R-1**;
  - b) Several actions instituted by individuals acting as special administrators of the estates of deceased persons against MM&AR and other defendants in the Circuit Court of Cook County (Chicago), in the State of Illinois (U.S.A.), claiming judgment for injuries and losses that are compensable under U.S. legislation (to date 13 separate actions have been filed and served, 11 of which claiming an indemnity in excess of \$1,000,000 each), as appears from a copy of the list of complaints at law (the "**List of Complaints**") filed in support hereof as **Exhibit R-2**;

- c) Letters of demand from the Municipality of Lac-Mégantic, the first letter claiming an amount of \$4,149,187.48 and a second letter increasing the amount claimed to the sum of \$7,796,948.67, claiming payment of costs paid by it, as appears from a copy of the letters filed *en liasse* in support hereof as **Exhibit R-3**;
  - d) Order issued by the Minister of Sustainable Development, Environment, Wildlife and Parks (the "**Minister of Environment**") dated July 29, 2013 issued against the Petitioner MM&AR and other defendants ordering that immediate steps be taken in relation to the environmental damage *inter alia* to proceed with remediation, containment and pollutant cleanup, as appears from the letter from the Ministère de la Justice of same date and order filed *en liasse* in support hereof as **Exhibit R-4**;
  - e) Notice of claim from Tafisa Canada, owner of production facilities in Lac-Mégantic with respect to a lawsuit resulting from the Derailment, inoperability of the MM&A Rail Line and the inability to ship its products to its customers, as appears from a copy of the Notice of claim filed in support hereof as **Exhibit R-5**;
  - f) Notice of intent to file a claim from Western Petroleum Company for loss of rail cars leased by it and that were part of the train operated by the Petitioner that derailed, as appears from a copy of the Notice of intent filed in support hereof as **Exhibit R-6**;
  - g) Letter of demand from Canadian Pacific Railway claiming an amount in excess of \$1,000,000 for, *inter alia*, equipment lease and AAR car repairs and other, as well as advising of its intention to offset an amount of \$660,460 CAD "for traffic that did not make the destination and empties that did not return to Canadian Pacific", the whole as appears from a copy of the letter filed in support hereof as **Exhibit R-7**;
  - h) Numerous letters of demand from various persons or their insurers concerning losses sustained to their properties or businesses, as appears from a copy of the list of letters of demand (the "**List of Letters of Demand**") filed in support hereof as **Exhibit R-8**;
26. The Petitioner and members of Petitioner's Corporate Group are awaiting the results of the investigation being conducted by numerous authorities at several levels, including the Federal Government, through the R.C.M.P., the Transport Safety Board and Transport Canada, and the Québec Provincial Government, through the Sûreté du Québec and search warrants have been issued by certain of these governmental or regulatory authorities or at their request;
27. In the meantime, while the Petitioner is deploying efforts to maintain railway transportation services where possible to its customers in Québec, its railway transportation services have been greatly reduced in Québec, and by MM&AR in the United States, as a result of the unavailability of the Lac-Mégantic segment of the line;
28. Moreover, as appears from the letter and the order from the Minister of Environment (Exhibit R-4), an order ("**Cleanup Order**") was issued on July 29, 2013 pursuant to Section 114.1 of the *Environment Quality Act*, R.S.Q., c. Q-2 ("**EQA**") ordering *inter alia* the Petitioner, MM&AR and others to recover and remove any contaminant emitted,

deposited or discharged into the water or unto the soil following the Derailment and to dispose of same in an authorized site and as prevent the petroleum and all other contaminants from being propagated into the environment, including in the air, the soil and the water (both surface and underground) and to provide the Minister of Environment or any person designated by the latter with any relevant information requested with respect to the work pursuant to said order as well as execute all necessary cleanup and decontamination work and the required mitigation and monitoring measures with respect to the environment, the whole as more fully detailed in the Cleanup Order;

29. As appears from the foregoing, the contamination in question occurred following the Derailment and thus has already occurred and is not due to any present or ongoing business activities of the Petitioner;
30. Moreover, the contamination affects in great part land that does not belong to, is not in the possession of and is not under the control of the Petitioner, the only portion of land owned by the Petitioner affected by the contaminants being the parcel of land on which are located the railway tracks in Lac-Mégantic;
31. Although Petitioner, since the Derailment, has undertaken and tried to assume and execute its obligations under the various applicable environmental legislation (federal and provincial) to the extent of its capacity and resources, it has become evident that it does not possess the financial capacity to do so, especially in light of the position taken by the Liability Insurer with respect to indemnification under its policy of insurance;
32. The Liability Insurer, while recognizing an obligation to indemnify under the policy, maintains, because of the sheer number of claims being made and the amounts being claimed, that it cannot provide for payment of covered environmental cleanup costs to the detriment of the third party claimants, especially where the amounts of the claims exceed the limit of coverage;
33. Thus, a great part of the Cleanup Order has a definitive monetary implication and it is evident that Petitioner is not and will not be able to perform all of the cleanup nor pay the services of third parties to do so. At present, it is estimated that pollutant cleanup costs will exceed 200 million dollars CDN;
34. While Petitioner and MM&AR have fully cooperated with the environmental authorities, have met with their representatives and have given assistance in connection therewith, and while the Petitioner and MM&AR have submitted the Train Derailment Claims, including the Environmental Claims, to the Liability Insurer, the latter has failed to make any payments under the insurance policy in this regard. In addition, neither the Petitioner nor MM&AR are able to make payment at this stage of sums incurred or to be incurred given their financial situation as described below;
35. It is financially impossible for the Petitioner to continue the operations and the provision of services without the benefit of the protection from its creditors under the CCAA, which is sought by the present Petition, and it is to be feared that the financial situation of the Petitioner will deteriorate and that the assets will not be sufficient to satisfy all of the current and potential liabilities of the Petitioner;

36. As indicated above, while the Petitioner holds insurance covering certain liabilities and defense costs of Petitioner and MM&AR, as will be set forth below, it has become evident that the amount of coverage will not be sufficient to cover all potential liabilities associated with the Train Derailment Claims;
37. Given the current situation, the Petitioner and MM&AR are seeking a solution and are preparing a plan (the "Plan") in the best interests of all of the stakeholders and potential stakeholders, including the Train Derailment Claimants and other creditors or potential creditors that:
- a) Could allow the partial and temporary resumption of the operations and delivery of services to customers who are in need of the services or the delivery of products by train;
  - b) Preserve and maximize the value of the assets for the benefit of all the creditors and potential creditors;
  - c) Allow for the orderly distribution of the funds which will be available to any claimant or a creditor entitled to a claim or a compensation;
  - d) Devise a simpler, less costly, more effective and more rapid process to deal with all of the claims or potential claims than legal proceedings in Canada and the U.S., the multiplicity of which may only contribute to the erosion of the value of the various assets and insurance indemnities;
38. The Petitioner is therefore seeking relief under the CCAA as a vehicle for achieving a global resolution of the claims and potential claims;

#### **IV. PETITIONER'S FINANCIAL SITUATION**

39. Petitioner files in support hereof as **Exhibit R-9** a copy of its unaudited balance sheet as at July 31, 2013 (the "**Balance Sheet**");
40. As appears from the Balance Sheet, as at July 31, 2013, the Petitioner owned assets having a net book value of \$17,974,000, these include the following principal assets of the Petitioner, most of which are illiquid in nature:

<b>ASSETS</b>		
a)	Cash:	\$274,000
b)	Accounts receivable, trade:	\$273,000
c)	Prepaid expenses:	\$29,000
d)	Buildings, land and track structure:	\$17,384,000
e)	Security deposits	\$14,000
	<b>Total</b>	<b>\$17,974,000</b>



41. As further described in part V below, it appears from the Balance Sheet, as at July 31, 2013, that the total liabilities of the Petitioner (excluding (i) the Train Derailment Claims; (ii) the guarantee in favor of the United States of America, represented by the secretary of transportation acting through the administrator of the Federal Railroad Administration ("FRA"); and (iii) the joint liability for a line of credit in the amount of \$6,000,000 granted by Wheeling & Lake Erie Railway Company ("WLE")) were in excess of \$48,158,000;
42. As mentioned above, the Petitioner and MM&AR hold insurance policies with respect to civil liability and property insurance. These policies are the following:
  - a) Canadian Railroad liability insurance policy with XL Insurance Company Ltd. under number RLC00308301 for a per occurrence limit of \$25,000,000 (CDNUSD) and covering, amongst others: Evacuation expenses, Fire Suppression expenses, Pollution Cleanup expenses, Bodily injury and Property damages;
  - b) Property and Commercial Inland Marine policy with Traveler's Property and Casualty Company of America under number QT-630-6357L188-TIL-13 subject to various limits and sub-limits and covering, amongst others: property, rolling stock, track bed and repairs and business interruption;
43. Both of the above policies are applicable subject to their terms and conditions to losses sustained either by third parties or by Petitioner or by others;
44. It should be noted that Petitioner has not received any indemnity under either of said policies to date, notwithstanding claims presented;
45. A statement of Petitioner's projected cash flow prepared by Petitioner is attached hereto as **Exhibit R-10**, for the period beginning July 19, 2013 and ending September 27, 2013;
46. Said cash flow statement was prepared based on the following key assumptions: (1) that the Petitioner will continue to pay ordinary course obligations, including obligations to employees; (2) that all of the Petitioner's suppliers will wish to operate on a "cash-on-delivery" basis going forward and (3) that MM&AR will be allowed, throughout the anticipated Chapter 11 proceedings, to continue to fund Petitioner's expenses;
47. As the operations of the Petitioner are expected to remain cash positive, as appears from the projected cash flow (Exhibit R-10) and provided the Petitioner obtains the Court protection sought hereunder, the Petitioner will be able to meet its day-to-day obligations for the stay period sought in the present Petition;

**V. CREDITORS OF THE PETITIONER**

**i) Secured Creditors**

48. The secured creditors are the following:

Secured creditors currently holding registered security against the assets of the Petitioner:

- a) The FRA, to whom Petitioner granted a corporate guarantee with respect to amounts owing by its corporate parent MM&AR (the outstanding balance being approximately \$27,500,000 and MM&AR being at present current on its obligations). The FRA holds a security interest in all of the debtors present and future acquired personal property registered in the Personal Property Register of Nova Scotia ("PPRS"); and a conventional hypothec without delivery in the amount of \$81,600,000 registered in the Register of Personal and Movable Real Rights ("RPMRR") in Québec covering the universality of the movable and immovable property, corporeal and incorporeal, present and future, of the Petitioner. It has further registered an immovable hypothec against the immovable property referred to in paragraph 40, with the exception of the rail line segment from Bedford to Sainte-Rosalie; and
- b) Right of ownership of Lessor (under a leasing agreement) held by RoyalNat Inc. with respect to certain equipment;

A copy of extracts of the computerized records of the PPRS and the RPMRR are filed *en liasse* in support hereof as **Exhibit R-11**;

Potential secured creditors

- a) In the event of the issuance of an Initial Order hereunder, apart from any charges that may be created as requested hereunder, Section 11.8(8) provides a charge with respect to any claim, if any, by Her Majesty in Right of Canada or a province against the Petitioner for any costs they may have expended or may in the future expend, for remedying any environmental condition or environmental damage affecting real property of the Petitioner, the charge to apply on said real property and on any other real property of Petitioner that is contiguous thereto and that is related to the activities that caused the environmental condition or environmental damage;

ii) **Unsecured Creditors**

49. The Petitioner has a number of unsecured creditors who are owed in excess of \$48,158,000 in the aggregate, consisting of:

Unsecured Creditors

- a) Accounts payable and accrued liabilities: approximately \$4,758,000;
- b) Due to parent company: \$43,400,000;
- c) Total: \$48,158,000

Other potential unsecured creditors

In addition, the Petitioner may be liable for the following amounts:

- a) The unsecured portion of the debt to FRA (described at 43 a) above) (if any), to be determined;
- b) The line of credit in favour of WLE: \$6,000,000 (USD);

c) Train Derailment Claims: to be determined;

**VI. RELIEF SOUGHT**

50. In light of the insolvent situation of the Petitioner resulting from its secured claims and its current liabilities as well as its potential liability related to the various claims or potential claims, including the Train Derailment Claims and other claims described above, the Petitioner urgently requires a stay of proceedings and the opportunity to attempt to resolve, compromise or otherwise address in a single forum the various claims and potential claims;
51. Given further that the potential liability of the Non-Petitioner Defendants, other members of the Petitioner's Corporate Group, their respective directors, officers and employees, with respect to the various claims or potential claims are derivative of and directly linked to the various claims made or potential claims to be made against the Petitioner, a stay of proceedings in respect of Non-Petitioner Defendants, the other members of the Petitioner's Corporate Group, their respective directors, officers and employees, is also necessary in order to provide the Petitioner with the opportunity to fully consider and implement a successful Plan and resolution of the current situation for the benefit of all its stakeholders;
52. The successful Plan of the Petitioner and the resolution of the various claims and the potential claims will require multi-party negotiations and discussions. The CCAA proceedings will provide a reasonable and effective forum within which these negotiations and discussions may take place. In addition, the CCAA proceedings will avoid a multiplicity of proceedings against the Petitioner and will provide one forum for dealing with all the liabilities of the Petitioner. This stability is necessary to preserve the status of the Petitioner and the continuation of the operations, the whole in order to allow a maximization of the value of the assets and indemnities for the numerous stakeholders;
53. As indicated above, concurrently with the present proceedings, it is anticipated that the Petitioner's parent MM&AR, will be commencing proceedings under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court, pursuant to which recognition in Canada of the automatic statutory stay of proceedings resulting therefrom may be sought. In addition, if the relief requested herein is granted, a petition under Chapter 15 of the U.S. Bankruptcy Code may be filed seeking recognition of these proceedings in the United States and seeking the assistance of the relevant U.S. Courts in enforcing this Court's Order;
54. The Petitioner and MM&AR will be seeking to devise a process dealing with the claims and potential claims in both jurisdictions in order to facilitate the process;

**VII. MONITOR AND ADMINISTRATION CHARGE AND DIRECTORS' CHARGE**

55. The Petitioner proposes that Richter Advisory Group Inc. ("**Richter**") (Gilles Robillard, C.A., C.I.R.P.) be appointed Monitor, the whole pursuant to the CCAA;
56. Richter has accepted its appointment as Monitor of the Petitioner, the whole as appears from the letter of consent from the Monitor filed in support hereof as **Exhibit R-12**;

57. Petitioner respectfully submits that it is appropriate that the Monitor be vested with the authority and protection required herein in order to allow it to fulfill its duties pursuant to the CCAA, the whole in accordance with the order to be rendered pursuant to the present Petition;
58. As security for the payment of the Monitor's fees and disbursements, including legal fees, as well as for the payment of the fees and the disbursements of Petitioner's counsel and other professionals as set forth in paragraph 38 of the conclusions of the present Petition, it is necessary that a prior charge be granted on the whole of Petitioner's assets in favor of said professionals (the "**Administration Charge**");
59. Moreover, in light of the circumstances, in order to be able to maintain temporarily the operations and seek a successful plan, the continued participation of the Petitioner's directors and officers is required. It is therefore appropriate that Initial Order to be granted pursuant hereto include the protections sought in the conclusions of the present Petition, namely, the orders related to the indemnification and charge in favour of its directors and officers (the "**Directors' Charge**");
60. The Petitioner seeks a \$150,000 Directors' Charge, the whole as set forth more fully at paragraph 22 and following of the conclusions of this Petition. The amount of the Directors' Charge was established by the Petitioner and reviewed by the Monitor, taking into account direct and indirect payroll obligations, commissions, vacation pay, deductions at source and sales taxes remittances;
61. Therefore, the Petitioner respectfully submits that the Administration Charge and the Directors' Charge, as defined in the conclusions hereof, must be granted pursuant to the conclusions of the present Petition;

#### **VIII. EXTRA-PROVINCIAL APPLICATION**

62. In light of the fact that the Petitioner is a Nova Scotia company with security registered also in Nova Scotia, given the anticipated concurrent proceedings being taken by MM&AR under Chapter 11 of the U.S. Bankruptcy Code in the U.S. and that the Petitioner and/or the Monitor may also seek to make an application under Chapter 15 of the U.S. Bankruptcy Code and given that claims have also been instituted in the United States in relation to the derailment, Petitioner requests that this Honourable Court seek the assistance of all Canadian and foreign courts in the execution of the order to be rendered hereon and of any other order to be rendered in this matter;
63. The Petitioner requests that this Honourable Court render any and all orders that it may deem necessary in light of the circumstances;

#### **IX. CONCLUSION**

64. The Petitioner believes that a better result for all stakeholders of the Petitioner will be achieved through the Plan than would be the case under any other available alternative. The order sought by the Petitioner will provide it with the necessary opportunity to address the claims and potential claims on a global basis and to assess and implement a successful restructuring strategy with all of its stakeholders, the whole with the goal of maximizing value for all of the stakeholders;

65. The initial order being sought by the Petitioner is based on the standard CCAA Initial Order issued by the Superior Court of Québec, Commercial Division (without however the standard provisions relating to interim financing as the Petitioner is not requesting any interim financing at this time but is reserving its rights to do so), and any changes thereto are underlined in the Draft Initial Order filed in support hereof as **Exhibit R-13**;
66. Considering the urgency of the situation, the Petitioner respectfully submits that the notices given for the presentation of this Petition are proper and sufficient;
67. Again, given the urgency of the situation, the Petitioner submits that it is essential that the execution of the order requested herein be granted notwithstanding appeal;
68. The present Petition is well founded in fact and in law;

**FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:**

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

p) General.

### Service

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

### Application of the CCAA

4. **DECLARE** that the Petitioner is a debtor company to which the CCAA applies.

### Effective time

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

### Plan of Arrangement

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

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

7. **ORDER** that, until and including September 6, 2013, or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Petitioner, or affecting the Petitioner's business operations and activities (the "**Business**") or the Property (as defined herein below), including as provided in paragraph 15 herein below except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court, the whole subject to subsection 11.1 CCAA. Without limiting the generality of the foregoing, Proceedings include all proceedings in Canada and in the United States of America or elsewhere taken or that may be taken against, *inter alia*, the Petitioner and/or Montreal Maine & Atlantic Railway Ltd. ("**MM&AR**"), and/or their liability insurer ("**Liability Insurer**") and/or other members of the Petitioner's corporate group (the "**Petitioner's Corporate Group**") and/or against any of the respective directors, officers or employees of any of the members of the Petitioner's Corporate Group, in connection with the derailment that occurred on July 6, 2013 in Lac-Mégantic, province of Québec, that involved the derailment of the freight train operated by the Petitioner (the "**Derailment**") and include, without limitation, proceedings with respect to the claims set forth at paragraph 25 of the Petition, including the Order issued by the Minister of Environment on July 29, 2013, pursuant to Section 114.1 of the *Environment Quality Act*, R.S.Q., c. Q-2 ("**EQA**") (Exhibit R-4) (the "**Cleanup Order**") with respect to its financial or monetary implications only and any other claim made or that may be made in anyway related to the Derailment (collectively, the "**Train Derailment Claims**"). The members of Petitioner's Corporate Group are listed in Schedule "A" hereto and the members of Petitioner's Corporate Group, and their respective directors, officers or employees and

the Liability Insurer, who are defendants to such proceedings are listed in Schedule "B" hereto and are collectively referred to herein as the "Non-Petitioner Defendants".

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

8. **ORDER** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Petitioner nor against any person deemed to be a director or an officer of the Petitioner under subsection 11.03(3)CCAA (each, a "Director", and collectively the "Directors") in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Petitioner where it is alleged that any of the Directors is under any law liable in such capacity for the payment or performance of such obligation or which relate to the Derailment.

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

9. **ORDER** that the Petitioner shall remain in possession and control of its present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "Property"), the whole in accordance with the terms and conditions of this Order including, but not limited, to paragraph 29 hereof.
10. **AUTHORIZE** the Petitioner to continue to carry on its business and financial affairs in a manner consistent with past periods and the commercially reasonable preservation thereof;
11. **ORDER** that the Petitioner shall be authorized and empowered to continue to retain and employ the employees, consultants, individuals self-employed contractors, agents, experts, accountants, counsels, and such other persons (collectively, "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
12. **ORDER** that the Petitioner shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:
- a) all outstanding and future wages, salaries, commissions, vacation pay, current pension contributions and other benefits, reimbursement of expenses (including, without limitation, amounts charged by employees to credit cards) and other amounts payable to former, current or future employees on or after the date of this Order and reimbursements of expenses payable to officers or directors on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
  - b) the fees and disbursements of any Assistants retained or employed by Petitioner in respect of these proceedings, at their standard rates and charges; and
  - c) subject to the prior written approval of the Monitor, outstanding amounts that became due prior to this Order to creditors who have liens or rights of retention on assets held by them for Petitioner or for Petitioner on behalf of its clients;

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

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

15. **ORDER** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof, including the Cleanup Order, with respect to its financial or monetary implications only are hereby stayed and suspended except with leave of this Court.
16. **DECLARES** that the present order rendered by this Court shall not have the effect of staying or otherwise preventing the execution of the work described in the Cleanup Order or any other work that the Minister of Sustainable Development, Environment, Wildlife and Parks or the City of Lac-Mégantic may consider appropriate to undertake in the public interest;
17. **DECLARES** that the present order rendered by this Court shall not have the effect of preventing the Minister of Sustainable Development, Environment, Wildlife and Parks



from proceeding with the execution of the work described in the Cleanup Order or to have it executed on its behalf by third parties;

18. DECLARES that proceedings arising from the obligation of the Petitioner to fund or otherwise pay for or reimburse the costs, interests and administrative charges associated with the execution of any work under the Cleanup Order whether by the Minister or third parties are stayed;
19. TAKES ACT of the undertaking of the Petitioner to continue providing its ongoing collaboration and cooperation with the Quebec Ministry of Sustainable Development, Environment, Wildlife and Parks, the city of Lac-Mégantic or other governmental authorities to the extent of its present capacity and resources in an effort to permit remediation, including granting the access to its property necessary for the execution of the work described in the Cleanup Order or any other work that the Minister of Sustainable Development, Environment, Wildlife and Parks or the City of Lac-Mégantic may consider appropriate to undertake in the public interest;
20. **DECLARE** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Petitioner or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioner becomes bankrupt or a receiver as defined in subsection 243(2) of the Bankruptcy and Insolvency Act (Canada) (the "BIA") is appointed in respect of the Petitioner, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioner in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

#### **No Interference with Rights**

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

#### **Continuation of Services**

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

payment practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner, with the consent of the Monitor, or as may be ordered by this Court.

23. **ORDER** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioner on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Petitioner.
24. **ORDER** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Petitioner with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

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

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

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

26. **ORDER** that the Petitioner shall indemnify its Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Petitioner after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, willful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.
27. **ORDER** that the Directors of the Petitioner shall be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$150,000.00 (the "**Directors' Charge**"), as security for the indemnity provided in paragraph 26 of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs 43 and 44 of this Order.

28. **ORDER** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph 26 of this Order.

### **Restructuring**

29. **DECLARE** that, to facilitate the orderly restructuring of its business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioner shall have the right, subject to approval of the Monitor or further order of the Court, to:
- a) permanently or temporarily cease, downsize or shut down any of its operations or locations as it deems appropriate and make provision for the consequences thereof in the Plan;
  - b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
  - c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$10,000 or \$50,000 in the aggregate;
  - d) terminate the employment of such of its employees or temporarily or permanently lay off such of its employees as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioner and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Petitioner may determine;
  - e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of its agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Petitioner and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and
  - f) subject to section 11.3 CCAA, assign any rights and obligations of Petitioner.
30. **DECLARE** that, if a notice of disclaimer or resiliation is given to a landlord of the Petitioner pursuant to section 32 of the CCAA and subsection 29.e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Petitioner and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to

third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Petitioner, provided nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

31. **ORDER** that the Petitioner shall provide to any relevant landlord notice of the Petitioner's intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Petitioner has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between the Petitioner and the landlord.
32. **DECLARE** that, in order to facilitate the Restructuring, the Petitioner may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute and may pursue, with the assistance of the Monitor, the Restructuring, including, subject to Court approval, the settlement or other resolution of the claims related to the Derailment.
33. **DECLARE** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, the Petitioner is permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in its possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to its advisers (individually, a "**Third Party**"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioner binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioner or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.

#### **Powers of the Monitor**

34. **ORDER** that Richter Advisory Group Inc. is hereby appointed to monitor the business and financial affairs of the Petitioner as an officer of this Court (the "**Monitor**") and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:
  - a) shall, without delay, (i) publish once a week for two (2) consecutive weeks, or as otherwise directed by the Court, in La Presse and the Globe & Mail newspapers and (ii) within five (5) business days after the date of this Order (A) post on the Monitor's website (the "**Website**") a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioner of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their

respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;

- b) shall monitor the Petitioner's receipts and disbursements;
- c) shall assist the Petitioner, to the extent required by the Petitioner, in dealing with its creditors and other interested Persons during the Stay Period;
- d) shall assist the Petitioner, to the extent required by the Petitioner, with the preparation of its cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- e) shall advise and assist the Petitioner, to the extent required by the Petitioner, to review the Petitioner's business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- f) shall assist the Petitioner, to the extent required by the Petitioner, with the Restructuring and in its negotiations with its creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan, including, without limitation, participating as the Petitioner considers appropriate in any discussion and negotiation with creditors, claimants or others and assisting and facilitating the settlement or other resolution of the claims related to the Derailment.
- g) shall report to the Court on the state of the business and financial affairs of the Petitioner or developments in these proceedings or any related proceedings or the settlement or other resolution of the claims related to the Derailment, and any other matter deemed by the Monitor to be relevant to this proceeding, within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;
- h) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
- k) may assist the Petitioner with respect to any insolvency proceedings commenced by or with respect to any other member of its corporate group (including MM&AR) in any foreign jurisdiction (collectively, "Foreign Proceedings") and report to this Court, as it deems appropriate, on the Foreign Proceedings with respect to matters relating to the Petitioner;

- l) may act as a "foreign representative" of the Petitioner or in any other similar capacity in any insolvency, bankruptcy or reorganization or other proceedings outside of Canada;
  - m) may give any consent or approval as may be contemplated by the Order or the CCAA; and
  - n) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time.
35. **ORDER** that, unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioner, and that the Monitor is not empowered to take possession of the Property nor to manage or control any of the business and financial affairs of the Petitioner and nothing in this Order shall vest in the Monitor the care, ownership, control, charge, occupation, possession or management (separately and collectively, the "**Possession**"), or require or obligate the Monitor to occupy, to take Possession of any Property or any source of contaminant which may be environmentally contaminated or contain a dangerous or designated substance, or (b) contain a pollutant or contaminant or cause or contribute to a spill, discharge, release or deposit of a substance in respect of which obligations of any sort may be imposed under any legislation enacted for the protection, conservation, enhancement, remediation or rehabilitation of the indoor or outdoor environment, or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Transportation of Dangerous Goods Act*, the *Environment Quality Act (Québec)*, the *Act Respecting Occupational Health and Safety (Québec)* or the regulations thereunder, or under any other federal or provincial legislation or rule of law or equity, in any jurisdiction affecting the indoor or outdoor environment or the transportation of dangerous goods (collectively, "**Environmental Laws**"). For greater certainty, the Monitor shall not be deemed, as a result of this Order, to be in Possession within the meaning of any Environmental Laws of any Property or source of contaminant.
36. **ORDER** that the Petitioner and its Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioner in connection with the Monitor's duties and responsibilities hereunder.
37. **DECLARE** that the Monitor may provide creditors and other relevant stakeholders of the Petitioner with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioner's counsel. In the case of information that the Monitor has been advised by the Petitioner is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioner unless otherwise directed by this Court.
38. **DECLARE** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioner or continues the employment of the Petitioner's employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.

39. **DECLARE** that, if the Monitor acts in good faith and takes reasonable care in preparing the reports referred to herein, the Monitor is not liable for loss or damage to any Person resulting from that person's reliance on any such report.
40. **DECLARE** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph 30 (i) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
41. **ORDER** that Petitioner shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioner's legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
42. **DECLARE** that the Monitor, the Monitor's legal counsel (Woods LLP), the Petitioner's legal counsel (Gowling Lafleur Henderson LLP) and the Monitor and the Petitioner's respective advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order and directly related to these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$1,500,000 (the "**Administration Charge**"), having the priority established by paragraphs 43 and 44 hereof.

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

43. **DECLARE** that the priorities of the Administration Charge and any possible charge in favor of the Directors (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:
  - a) first, the Administration Charge;
  - b) second, the Directors' Charge;
44. **DECLARE** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind or deemed trusts (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances.
45. **ORDER** that, except as otherwise expressly provided for herein, the Petitioner shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioner obtains the prior written consent of the Monitor and the prior approval of the Court.
46. **DECLARE** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioner, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

47. **DECLARE** that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Petitioner (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:
- c) the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by the Petitioner of any Third Party Agreement to which it is a party; and
  - d) any of the beneficiaries of the CCAA Charges shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.
48. **DECLARE** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Petitioner pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.
49. **DECLARE** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioner and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioner, for all purposes.

#### **General**

50. **ORDER** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the Petitioner or of the Monitor in relation to the Business or Property of the Petitioner, without first obtaining leave of this Court, upon five (5) days written notice to the Petitioner's counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
51. **DECLARE** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioner under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
52. **DECLARE** that, except as otherwise specified herein, the Petitioner and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in




connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioner and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.

53. **DECLARE** that the Petitioner and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Petitioner shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
54. **DECLARE** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Petitioner and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings.
55. **DECLARE** that the Petitioner or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the order on notice only to each other and any other Person directly affected thereby, if any.
56. **DECLARE** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Petitioner, to the Petitioner's counsel (Gowling Lafleur Henderson LLP c/o Denis St-Onge, phone: 514-392-9519, fax: 514-876-9519, denis.st-onge@gowlings.com, 3700-1 Place Ville Marie, Montreal, Quebec, H3B 3P4), to the Monitor (Richter Advisory Group Inc., c/o Gilles Robillard, phone: 514-934-3484, fax: 514-934-3504, 1981, McGill College, Montreal, Québec, H3A 0G6), to the Monitor's counsel (Woods LLP c/o Sylvain Vauclair, phone: 514-982-4528, fax: 514-284-2046, svaclair@woods.qc.ca, 2000, avenue McGill College, suite 1700, Montreal, Québec, H3A 3H3) and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order, such application or motion shall be filed during the Stay Period ordered by this Order, unless otherwise ordered by this Court.
57. **DECLARE** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
58. **DECLARE** that the Monitor, with the prior consent of the Petitioner, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court, for which the Monitor shall be the foreign representative of the Petitioner, including, but without limitation, in respect of proceedings that may be commenced, the Chapter 15 of the U.S. Bankruptcy Code and any ancillary relief in respect thereto. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

59. **REQUEST** 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.
60. **ORDER** the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security.

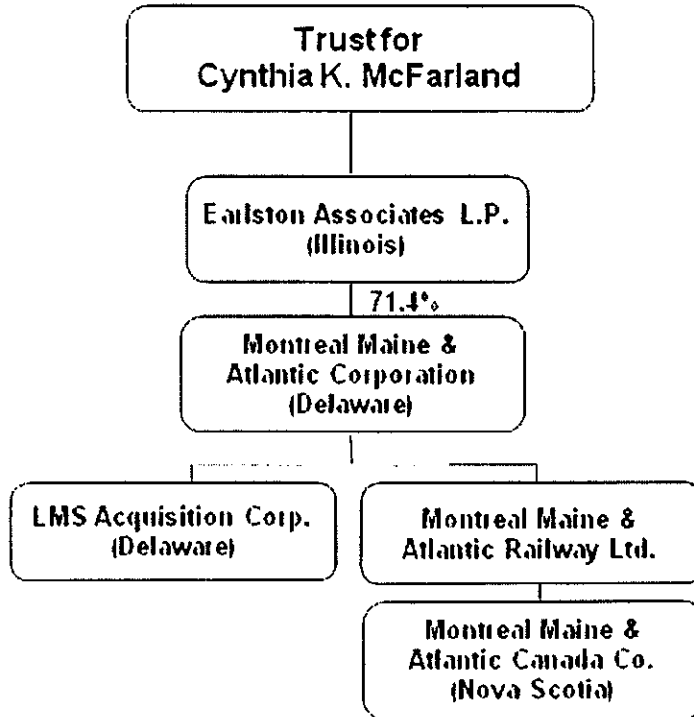
THE WHOLE WITHOUT COSTS, save and except in case of contestation.

MONTREAL, August 8, 2013

  
**GOWLING LAFLEUR HENDERSON LLP**  
Attorneys for Petitioner

**SCHEDULE « A »**

**MONTREAL, MAINE & ATLANTIC CORPORATE GROUP**



## **SCHEDULE « B »**

### **NON PETITIONNERS DEFENDANTS :**

**MONTREAL, MAINE & ATLANTIC CORPORATION**

**MONTREAL, MAINE & ATLANTIC RAILWAY LTD**

**EARLSTON ASSOCIATES L.P.**

**EDWARD BURKHARDT**

**ROBERT GRINDROD**

**GAYNOR RYAN**

**DONALD GARNER JR.**

**JOE McGONIGLE**

**THOMAS HARDING**

**XL INSURANCE COMPANY LIMITED**

**XL GROUP PLC**

# **EXHIBIT R-1**

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF SAINT-FRANÇOIS

NO: 450-06-000001-135

(Class Action)  
SUPERIOR COURT

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**YANNICK GAGNÉ**

and

**GUY OUELLET**

*Petitioners*

-vs.-

**RAIL WORLD, INC.**, legal person duly constituted, having its head office at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

**RAIL WORLD HOLDINGS, LLC**, legal person duly constituted, having its head office at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

**MONTREAL MAINE & ATLANTIC RAILWAY LTD.**, legal person duly constituted, having its head office at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

**EARLSTON ASSOCIATES L.P.**, legal person duly constituted, having its head office at 8600 W Bryn Mawr Ave 500N, City of Chicago, State of Illinois, 60631, USA

and

**PEA VINE CORPORATION**, legal person duly constituted, having its head office at 2899 Sherman Ave, City of Monte Vista, State of Colorado, 81144, USA

and

**MONTREAL, MAINE & ATLANTIC CORPORATION**, legal person duly constituted, having its head office at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

**MONTREAL, MAINE & ATLANTIC CANADA COMPANY**, legal person duly constituted, having its head office at 1959 Upper Water Street, Suite 800, City of Halifax, Province of Nova Scotia, B3J 2X2

and

**EDWARD BURKHARDT**, service at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

**ROBERT GRINDROD**, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

**GAINOR RYAN**, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

**DONALD GARDNER, JR.**, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

**JOE MCGONIGLE**, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

**CATHY ALDANA**, service at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

**THOMAS HARDING**, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

**IRVING OIL LIMITED**, legal person duly constituted, having its head office at 10 Sydney Street, City of St. John, Province of New Brunswick, E2L 4K1

and

**IRVING OIL COMPANY, LIMITED**, legal person duly constituted, having its head office at 10 Sydney Street, City of St. John, Province of New Brunswick, E2L 4K1

and

**IRVING OIL OPERATIONS GENERAL PARTNER LIMITED**, legal person duly constituted, having its head office at 1 Germain Street, Suite 1700, City of St. John, Province of New Brunswick, E2L 4V1

and



**IRVING OIL OPERATIONS LIMITED,**  
legal person duly constituted, having its  
head office at 1 Germain Street, Suite  
1700, City of St. John, Province of New  
Brunswick, E2L 4V1

and

**WORLD FUEL SERVICES CORP.,** legal  
person duly constituted, having its head  
office at 9800 NW 41<sup>st</sup> Street, Suite 400,  
City of Miami, State of Florida, 33178,  
USA

and

**WORLD FUEL SERVICES, INC.,** legal  
person duly constituted, having its head  
office at 9800 NW 41<sup>st</sup> Street, Suite 400,  
City of Miami, State of Florida, 33178,  
USA

and

**WORLD FUEL SERVICES CANADA,**  
**INC.,** legal person duly constituted,  
having its head office at 9800 NW 41<sup>st</sup>  
Street, Suite 400, City of Miami, State of  
Florida, 33178, USA

and

**DAKOTA PLAINS HOLDINGS, INC.,**  
legal person duly constituted, having its  
head office at 294 Grove Lane East, City  
of Wayzata, State of Minnesota, 55391,  
USA

*Respondents*

and

**XL INSURANCE COMPANY LIMITED,**  
legal person duly constituted, having its  
principal establishment at 8 Street  
Stephen's Green, City of Dublin, 2,  
Ireland  
and

**XL GROUP PLC**, legal person duly constituted, having its principal establishment at One Bermudiana Road, City of Hamilton, HM, 08, Bermuda

*Mises-en-cause*

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**AMENDED MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION**  
**&**  
**TO ASCRIBE THE STATUS OF REPRESENTATIVE**  
**(Art. 1002 C.C.P. and following)**

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TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT,  
SITTING IN AND FOR THE DISTRICT OF SAINT-FRANÇOIS, YOUR  
PETITIONERS STATE AS FOLLOWS:

**I. GENERAL PRESENTATION**

A) The Action

1. Petitioners wish to institute a class action on behalf of the following group, of which they are members, namely:
  - all persons and entities (natural persons, legal persons established for a private interest, partnerships or associations as defined in article 999 of the Code of Civil Procedure of Quebec) residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic [including their estate, successor, spouse or partner, child, grandchild, parent, grandparent and sibling], who have suffered a loss of any nature or kind relating to or arising directly or indirectly from the train derailment that took place on July 6, 2013 in Lac-Mégantic (the "Train Derailment"), or any other group to be determined by the Court;

B) The Respondents

2. Please note that the Respondents presented herein are as known currently. As new facts emerge throughout the various investigations of the governmental bodies, the Petitioners reserve their right to amend so as to update this section;

The Corporate Rail World Respondents

3. Respondent Rail World, Inc. ("Rail World") is an American rail transport holding corporation with its head office in Rosemont, Illinois. It is a railroad management and consulting company. It is the parent company of Montreal, Maine and Atlantic Railway Ltd. ("MMAR") and its president and Chief Executive Officer is Respondent Edward Burkhardt;
4. Respondent Rail World Holdings, LLC ("Rail World Holdings") is an American corporation with its head office in Rosemont, Illinois. The company holds railway investments around the world. Respondent Edward Burkhardt serves as the president of the company. Rail World Holdings is not a distinct corporate entity performing autonomous business activities, but is instead an entity created to serve as a holding company for other corporate entities and is dominated and controlled by its parent company, Rail World;
5. Respondent MMAR is an American corporation with its head office in Hermon, Maine. It operates a Class II freight railroad in the U.S. states of Maine and Vermont and in the province of Quebec. MMAR owns the 1200 kilometer regional railway crossing Maine, Vermont, Quebec and New Brunswick and it also owns and leases locomotives and train cars travelling between Montreal, Quebec and Lac-Mégantic, Quebec. It is a wholly-owned subsidiary of Rail World and Respondent Edward Burkhardt serves as the Chairman of the Board. It is a wholly-owned subsidiary of Montreal, Maine and Atlantic Corporation ("MMAC"), the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1A**. MMAR is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Rail World;
6. Respondent Earlston Associates L.P. ("Earlston") is an American corporation with its head office in Chicago, Illinois. Its majority shareholder is Respondent Edward Burkhardt, who owns 72.78% of the corporate stock. It is the parent company of MMAC (...);
7. Respondent Pea Vine Corporation ("Pea Vine") is an American corporation with its head office in Vista, Colorado. It operates in the rail transportation industry as a railroad line-haul operator. Respondent Edward Burkhardt is the President of the company;
8. Respondent MMAC is an American corporation with its head office in Hermon, Maine. It is a wholly-owned subsidiary of Respondent Earlston. MMAC is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its parent company, Earlston;
9. Respondent Montreal, Maine & Atlantic Canada Company ("MMA Canada") is a wholly-owned subsidiary of MMAR (...), the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as

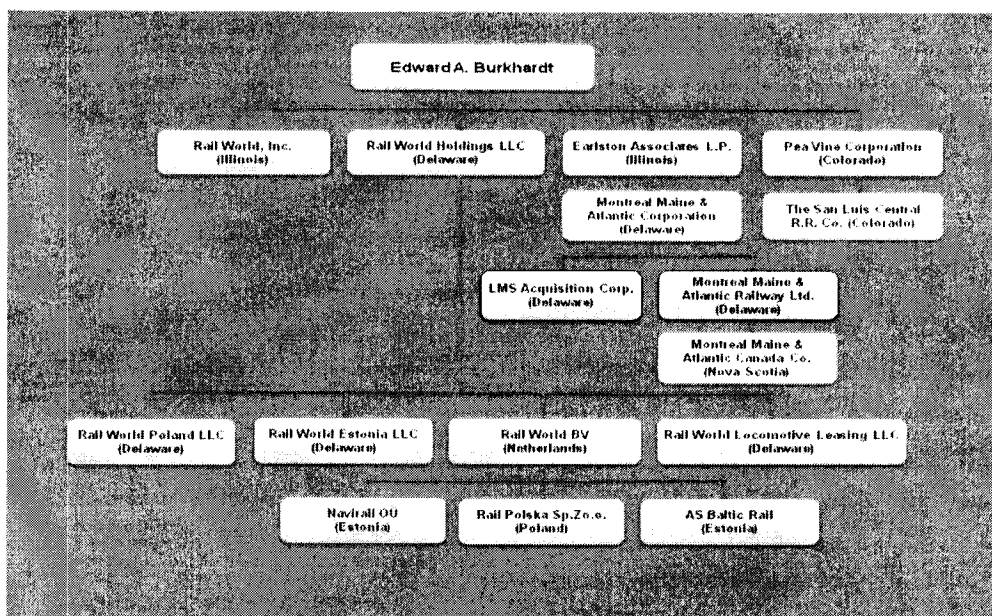
**Exhibit R-1B.** MMA Canada is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Rail World;

9.1 Rail World controlled and dominated its subsidiaries directly and/or through its operating and subsidiary companies, including Rail World Holdings, and MMAC, and MMAR. Respondents were operated as one economic unit or a single group enterprise as follows:

- a) Each of the seven companies is a parent or subsidiary of the others or is an affiliate of the others;
- b) Each of the seven companies is the agent of the others;
- c) All seven companies have officers and directors in common, including most importantly, the Respondent Edward Burkhardt as explained below; and
- d) The acts and omissions set out herein were done by the Rail World Respondents in pursuit of their common enterprise;
- e) All of the Rail World Respondents were under the control and direction, including all aspects of their business and operations, of the Respondent Rail World and its officers and directors and its subsidiaries as described herein;

#### The Individual Rail World Respondents

10. Respondent Edward Burkhardt ("Burkhardt") is the President of Respondents Rail World, Rail World Holdings and Pea Vine Corporation. Mr. Burkhardt is the majority shareholder of Respondent Earlston and he serves as the Chairman of the Board of Directors at Respondent MMAR. Respondent Edward Burkhardt is responsible for the implementation and enforcement of policies and/or for the failure to implement and to enforce proper policies and procedure;
11. As is plainly illustrated below, Respondent Edward Burkhardt is the principal director of and exercises real and effective control of the other Respondents, in effect functioning as the alter ego of the entire operation. The other officers and management of the Rail World Respondents and its affiliates effectively controlled all aspects of the business and operations of all of the Rail World Respondents as described herein;



12. Respondents Edward Burkhardt, Robert Grinrod (President and Chief Executive Officer of MMAR), Gainor Ryan (Vice-President of Human Resources of MMAR), Donald Gardner, Jr. (Vice-President Finance and Administration and Chief Financial Officer at MMAR), Joe McGonigle (Vice-President of MMAR) and Cathy Aldana (Vice-President of Research and Administration at Rail World) are the collectively, the controlling minds of the Corporate Rail World Respondents;
13. Respondent Thomas Harding was the conductor of the Train;
14. Mis-en-cause XL Insurance Company Limited is a global insurance company with its head office in Ireland. It is the liability insurer of Respondent MMAR;
15. Mis-en-cause XL Group PLC is a global insurance company with its head office in Bermuda. It is the liability insurer of Respondent MMAR;
16. (...)
17. Given the close ties between the Corporate Rail World Respondents and the Individual Rail World Respondents and considering the preceding, all Corporate Rail World Respondents and Individual Rail World Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, all Corporate Rail World Respondents will be referred to as the “Rail World Companies” and the Individual Rail World Respondents will be referred to as the “Senior Executive Team” for the purposes hereof. Collectively, they will be referred to as the “Rail World Respondents”;

## The Irving Oil Respondents

17.1 Respondent, Irving Oil Limited ("Irving Oil") is a corporation incorporated pursuant to the laws of New Brunswick with its head office located in St. John, New Brunswick. At all material times, Irving Oil either directly or indirectly through an agent or subsidiary purchased and had a proprietary or equitable interest in and control of the shale liquids, sometimes referred to as "shale oil" or "crude oil" (the "Shale Liquids") that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013;

17.2 Respondent, Irving Oil Company, Limited ("Irving Oil Co.") is a corporation incorporated pursuant to the laws of New Brunswick with its head office located in St. John, New Brunswick. At all material times, Irving Oil GPL either directly or indirectly through an agent or subsidiary purchased and/or owned the Shale Liquids that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013. Irving Oil GPL directly or indirectly, through an agent or subsidiary, contracted with MMAR for the shipment of the Shale Liquids and was responsible for the decision to use and/or was aware of the use of DOT-111 tankers to ship the Shale Liquids. Irving Oil GPL is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Irving Oil, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1C**;

17.3 Respondent, Irving Oil Operations General Partner Limited ("Irving Oil GPL") is a corporation incorporated pursuant to the laws of New Brunswick with its head office located in St. John, New Brunswick. At all material times, Irving Oil GPL either directly or indirectly through an agent or subsidiary purchased and/or owned the Shale Liquids that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013. Irving Oil GPL directly or indirectly, through an agent or subsidiary, contracted with MMAR for the shipment of the Shale Liquids and was responsible for the decision to use and/or was aware of the use of DOT-111 tankers to ship the Shale Liquids. Irving Oil GPL is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Irving Oil;

17.4 Respondent, Irving Oil Operations Limited ("Irving Oil Operations") is a corporation incorporated pursuant to the laws of New Brunswick with its head office in St. John, New Brunswick. At all material times, Irving Oil Operations either directly or indirectly through an agent or subsidiary purchased and/or owned the Shale Liquids that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013. Irving Oil Operations directly or indirectly, through an agent or

subsidiary, contracted with MMAR for the shipment of the Shale Liquids, and was responsible for the decision to use and/or was aware of the use of DOT 111 tankers to ship the Shale Liquids. It is a wholly-owned subsidiary of Irving Oil, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1D**. Irving Oil Operations is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Irving Oil;

17.5 At all relevant times, the Respondents, Irving Oil, Irving Oil Co., Irving Oil GPL and Irving Oil Operations (hereinafter collectively "Irving Oil") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions directly or through their subsidiaries. As such, each Irving Oil Respondent is individually as well as solidarily liable to the Petitioners and to the members of Class for their injuries, losses and damages;

#### The World Fuel Respondents

17.5 Respondent, World Fuel Services Corp. is a corporation incorporated pursuant to the laws of Florida with its head office located in Miami, Florida. At all material times World Fuel Services Corp. or one of its subsidiaries was the seller and/or owner of the Shale Liquids that were being shipped by MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick and leased the DOT-111 tankers used to carry the oil. World Fuel Services Corp. exercised control over its subsidiaries and corporate divisions and was responsible for the decision to use and/or was aware of the use of DOT 111 tankers to ship the Shale Liquids;

17.6 Respondent, World Fuel Services, Inc. is a corporation incorporated pursuant to the laws of Florida with its head office located in Miami, Florida. At all material times World Fuel Services, Inc. either directly or indirectly through one of its subsidiaries, was the seller and/or owner of the Shale Liquids that were being shipped by MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick and leased the DOT-111 tankers used to carry the Shale Liquids. World Fuel Services, Inc. is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, World Fuel Services Corp.;

17.7 Respondent, World Fuel Services Canada, Inc. is a corporation incorporated pursuant to the laws of British Columbia with its head office located in Miami, Florida. At all material times World Fuel Services Canada, Inc. either directly or indirectly through one of its subsidiaries was the seller and/or owner of the Shale Liquids that were being shipped by MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick, and leased the DOT-111 tankers used to carry the Shale Liquids. World Fuel Services Canada, Inc. is not a distinct

corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, World Fuel Services Inc., the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as **Exhibit R-1E**;

17.8 Respondent Dakota Plains Holdings, Inc. is a corporation incorporated pursuant to the laws of Nevada with its head office located in Wayzata, Minnesota. At all material times, Dakota Plains Holdings, Inc. was a subsidiary of and/or affiliate and/or joint venture of World Fuel Services Corp. and/or World Fuel Services, Inc., and/or World Fuel Services Canada, Inc. Dakota Plains Holdings, Inc. was the seller, owner and shipper of the Shale Liquids that were being shipped by MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick and leased the DOT-111 tankers used to carry the Shale Liquids;

17.9 At all relevant times, the Respondents, World Fuel Services Corp., World Fuel Services, Inc., World Fuel Services Canada, Inc. and Dakota Plains Holdings, Inc. (hereinafter collectively "World Fuel") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions either directly or through their subsidiaries. As such, each World Fuel Respondent is individually as well as solidarily liable to the Petitioners and to the members of Class for their injuries, losses and damages;

17.10 Unless the context indicates otherwise, all Irving Oil Respondents and World Fuel Respondents will be referred to collectively as the "Oil Respondents" for the purposes hereof;

17.11 All of the Respondents, whether directly or indirectly, are significantly involved in the train derailment that took place on July 6, 2013 in Lac-Mégantic, Quebec;

### C) The Situation

18. Please note that the facts presented herein are as known currently. As new facts emerge throughout the various investigations of the governmental bodies, the Petitioners reserve their right to amend so as to update this section;

#### The Oil

18.1 Prior to July 5, 2013, Irving Oil contracted with World Fuel for the purchase of Shale Liquids obtained from the Bakken formation in North Dakota. These Shale Liquids were a highly flammable and therefore hazardous substance;

18.2 In order to deliver the Shale Liquids to their purchaser, World Fuel arranged for MMAR to transport the Shale Liquids from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick and leased 72 DOT-111 tankers for this purpose;



### The Train Derailment

19. On July 5, 2013, at approximately 11:25 pm, Respondent Harding, the one (1) engineer employed by Respondent MMAR to operate the Train, parked and tied down a freight train in the town of Nantes, Québec, for a stopover en route to the province of New Brunswick, the whole as appears more fully from a copy of the Montreal, Maine and Atlantic Railway (MMA) Press Release entitled "Derailment in Lac-Mégantic, Quebec" dated July 6, 2013, produced herein as **Exhibit R-2**;
20. The (...) Train was comprised of the 72 DOT-111 tank cars, each carrying 113,000 litres of (...) the Shale Liquids and of 5 locomotive units (hereinafter collectively referred to as the "Train"), the whole as appears more fully from a copy of the National Post graphic article entitled "The Night a Train Destroyed a Town", produced herein as **Exhibit R-3**;
21. The estimated 9,975 ton Train was parked approximately 11 kilometers west of Lac-Mégantic, Québec, on the main rail line at an elevation point of 515 meters on an incline of approximately 1.2%;
22. Respondent Harding claims to have tied down the Train and turned off four of the five engines, leaving on the lead engine #5017 to ensure that the air brake system continued to operate, the whole as appears more fully from a copy of the Wall Street Journal article entitled "Brakes Cited in Quebec Wreck" dated July 10, 2013, produced herein as **Exhibit R-4**;
23. Respondent Harding failed to apply any or insufficient hand brakes, thereby failing to act in accordance with existing requirements, regulations, and policy;
24. Respondent Harding, the only employee assigned to operate the Train, then left at approximately 11:25 PM and went to a local hotel for the night;
25. At approximately 11:30 PM, residents of Nantes noticed a significant amount of smoke coming from the Train and called 9-1-1;
26. At approximately 11:45 PM, the Nantes fire department arrived on the scene to extinguish a small fire in the locomotive, reportedly caused by a ruptured oil or fuel line in the locomotive. ;
27. At approximately 11:50 PM, the fire was reported to rail traffic control and Respondent MMAR dispatched two (2) track maintenance employees ("MMAR Representatives") to the scene. Neither Respondent Harding nor another properly qualified engineer attended ;

28. By 12:15 AM on July 6, 2013, the blaze was completely extinguished and the firefighters left the Train in the custody of the MMAR Representatives, who confirmed that the Train was safe;
29. At approximately 12:56 AM, after the emergency responders had left and, while no MMAR Representatives were present, the Train began to move downhill along the track towards the town of Lac-Mégantic;
30. At approximately 1:14 AM, the Train derailed at the Rue Frontenac road crossing in Lac-Mégantic and crashed into the downtown core of the town (hereinafter referred to as the "Train Derailment");
31. Between 1:15 am and 4:00 am, several tanker cars caught fire and the highly flammable tank cars with Shale Oil exploded, decimating the entire area. The explosions continued for several hours as 2,000 residents were evacuate from the area (hereinafter referred to as the "Explosion"), the whole as appears more fully from a copy of the National Post article entitled "Death Toll Rises to 13 with Dozens More Still Missing" dated July 9, 2013, produced herein as **Exhibit R-5**;
32. In the aftermath of the Train Derailment and Explosion, 38 have been confirmed and 13 people suspected to have died in the explosion remain missing (...). Numerous people also sustained extensive physical injuries as a result of the blasts;
33. At least thirty (30) buildings were destroyed in the downtown "red zone" and at least 20 people lost their homes;
34. The Transportation Safety Board of Canada ("TSBC") and the Sûreté du Québec ("SQ") have both launched investigations into the causes of the Train Derailment, the whole as appears more fully from a copy of the Transportation Safety Board of Canada's Rail Investigation Report entitled "Railway investigation R13D0054" dated July 12, 2013 and from a copy of the Globe and Mail article entitled "Police signal there are sufficient grounds for charges in Lac-Mégantic" dated July 9, 2013, produced herein, *en liasse*, as **Exhibit R-6**;
35. On July 10, 2013, Respondent Edward Burkhardt gave an impromptu press conference to the media in Lac-Mégantic, in which he was asked by a reporter: "You don't accept full responsibility for this?", his answer was the following:

"I didn't say that, you see people are always putting words in my mouth, please, I did not say that, we think we have plenty of responsibility here, whether we have total responsibility is yet to be determined. We have plenty of it. We're going to try to help out with everything that we can in this community, working through the city and the Red Cross to do our best to meet our obligation to make repairs and put people back in homes and things like that."

And when asked about the application of the brakes on the Train, Respondent Burkhardt replied:

“This was a failure of the brakes; it’s very questionable whether the brakes- the hand brakes- were properly applied on this train. As a matter of fact, I’d say they weren’t or we wouldn’t have had this incident [...] I don’t think the employee removed brakes that were set; I think they failed to set the brakes in the first place. We know the brakes were applied properly on a lot of the locomotive. The fact that when the air-brakes released on the locomotive, that the train “ran away”, would indicate that the hand brakes on the balance of the train were not properly applied. It was our employee that was responsible for setting an adequate number of hand brakes on the train.”

#### The Respondent MMAR’s Poor Safety Record

36. Since 2003, Respondent MMAR has reported 129 accidents, including 14 main track derailments and 4 collisions, according to Canada’s Transportation Safety Board (Exhibit R-6);
37. In the United States, Respondent MMAR has reported 23 accidents, injuries and other mishaps from 2010 to 2012, according to Federal Railroad Administration data, the whole as appears more fully from a copy of the Wall Street Journal article entitled “Runaway Quebec Train’s Owner Battled Safety Issues” dated July 9, 2013, produced herein as **Exhibit R-7**;
38. In 2012, Respondent MMAR had an average of 36.1 occurrences per million miles, while the national average was 14.6. Between 2003 and 2011, the company’s rate ranged between 23.4 and 56 incidents per million miles, while the national average ranged between 15.9 and 19.3, according to Federal Railroad Administration data (Exhibit R-7);
39. Several of these incidents involved brakes that failed or were not properly activated, resulting in the train rolling away unmanned;
40. For example, in February 2010, a train of 3 MMAR locomotives were left unattended in Brownville Junction, Maine. The air brakes failed and the train rolled down a hill and crashed, causing physical injury and spilling more than 1,100 litres of fuel, the whole as appears more fully from a copy of the Bureau of Remediation & Waste Management report number B-97-2013, produced herein as **Exhibit R-8**;
41. On June 11, 2013, a MMAR train derailed in Frontenac, Quebec, just east of Lac Mégantic and spilled 13,000 litres of diesel fuel, the whole as appears more fully

from a copy of the La Presse article entitled “Déversement de 13 000 litres de diesel à Frontenac, près de Lac-Mégantic” dated June 11, 2013, produced herein as **Exhibit R-9**;

#### The Rail World Respondents' Cutbacks

42. In 2003, Respondent Rail World bought the Bangor & Aroostook Railroad, which spans approximately 1200 kilometers of regional rail track in Maine, Vermont and Canada, and renamed it Montreal, Maine and Atlantic Railway Inc.;
43. From the beginning, Respondent MMAR suffered many financial difficulties, largely due to decreases in the lumber and pulp-and-paper industries that once sustained it, the whole as appears more fully from a copy of The Gazette article entitled “Railway companies cutting back crew” dated July 10, 2013, produced herein as **Exhibit R-10**;
44. Following the takeover, employee wages were drastically cut in order to save costs. Cuts and layoffs continued in 2006 and again in 2008, the whole as appears more fully from a copy of The Ottawa Star article entitled “Lac Megantic: Railway's history of cost-cutting” dated July 11, 2013, produced herein as **Exhibit R-11**;
45. Respondent MMAR, contrary to industry standards, reduced its locomotive crews by half, replacing two (2) workers with a single employee in charge of an entire train. In North America, most train operators, including two of Canada's largest - Canadian National Railway Ltd. and Canadian Pacific Railway Ltd- use two staff to operate one train (Exhibit R-7). In particular, it had a special duty to ensure the usage of adequate train crews when transporting highly flammable Shale Liquids through urban and residential areas;
46. In 2010, Respondent MMAR sold 375 kilometers of rail line in Maine to the state itself for close to \$20.1 million, citing economic hardship (Exhibit R-7);
47. In 2012, Respondent MMAR's finances had somewhat improved after years of operating losses, in part due to the new business of shipping petroleum products to Irving Oil in Saint John, New Brunswick, where the Train was headed before the Train Derailment;
48. In order to keep costs at a minimum and the company profitable, Respondent MMAR began outfitting its trains with remote-control communications technology systems and employing other cost-cutting tactics, such as employee cutbacks, with complete disregard for industry safety and security practices when transporting inherently dangerous goods;

49. These cutbacks demonstrate a serious and concerted preoccupation with finances at the expense of the necessary safety and security policies that should have been the primary concern of the Respondents;
50. The policies pertaining to the transportation of goods by rail and the implementation of such policies by Respondent MMAR emanate from Respondent Rail World, of which Respondent Burkhardt is President and Chief Executive Officer;
51. All directives concerning the number of employees required to operate the Train, the number and manner in which the hand brakes are to be applied, the decisions to leave the Train unattended, the lack of safety and security measures or procedures are dictated and enforced by Respondent Rail World and its alter ego, Respondent Burkhardt in his capacity as President and Chairman of the Board, at his sole unfettered discretion;
52. Canada's rail industry is largely self-regulating, allowing rail corporations such as Respondent Rail World to implement and enforce their own guidelines and standards. Because of the lack of regulation in this industry, it is impossible to know whether these corporations actually implemented these protocols and, if so, whether they actually adhered to their safety protocols;
53. Respondent Burkhardt, through Respondent Company Rail World maintains authority, control, decision making and governing power over all the subsidiary and affiliated corporations including Respondents Rail World Holdings, MMAR, Earlston, Pea Vine, MMAC, MMAR Canada. Rail World is, effectively, the alter-ego of these companies through which it is able to exercise various business transactions;

#### The DOT-111 Tankers are Prone to Rupture and Explosion

- 53.1 DOT-111 tank cars, also known as CTC-111A tank cars, were leased by Irving Oil and/or World Fuel and/or MMAR and were used to transport the Shale Liquids from North Dakota to New Brunswick. These tanks are multi-purpose, non-pressure tank cars that are widely known to the all Respondents and to regulators to be vulnerable to leaks, ruptures and explosions;
- 53.2 The United States National Transportation Safety Board ("U.S. NTSB") repeatedly noted in numerous investigations, beginning as early as May 1991, that DOT-111 model tank cars have multiple design flaws which result in a high incidence of tank failures during collisions, and render them less suitable for the transport of dangerous products, the whole as appears more fully from a copy of the U.S. NTSB Safety Recommendation dated March 2, 2012, produced herein as **Exhibit R-12**;

53.3 The TSBC has also noted that the DOT-111 tank's design is flawed, resulting in a high incidence of tank failure during accidents. Accidents in Canada where DOT-111 design flaws were ultimately identified as contributing to the damages that were caused are numerous and include, but are not limited to:

- a) the January 30, 1994 derailment of 23 freight cars northwest of Sudbury, Ontario, in which three DOT-111 tanks cars containing dangerous goods failed and released product; the whole as appears more fully from a copy of TSBC Railway Occurrence Report dated January 30, 1994, produced herein as **Exhibit R-13**;
- b) the October 17, 1994 derailment of six tank cars containing methanol in Lethbridge, Alberta. Four derailed DOT-111 tank cars failed and released approximately 230,700 litres of methanol. A 20-square-block area of the city was evacuated; the whole as appears more fully from a copy of TSBC Railway Occurrence Report dated October 17, 1994, produced herein as **Exhibit R-14**;
- c) the January 21, 1995 derailment of 28 freight cars of sulfuric acid near Gouin, Quebec. Eleven DOT-111 tanks failed and released 230,000 litres of sulphuric acid, causing considerable environmental damage; the whole as appears more fully from a copy of TSBC Railway Occurrence Report dated January 21, 1995, produced herein as **Exhibit R-15**;
- d) the August 27, 1999 derailment of a DOT-111 tank that failed and released 5,000 gallons of combustible product in Cornwall, Ontario, resulting in a temporary evacuation of customers and staff from nearby businesses; the whole as appears more fully from a copy of TSBC Railway Investigation Report dated August 27, 1999, produced herein as **Exhibit R-16**; and
- e) the May 2, 2005 collision of 74 freight cars, in which a DOT-11 tank failed and released 98,000 litres of denatured alcohol, resulting in the evacuation of 200 people; the whole as appears more fully from a copy of TSBC Railway Investigation Report dated May 2, 2005, produced herein as **Exhibit R-17**;

53.4 Known flaws in the design of the DOT-111 tank cars include: the tank is not double-hulled and its steel shell is too thin to resist puncture; the tank's ends are especially vulnerable to tears from couplers that can fly up after ripping off between cars; unloading valves and other exposed fittings on the tops of the tanks can break during rollovers; and the tanks are not equipped with shields to resist shock in the event of a collision (Exhibit R-12). As a result, the tanks are highly prone to failure and leakage even in collisions at low speed;

53.5 These flaws were repeatedly identified as concerning to Canadian and American regulators. In 2011, the American Association of Railroads' Tank Car Committee imposed design changes intended to improve safety in new DOT-111s, including requirements for thicker heads, low-pressure release valves and puncture-proof shells. These design modifications have also been adopted for new DOT-111 cars manufactured and used in Canada, but there is no requirement to modify existing tanks. While these changes decrease the likelihood of tank rupture in tanks produced in late 2011 and onwards, the benefits are not realized unless a train is composed entirely of tanks that possess these modifications;

53.6 In the presence of ongoing concerns, the U.S. NTSB issued safety guidelines in March, 2012 for all DOT-111s, which included a recommendation that all tank cars used to carry ethanol and crude oil be reinforced to render them more resistant to punctures and that existing non-reinforced tank cars are phased out completely. These guidelines noted the dangers posed by the transport of large quantities of ethanol and crude oil by rail and specifically cited the increased volume of crude oil being shipped out of the Bakken region of North Dakota as one of many justifications for the requirement for improved standards (Exhibit R-12);

53.7 Despite known concerns surrounding the use of unenforced DOT-111 tanks to transport crude oil, many of the tanks involved in the Train Derailment were older model DOT-111 tanks that were not reinforced, thus remaining highly prone to rupture in the event of a collision;

53.7 The Respondents knew or ought to have known that DOT-111 tanks were prone to rupture and should therefore not have been used to transport the Shale Liquids. The Respondents had a duty to ensure that the Shale Liquids were safely transported in tanks that had property safety features to limit failure in the event of a collision.

#### D) The Faults

54. The Respondents had a duty to the Petitioners and the Class Members to abide by the rules of conduct, usage or law to ensure the safe transportation of the Shale Liquids and the safe operation of the Train;

54.1 The Respondents had a duty to the Petitioners and the Class Members to exercise reasonable care in their determination of the methods, railway, railway operator and tanks used to ship the Shale Liquids from North Dakota to New Brunswick, and to exercise reasonable care in their physical shipment of the Shale Liquids from North Dakota to New Brunswick.

55. The Train Derailment and the resulting injuries and damages were caused by the faults of the Respondents themselves, as well as, of their agents or servants, for whose actions, omissions and negligence they are responsible, the particulars of which include, but are not limited to:

A. With regards to the Irving Oil and World Fuel Respondents:

- a) they failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were properly and safely transported;
- b) they failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were not transported in DOT-111 tanks, or that it was only transported in DOT-111 tanks that were properly reinforced;
- c) they failed and/or neglected to inspect or adequately inspect the Train and its equipment before allowing it to be used to transport the Shale Liquids;
- d) they failed and/or neglected to hire a safe and qualified railway operator with a positive safety record to transport the Shale Liquids;
- e) they failed and/or neglected to identify the risk of the Train Derailment in the present circumstances when they ought reasonably to have done so, and they failed and/or neglected to prevent such an incident from occurring;
- f) they failed and/or neglected to promulgate, implement and enforce rules and regulations pertaining to the safe shipment of the Shale Liquids by train;
- g) they hired incompetent employees and servants, and are liable for the acts, omissions or negligence of same;
- h) they failed or neglected to properly instruct and educate their employees on how to safely transfer Shale Liquids by train;
- i) they allowed a dangerous situation to exist, when, by the use of a reasonable effort, they could have prevented the Train Derailment;

B. With regards to the Rail World Respondents:

- a) they failed and/or neglected to take reasonable or any care to ensure that the Train was safely and securely stationed for the night;
- b) they failed and/or neglected to inspect or adequately inspect the Train and its equipment before leaving it unattended;



- c) they failed and/or neglected to activate or secure a reasonable amount of the Train's hand brakes;
- d) they failed and/or neglected to have or maintain the Train in proper state of mechanical order suitable for the safe use thereof;
- e) they failed and/or neglected to take the appropriate safety and security measures following the fire at 11:30 PM on July 5, 2013;
- f) they failed and/or neglected to consider the dangers of leaving the Train on a slope and on the main rail line, unattended, for an extended period of time;
- g) they failed and/or neglected to identify the risk of the Train Derailment in the present circumstances when they ought reasonably to have done so and they failed and/or neglected to prevent such an incident from occurring;
- h) they failed and/or neglected to promulgate, implement and enforce rules and regulations pertaining to the safe operation of the Train;
- i) they hired incompetent employees and servants, and are liable for the acts, omissions or negligence of same;
- j) they permitted incompetent employees, whose faculties of observation, perception and judgment were inadequate, to operate the Train;
- k) they caused and/or allowed the train to be operated by a single conductor despite the fact that they knew or should have known that having at least two (2) conductors on board was the common safe practice;
- l) they permitted a person to operate the Train who failed to identify a dangerous situation and take appropriate measures to avoid it;
- m) they failed or neglected to properly instruct and educate their employees on how to safely operate the Train and the appropriate measures to take after a fire;
- n) they allowed a dangerous situation to exist, when, by the use of a reasonable effort, they could have prevented the Train Derailment;

55.1 The Train Derailment and the resulting injuries and damages were caused by Respondents. The Respondents knew or should have known about the volatility of the Shale Liquids, the defects and unsuitability of the DOT-111 tankers used to transport the Shale Liquids, the poor safety record of the Rail World

Respondents and the fact that transport of a dangerous substance was occurring in a residential area.

55.2 The Respondents ought to have taken care to minimize all safety risks associated with the transportation of the Shale Liquids by ensuring that the Shale Oil was transported in properly reinforced tanks with adequate safety features to reduce the impact of collision and likelihood of failure; by ensuring that the railway used to ship the Shale Liquids had a strong safety record and low record of collisions; and by ensuring that all staff involved in the transport of the Shale Liquids were adequately trained and that the Train would be adequately staffed during the trip to New Brunswick; and failed to do so;

55.2 This negligence and/or recklessness and the resulting risk of harm was directed towards the general public, which in turn materialized as against the Petitioners and the Class Members. The Respondents knowingly endangered the safety of the Petitioners and the Class Members by shipping the Shale Liquids, a highly flammable and inherently dangerous product, through residential areas in a manner that was known to be dangerous and to result in an increased likelihood of collision, explosion and fire;

## **II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONERS**

### Petitioner Ouellet

56. Petitioner Ouellet resides at 4282 Rue Mauger in Lac-Mégantic, Quebec;
57. Petitioner Ouellet suffered many grave losses due to the Train Derailment including, but not limited to the death of his partner, Diane Bizier. They had been in a serious relationship for five (5) years;
58. Petitioner Ouellet's place of work, a factory, was closed for 3 days following the Train Derailment, which resulted in the loss of many hours of work and income;
59. Furthermore, Petitioner Ouellet took a work leave for one week due to overwhelming stress, anxiety and sadness;
60. As a result of the death of his partner, Petitioner Ouellet also suffered a loss of support, companionship and consortium;
61. Petitioner's damages are a direct and proximate result of the Respondents' conduct;
62. In consequence of the foregoing, Petitioner is justified in claiming damages;

Petitioner Gagné

63. Petitioner Gagné resides at 4722 Rue Papineau in Lac-Mégantic, Quebec;
64. Petitioner Gagné owns and operates a restaurant and small concert venue, Musi-Café, located at 5078, Rue Frontenac in Lac-Mégantic, Quebec;
65. Petitioner Gagné was working at Musi-Café the night of the Train Derailment. He and his partner, who was 7 months pregnant at the time, left the establishment merely 15-30 minutes before the Train Derailment;
66. As a result of the Train Derailment, Petitioner Gagné suffered many damages, including, but not limited to: the loss of his business and his place of work, the loss of 3 employees who perished in the tragedy, the loss of 12 employees who are currently unemployed and the investments made over the last two years in the renovation of Musi-Café;
67. After tragedy struck, Petitioner Gagné also suffered from a great deal of sadness, anguish, stress and melancholy;
68. Petitioner Gagné will have to completely rebuild his life, including taking all the administrative measures to revive his business, if possible. As a result of the damage done to his place of business and livelihood, he anticipates many financial problems in his future;
69. Petitioner Gagné has also suffered loss of time, inconvenience and stress due to disorganization and disorientation following the events of July 6, 2013;
70. Petitioner's damages are a direct and proximate result of the Respondents' conduct;
71. In consequence of the foregoing, Petitioner is justified in claiming damages;

**III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

72. Every member of the group resided in, owned or leased property in or were physically present in Lac-Mégantic, Quebec and suffered a loss of nature or kind resulting directly or indirectly from the Train Derailment;
73. Each member of the class is justified in claiming at least one or more of the following as damages:
  - a. For physical injury or death, the individuals or their estates may claim at least one or more of the following non-exhaustive list, namely:

- i. pain and suffering, including physical injury, nervous shock or mental distress;
- ii. loss of enjoyment of life;
- iii. past and future lost income;
- iv. past and future health expenses which are not covered by Medicare;
- v. property damages; and/or
- vi. any other pecuniary losses;

b. Those individuals who did not suffer physical injury may claim one or more of the following non-exhaustive list, namely:

- i. mental distress;
- ii. incurred expenses;
- iii. lost income;
- iv. expenses incurred for preventative health care measures which are covered by Medicare ;
- v. inconvenience;
- vi. loss of real or personal property;
- vii. property damages causing replacement and/or repairs;
- viii. diminished value of real property; and/or
- ix. any other pecuniary losses;

c. Family members of those that died or were physically injured may claim one or more of the following non-exhaustive list, namely:

- i. expenses reasonably incurred for the benefit of the person who was injured or who has died;
- ii. funeral expenses incurred ;
- iii. travel expenses incurred in visiting the injured person during his or her treatment or recovery;
- iv. loss of income or for the value of services where, as a result of the injury, the family member provides nursing, housekeeping or other services for the injured person; and
- v. an amount to compensate for the loss of guidance, care and companionship that the family member might reasonably have expected to receive from the person if the injury or death had not occurred; and/or
- vi. any other pecuniary loss;

d. Businesses Owning or Leasing Property and/or Operating in Lac-Mégantic may claim one or more of the following non-exhaustive list, namely:

- i. loss of real or personal property ;
- ii. property damages causing replacement or and repairs;
- iii. loss of income, earnings, or profits;
- iv. diminished value of real property; and/or

v. any other pecuniary loss;

74. All of these damages to the Class Members are a direct and proximate result of the Respondents' faults and/or negligence;

#### **IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical

75. Petitioners estimate that there are 5,932 persons living in Lac-Mégantic as of 2011. However, Petitioners are unaware of the precise number of persons who, were residing in, owning or leasing property in, or were physically present in Lac-Mégantic and suffered damages arising directly or indirectly from the Train Derailment that took place on July 6, 2013;

76. In addition, given the significant costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the court system;

77. These facts demonstrate that it would be difficult or impractical to contact each and every member of the class to obtain mandates and to join them in one action;

78. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;

B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondents and that which the Petitioners wish to have adjudicated upon by this class action

79. Individual questions, if any pale by comparison to the numerous common questions that predominate;

80. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, a single accident and the Respondents' alleged misconduct;

81. The recourse of the Class Members raises identical, similar or related questions of fact or law, namely:

a. Did the Respondents negligently and/or recklessly cause or contribute to the Train Derailment and the resulting fire, explosion and Shale Liquids spill?

b. Did the Respondents know or should they have known of the risk of the Train Derailment and did they exercise sufficiently reasonable care in order to prevent such an incident from occurring?

c. Did the Respondents properly inspect the Train and its equipment to assure that it was free from defects, in proper working order and fit for its intended purpose and did this cause or contribute to the Train Derailment?

d. Did the Respondents' agents and/or employees commit any faults in the performance of their duties and did this cause or contribute to the Train Derailment?

e. Did the Rail World Respondents promulgate, implement and enforce rules and regulations pertaining to the safe operations of their trains which would have prevented the Train Derailment?

f. Did the Rail World Respondents fail to properly operate and/or maintain the Train in a manner that would have prevented the Train Derailment?

f.1 Did the Oil Respondents fail and/or neglect to exercise reasonable care to ensure that the Shale Liquids were properly and safely transported?

g. In the affirmative to any of the above questions, did the Respondents' conduct engage their solidary liability toward the members of the Class?

h. What is the nature and the extent of damages and other remedies to which the members of the class can claim?

i. Are members of the class entitled to bodily, moral and/or material damages?

j. Are members of the class entitled to aggravated and/or punitive damages?

k. Are the Mises-en-Cause, as the Rail World Respondents' liability insurers, contractually required to pay members of the class for their prejudice, injury and damages?

82. The interest of justice favour that this motion be granted in accordance with its conclusions;

**V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

83. The action that the Petitioners wish to institute on behalf of the members of the class is an action in damages;

84. The conclusions that the Petitioners wish to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioners and each of the members of the class;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioners and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioners request that he be attributed the status of representative of the Class

85. Petitioners are members of the class;

86. Petitioners are ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the Fonds d'aide aux recours collectifs, as the case may be, and to collaborate with their attorneys;
87. Petitioners have the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;
88. Petitioners have given the mandate to their attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
89. Petitioners, with the assistance of their attorneys, are ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;
90. Petitioners are in good faith and have instituted this action for the sole goal of having their rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;
91. Petitioners understand the nature of the action;
92. Petitioners' interests are not antagonistic to those of other members of the class;

B) The Petitioners suggest that this class action be exercised before the Superior Court of justice in the district of Saint-François

93. A great number of the members of the class reside in the judicial district of Mégantic (...);
94. The present motion is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present motion;

**AUTHORIZE** the bringing of a class action in the form of a motion to institute proceedings in damages (...);

**ASCRIBE** the Petitioners the status of representatives of the persons included in the class herein described as:



- all persons and entities (natural persons, legal persons established for a private interest, partnerships or associations as defined in article 999 of the Code of Civil Procedure of Quebec) residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic [including their estate, successor, spouse or partner, child, grandchild, parent, grandparent and sibling], who have suffered a loss of any nature or kind relating to or arising directly or indirectly from the train derailment that took place on July 6, 2013 in Lac-Mégantic (the "Train Derailment"), or any other group to be determined by the Court;

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a. Did the Respondents negligently and/or recklessly cause or contribute to the Train Derailment and the resulting fire, explosion and Shale Liquids spill?
- b. Did the Respondents know or should they have known of the risk of the Train Derailment and did they exercise sufficiently reasonable care in order to prevent such an incident from occurring?
- c. Did the Respondents properly inspect the train and its equipment to assure that it was free from defects, in proper working order and fit for its intended purpose and did this cause or contribute to the Train Derailment?
- d. Did the Respondents' agents and/or employees commit any faults in the performance of their duties and did this cause or contribute to the Train Derailment?
- e. Did the Rail World Respondents promulgate, implement and enforce rules and regulations pertaining to the safe operations of their trains which would have prevented the Train Derailment?
- f. Did the Rail World Respondents fail to properly operate and/or maintain the Train in a manner that would have prevented the Train Derailment?
- f.1 Did the Oil Respondents fail and/or neglect to exercise reasonable care to ensure that the Shale Liquids were properly and safely transported?
- g. In the affirmative to any of the above questions, did the Respondents' conduct engage their solidary liability toward the members of the Class?
- h. What is the nature and the extent of damages and other remedies to which the members of the class can claim?

i. Are members of the class entitled to bodily, moral and/or material damages?

j. Are members of the class entitled to aggravated and/or punitive damages?

k. Are the Mises-en-Cause, as the Rail World Respondents' liability insurers, contractually required to pay members of the class for their prejudice, injury and damages?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** the class action of the Petitioners and each of the members of the class;

**DECLARE** the Defendants solidarily liable for the damages suffered by the Petitioners and each of the members of the class;

**CONDEMN** the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay to each of the members of the class, punitive damages, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

**ORDER** the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants to bear the costs of the present action including expert and notice fees;

**RENDER** any other order that this Honourable court shall determine and that is in the interest of the members of the class;

**DECLARE** that all members of the class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

**ORDER** the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE (national edition), LE DEVOIR, LA TRIBUNE, L'ÉCHO DE FRONTENAC and the LE JOURNAL DE QUÉBEC;

**ORDER** that said notice be available on the Respondents' websites with a link stating "Notice to all persons and entities residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic and who have suffered a loss relating to the Train Derailment that took place on July 6, 2013";

**RENDER** any other order that this Honourable court shall determine and that is in the interest of the members of the class;

**THE WHOLE** with costs, including all publications fees.

Lac-Mégantic, July 17, 2013

(s) Daniel Larochelle

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ME DANIEL LAROCHELLE  
Attorney for the Petitioners

(s) Jeff Orenstein

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CONSUMER LAW GROUP INC.  
Per: Me Jeff Orenstein  
Attorneys for the Petitioners

# **EXHIBIT R-2**

**ACTIONS INSTITUTED IN THE UNITED-STATES AGAINST MMA AND ALS – LAC MÉGANTIC 2013**

ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
Meyers & Flowers, LLC (Illinois)	Annick Roy, as Special Administrator of the ESTATE OF JEAN-GUY VEILLEUX, Deceased	Montreal, Maine & Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing, LLC and DPTS Marketing, LLC	July 22, 2013	Amount of claim in excess of \$50,000
Meyers & Flowers, LLC (Illinois)	Réal Breton, as Special Administrator of the ESTATE OF GENEVIÈVE BRETON, Deceased	Montreal, Maine & Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services	July 25, 2013	Amount of claim in excess of \$1,000,000

ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
Meyers & Flowers, LLC (Illinois)	Réjean Roy, as Special Administrator of the ESTATE OF MELISSA ROY, Deceased	Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing, LLC and DPTS Marketing, LLC	July 25, 2013	Amount of claim in excess of \$1,000,000
		Montreal, Maine & Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing,		

ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
<p>Edelman, Combs, Lattuner &amp; Goodwin, LLC (Chicago, Illinois)</p> <p>Weller, Green, Toups &amp; Terrell, LLP (Beaumont, Texas)</p> <p>Edward Jazlowiecki Law offices (Bristol, Connecticut)</p> <p>Me Glorianne Blais, Lac Mégantic (Québec)</p>	<p>Simon Custeau, individually and as representative of the Estate of Real Custeau, Deceased; Richard Custeau; Sylvie Custeau; Sonia Pepin and Jeremy Custeau</p>	<p>Montreal, Maine &amp; Atlantic Railway, Inc.  Rail World, Inc.  Edward Burkhardt, individually  World Fuel Services Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC,  Dakota Plains Transloading, LLC  Dakota Petroleum Transport Solutions, LLC  Dakota Plains Marketing, LLC and  DPTS Marketing, LLC</p>	<p>July 26, 2013</p>	<p>Amount of claim in excess of \$50,000</p>
<p>Meyers &amp; Flowers, LLC (Illinois)</p> <p>And  The Webster Law Firm (Texas)</p>	<p>Georgette Martin, as Special Administrator of the ESTATE OF DAVID MARTIN, Deceased</p>	<p>Montreal, Maine &amp; Atlantic Railway, Inc.  Rail World, Inc.  Edward Burkhardt, individually  World Fuel Services</p>	<p>July 29, 2013</p>	<p>Amount of claim in excess of \$1,000,000</p>

ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
Meyers & Flowers, LLC (Illinois) And The Webster Law Firm (Texas)	Marie-Josée Grimard, as Special Administrator of the ESTATE OF HENRIETTE LATULIPPE, Deceased	Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing, LLC and DPTS Marketing, LLC	July 29, 2013	Amount of claim in excess of \$1,000,000
		Montreal, Maine & Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing,		



ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
<p>Meyers &amp; Flowers, LLC (Illinois) And The Webster Law Firm (Texas)</p>	<p>Sophie Veilleux, as Special Administrator of the ESTATE OF RICHARD VEILLEUX, Deceased</p>	<p>Montreal, Maine &amp; Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing, LLC and DPTS Marketing, LLC</p>	<p>July 29, 2013</p>	<p>Amount of claim in excess of \$1,000,000</p>
<p>Meyers &amp; Flowers, LLC (Illinois) And The Webster Law Firm (Texas)</p>	<p>Thérèse Dubois Poulin, as Special Administrator of the ESTATE OF DENIS DUBOIS, Deceased</p>	<p>Montreal, Maine &amp; Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services</p>	<p>July 29, 2013</p>	<p>Amount of claim in excess of \$1,000,000</p>

<b>ATTORNEYS</b>	<b>CLIENT</b>	<b>DEFENDANTS</b>	<b>DATE</b>	<b>AMOUNT</b>
Meyers & Flowers, LLC (Illinois) And The Webster Law Firm (Texas)	Sandy Bédard, as Special Administrator of the ESTATE OF MICHEL GUERTIN, Deceased	Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing, LLC and DPTS Marketing, LLC	July 29, 2013	Amount of claim in excess of \$1,000,000

ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
<p>Meyers &amp; Flowers, LLC (Illinois) And The Webster Law Firm (Texas)</p>	<p>Joannie Proteau, as Special Administrator of the ESTATE OF MAXIME DUBOIS, Deceased</p>	<p>LLC and DPTS Marketing, LLC  Montreal, Maine &amp; Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing, LLC and DPTS Marketing, LLC</p>	<p>July 29, 2013</p>	<p>Amount of claim in excess of \$1,000,000</p>
<p>Meyers &amp; Flowers, LLC (Illinois) And The Webster Law Firm (Texas)</p>	<p>Alexia Dumas-Chaput, as Special Administrator of the ESTATE OF MATHIEU PELLETIER, Deceased</p>	<p>Montreal, Maine &amp; Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services</p>	<p>July 29, 2013</p>	<p>Amount of claim in excess of \$1,000,000</p>

ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
<p>Meyers &amp; Flowers, LLC (Illinois) And The Webster Law Firm (Texas)</p>	<p>Karine Paquet, as Special Administrator of the ESTATE OF ROGER PAQUET, Deceased</p>	<p>Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing, LLC and DPTS Marketing, LLC</p>	<p>July 29, 2013</p>	<p>Amount of claim in excess of \$1,000,000</p>

ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
<p>Meyers &amp; Flowers, LLC (Illinois)            And            The Webster Law Firm (Texas)</p>	<p>Lisette Fortin-Bolduc, as Special Administrator of the ESTATE OF STEPHANE BOLDUC, Deceased</p>	<p>LLC and            DPTS Marketing, LLC              Montreal, Maine &amp; Atlantic Railway, Inc.            Rail World, Inc.            Edward Burkhardt, individually            World Fuel Services Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC,            Dakota Plains Transloading, LLC            Dakota Petroleum Transport Solutions, LLC            Dakota Plains Marketing, LLC and            DPTS Marketing, LLC</p>	<p>July 29, 2013</p>	<p>Amount of claim in excess of \$1,000,000</p>

# **EXHIBIT R-3**

**SOUS TOUTES RÉSERVES**

Montréal, le 23 juillet 2013

**Montreal Maine and Atlantic Railway Ltd**

Ayant son domicile élu au bureau de son fondé de pouvoir  
A/S Me Pierre Legault  
Gowling Lafleur Henderson LLP  
1, Place Ville-Marie, 37<sup>ème</sup> étage  
Montréal (Québec) H3B 3P4

**Montreal Maine and Atlantic Canada Company**

Ayant son domicile élu au bureau de son fondé de pouvoir  
A/S Me Pierre Legault  
Gowling Lafleur Henderson LLP  
1, Place Ville-Marie, 37<sup>ème</sup> étage  
Montréal (Québec) H3B 3P4

OBJET : Mise en demeure – Catastrophe du 6 juillet 2013 – Travaux de nettoyage et récupération des hydrocarbures - Paiement de vos fournisseurs et remboursement à la Ville de Lac-Mégantic  
Notre dossier : 4411-3

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À qui de droit,

Nous représentons les intérêts de la Ville de Lac-Mégantic qui, par l'entremise de son directeur général, monsieur Gilles Bertrand, nous mandate afin de vous faire parvenir la présente mise en demeure.

Dans la nuit du vendredi 5 au samedi 6 juillet 2013, un convoi ferroviaire composé de plusieurs wagons-citernes contenant des hydrocarbures a déraillé et une explosion est survenue dans la Ville de Lac-Mégantic causant ainsi un incendie majeur, entraînant la mort de plusieurs dizaines de personnes, la destruction d'immeubles et d'infrastructures, et de lourds dommages environnementaux.

**Montréal**

**Laval**

Cet accident constitue un sinistre majeur pour notre cliente et ses citoyens. Le dernier bilan de cette catastrophe fait en effet état de quarante-sept (47) personnes décédées ou disparues, de près de deux mille (2 000) citoyens forcés d'abandonner leurs logis et de la destruction totale d'une partie du centre-ville historique de Lac-Mégantic et de son patrimoine. Ces événements ont bien sûr un impact traumatisant majeur sur la communauté méganticoise.

Cet accident ainsi que le gigantesque incendie qui s'en est suivi ont causé des dommages d'une ampleur jamais vue au centre-ville, notamment dans le quadrilatère formé par les rues Québec-Central, Laval, Frontenac, Thibodeau, boulevard des Vétérans et Milette, incluant les rues Grégoire et Kelly et une partie du stationnement de la gare.

Des fumées toxiques et divers contaminants, dont des hydrocarbures, ont été répandus sur le territoire de la ville, dans l'air, les sols, les eaux de surface et, probablement, les eaux souterraines.

Ces fumées et contaminants se sont répandus au-delà du territoire de la ville et peuvent ainsi menacer la santé, la sécurité et le bien-être d'une quantité importante de personnes et de biens.

L'état d'urgence local a été déclaré sur tout le territoire de la ville de Lac-Mégantic conformément à l'article 42 de la *Loi sur la sécurité civile* (R.L.R.Q., c. S-2.3), état d'urgence qui est maintenu encore à ce jour avec l'autorisation du ministre de la Sécurité publique du Québec.

La déclaration d'état d'urgence local confère à notre cliente des pouvoirs exceptionnels dont, notamment, ceux de poser tout geste nécessaire au bon fonctionnement des opérations de nettoyage du secteur affecté et de prendre toute mesure utile et nécessaire à la protection et à la sauvegarde de l'environnement, des personnes et des biens.

Considérant votre responsabilité dans cet accident ferroviaire, vous avez mandaté certains fournisseurs de services (soit notamment les firmes CTEH, SIMEC et MD-UN) pour effectuer le nettoyage et la récupération des hydrocarbures, notamment du site du sinistre dans la ville de Lac-Mégantic et de différents autres sites.



Certains de vos fournisseurs de services ont informé notre cliente et les autorités responsables de la sécurité civile du gouvernement du Québec, que votre entreprise serait en défaut de respecter les engagements contractuels qu'elle a souscrits à leur égard concernant ces travaux, notamment en ne les payant pas pour les services rendus. Certains de ces fournisseurs avaient même cessé d'effectuer les travaux pour lesquels vous les avez mandatés ce qui, dans les circonstances, est tout-à-fait inacceptable.

Considérant que les travaux de nettoyage et de récupération des hydrocarbures sont très urgents et qu'ils doivent être exécutés sans interruption;

Considérant que la santé, la sécurité ainsi que le bien-être de l'ensemble de la population de la ville de Lac-Mégantic et des autres municipalités qui peuvent être affectées par ce sinistre sont menacés;

Vous êtes par conséquent tenus de vous assurer que les fournisseurs mandatés pour procéder aux travaux de nettoyage et de récupération des hydrocarbures procèdent sans interruption, vu l'urgence de la situation, en assurant notamment le paiement de ces fournisseurs sans autres délais, afin de respecter vos responsabilités.

Déjà, notre cliente a été dans l'obligation de payer une facture de 750 000\$ à l'un de vos fournisseurs, à savoir CTEH parce que vous avez négligé ou omis de d'acquitter les honoraires qui lui étaient dûs. Notre cliente a dû faire de même avec votre fournisseur SIMEC, en lui payant une facture de 1 399 187,48\$ que vous avez négligé ou omis d'acquitter. Enfin, notre cliente a dû payer une facture de 2 000 000,00\$ à votre fournisseur MD-UN pour les mêmes motifs.

Sans ces paiements totalisant 4 149 187,48\$ par notre cliente, ces entreprises allaient cesser d'exécuter leurs travaux de nettoyage et de récupération des hydrocarbures, lesquels sont pourtant essentiels au rétablissement des activités normales de Lac-Mégantic.

Par la présente, vous êtes formellement mis en demeure de :

- 1) rembourser à la ville de Lac-Mégantic, la somme de 4 149 187,48\$ par chèque visé au nom de Dufresne Hébert Comeau Inc. en fidéicommis;

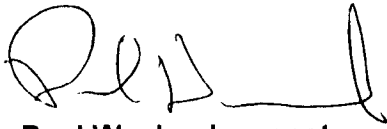
- 2) respecter vos engagements contractuels à l'égard des fournisseurs dont vous avez retenu les services ;
- 3) de nous identifier sur réception des présentes le nom et les qualifications professionnelles de la personne que vous avez désignée comme étant responsable de la supervision des fournisseurs qui effectuent les travaux;
- 4) de donner instructions à ladite personne de faire rapport quotidiennement de l'avancement des travaux à M. Gilles Bertrand, directeur général de la Ville;
- 5) de nous fournir sur réception des présentes :
  - la liste complète des fournisseurs que vous avez mandatés pour procéder au nettoyage et à la récupération des hydrocarbures,
  - une copie de leurs contrats,
  - la description de leurs mandats respectifs, les délais d'exécution et le montant prévu pour leurs honoraires.
- 6) de nous transmettre un plan de gestion des fournisseurs exécutant les différents travaux de nettoyage et de récupération des hydrocarbures qui sont sous contrat avec vous afin de nous démontrer que vous prenez **tous** les moyens nécessaires pour vous assurer de la coordination efficace et efficiente de ces entreprises.

À défaut par vous de vous conformer à ce qui précède dans un délai de **48** heures de la réception de la présente, notre cliente vous tiendra responsable des dommages additionnels qui en résulteraient et elle verra notamment à ce que les travaux se poursuivent sans interruption.

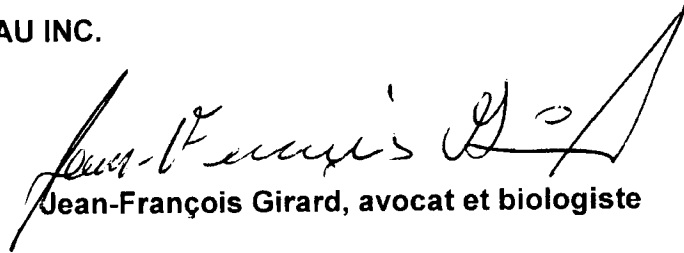
Enfin, nous aurons alors le mandat d'entreprendre contre vous tous les recours appropriés que la loi met au bénéfice de notre cliente dans les circonstances, sans autre avis ni délai.

VEUILLEZ AGIR EN CONSÉQUENCE.

DUFRESNE HÉBERT COMEAU INC.



**Paul Wayland, avocat**  
PW/JFG/aj  
#441612



**Jean-François Girard, avocat et biologiste**

c.c. M. Gilles Bertrand, Directeur général  
c.c. M. Guy Laroche, Sous-ministre associé, Direction générale de la sécurité civile et de  
la sécurité incendie, Ministère de la sécurité publique  
c.c. XL Insurance Company Limited et XL Group PLC, compagnies d'assurance

N°

COUR  
DISTRICT DE

VILLE DE LAC-MÉGANTIC

c.

MONTREAL MAINE AND ATLANTIC RAILWAY  
LTD

et

MONTREAL MAINE & ATLANTIC CANADA  
COMPANY

MISE EN DEMEURE

COPIE POUR :

MONTREAL, MAINE & ATLANTIC CANADA  
COMPANY

A/S Me Pierre Legault  
Gowling Lafleur Henderson LLP  
1 Place Ville-Marie, 37e étage  
Montréal (Québec) H3B 3P4

**Dufresne Hébert Comeau inc.**

**Avocats**

800, PLACE VICTORIA, BUREAU 4500  
MONTREAL (QUEBEC) H4Z 1J2  
TÉLÉPHONE : 514.331.5010  
TÉLÉCOPIEUR : 514.331.0514

**Me Paul Wayland (aj)**

BD-3899

N/D : 411-3

#441718

*23.7.13  
M. Hébert  
M. Comeau*

Montréal, le 29 juillet 2013

PAR COURRIEL

**Me Pierre Legault**

Gowling Lafleur Henderson LLP  
1, Place Ville-Marie  
37<sup>ème</sup> étage  
Montréal (Québec) H3B 3P4

**OBJET :**

**N/Réf. : 004411-003**

Cher confrère,

Comme vous le savez, nous sommes les procureurs de Ville de Lac-Mégantic.

Nous faisons référence à notre mise en demeure du 23 juillet 2013 dont vous avez accusé réception pour Montreal, Main & Atlantic Railway Ltd et Montreal, Maine & Atlantic Canada Company en date du 25 juillet 2013.

Vous trouverez ci-joint copie de l'ordonnance no 628 émise en date du 29 juillet 2013 par le Ministre du développement durable de l'environnement, de la faune et des parcs de la province de Québec et adressée notamment à Montreal, Main & Atlantic Canada Company et Montreal, Main & Atlantic Railway Ltd.

La Ville de Lac-Mégantic a un intérêt certain à ce que toutes et chacune des ordonnances y contenues soit (ent) intégralement respectée(s), et en autant qu'elle est concernée, souscrit entièrement à la démarche du Ministre du développement durable de l'environnement, de la faune et des parcs.

Au surplus, même si vous nous avez informés que votre cliente a un problème avec ses assureurs et qu'une rencontre est prévue avec ces derniers le 30 juillet 2013, force est de constater qu'à ce jour, la mise en demeure du 23 juillet 2013 n'a pas été respectée.

Plus grave encore, au 26 juillet 2013, la Ville de Lac-Mégantic avait payé, pour le compte de vos clientes, aux entreprises mandatées par ces dernières pour effectuer le nettoyage du site la somme de 7 796 948,67\$, tel qu'il appert de la liste de paiements jointe.

Nous avons donc reçu instruction en ce qui concerne uniquement les paiements effectués et sans égard à toute autre somme qui pourrait être réclamée par notre cliente pour d'autres raisons, de réclamer à la vôtre le remboursement dans un délai de vingt-quatre (24) heures de la somme de 7 796 948,67\$ sous forme d'un chèque en fidéicommiss à l'ordre de « Dufresne Hébert Comeau inc. Avocats ».

**Montréal**

100, Place Yvon-Roy, 10<sup>ème</sup> étage, Montréal (Québec) H2Z 1L1  
Téléphone : 514-331-5010  
info@dufresnehebert.ca

Télécopieur: 514-331-0514  
www.dufresnehebert.ca

**Laval**

1000, rue de la Vallée, Laval (Québec) H7V 1A7  
Téléphone: 514-682-5010

Télécopieur 450-682-5014

À défaut de recevoir cette dite somme dans le délai imparti, les procédures judiciaires jugées appropriées seront alors entreprises sans autre avis ni délai.

Veuillez demander à vos clientes d'agir en conséquence.

**Dufresne Hébert Comeau inc.**



**Louis Coallier**

LC/n

p.j. : ordonnance no 628  
Liste des paiements

#442039

# **EXHIBIT R-4**

BY REGISTERED MAIL

July 29, 2013

**MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE**

1959, Upper Water Street, suite 800

Halifax, Nouvelle-Écosse B3J 2X2

Canada

**AND**

**MONTRÉAL, MAINE & ATLANTIC RAILWAY, LTD**

15, Iron Road

Hermon, Maine 04401

USA

**RE : Lac-Mégantic  
Order n° 628 from the Minister of Sustainable Development,  
Environment, Wildlife and Parks dated July 29, 2013**

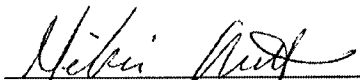
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Dear Madam or Sir,

Please find enclosed a certified copy of the order n° 628 issued by the Minister of Sustainable Development, Environment, Wildlife and Parks on July 29, 2013, accordingly to section 114.1 of the *Environment Quality Act* (R.L.R.Q., chapter Q-2) to Montréal, Maine & Atlantique Canada Cie, Montréal, Maine & Atlantic, Ltd, Western Petroleum Company and World Fuel Services Corporation.

A certified copy of this order has already been served by bailiff to your attorney, Me Pierre Legault, at the following address: Gowling Lafleur Henderson s.e.n.c.r.l., 1 place Ville-Marie, 37e étage, Montréal (QC) H3B 3P4.

Best regards,



Mélissa Devost, avocate

C.c. Me Pierre Legault, Gowling Lafleur Henderson s.e.n.c.r.l

Me Emmanuelle Gervais-Cadrin, Direction des affaires juridiques du  
ministère du Développement durable, de l'Environnement, de la Faune et  
des Parcs



**Développement durable,  
Environnement,  
Faune et Parcs**

**Québec** 

N° : 628

Québec, le 29 juillet 2013

À : **MONTRÉAL, MAINE & ATLANTIQUE  
CANADA CIE**, personne morale légalement  
constituée, ayant son siège au 1959, Upper  
Water Street, suite 800, Halifax, Nouvelle-  
Écosse, Canada, B3J 2X2;

**MONTRÉAL, MAINE & ATLANTIC  
RAILWAY LTD**, personne morale légalement  
constituée, ayant son siège au 15, Iron Road,  
Hermon, Maine 04401, États-Unis;

**WESTERN PETROLEUM COMPANY**,  
personne morale légalement constituée,  
ayant une place d'affaires au 9531 W 78 th St  
Ste 102, Eden Prairie, Minnesota 55344,  
États-Unis;

**WORLD FUEL SERVICES CORPORATION**,  
personne morale légalement constituée,  
ayant son siège au 9800 N.W. 41st Street,  
suite 400, Miami, Floride 33178, États-Unis.

PAR : **LE MINISTRE DU DÉVELOPPEMENT  
DURABLE, DE L'ENVIRONNEMENT, DE LA  
FAUNE ET DES PARCS.**

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**ORDONNANCE**  
(article 114.1 de la *Loi sur la qualité de l'environnement*,  
R.L.R.Q., chapitre Q-2)

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La présente ordonnance vous est notifiée en vertu de l'article 114.1 de la  
*Loi sur la qualité de l'environnement* et est fondée sur les motifs suivants :

1. Vers 1h00 le 6 juillet 2013, un train de 72 wagons de pétrole brut a déraillé dans le centre-ville de la Ville de Lac-Mégantic. Le feu s'est déclaré dans certains wagons et a provoqué des explosions et une déflagration, ce qui a entraîné des émissions, dépôts, dégagements et rejets de pétrole ainsi que d'autres contaminants dans l'environnement;
2. Lorsque le déraillement est survenu, Montréal, Maine & Atlantique Canada cie / Montréal, Maine & Atlantic Railway Ltd assumaient le transport du pétrole brut; elles avaient donc la garde et le contrôle de ce pétrole;
3. Ce pétrole était et est toujours la propriété de Western Petroleum Company / World Fuel Services Corporation;
4. Le pétrole qui a été émis, déposé, dégagé et rejeté dans l'environnement est un contaminant au sens du paragraphe 5° de l'article 1 de la *Loi sur la qualité de l'environnement*. Le pétrole est également une matière dangereuse au sens du paragraphe 21° de l'article 1 de la *Loi sur la qualité de l'environnement* et du *Règlement sur les matières dangereuses* (R.L.R.Q., chapitre Q-2, r. 32);
5. L'article 8 du *Règlement sur les matières dangereuses* prévoit une interdiction d'émettre, de déposer, de dégager ou de rejeter une matière dangereuse dans l'environnement ou dans un système d'égout, ou d'en permettre l'émission, le dépôt, le dégagement ou le rejet;
6. Le pétrole ainsi que les autres contaminants qui ont été émis, déposés, dégagés et rejetés dans l'environnement et dans le système d'égout de la Ville de Lac-Mégantic à la suite du déraillement du train le 6 juillet 2013 ont causé de nombreux dommages : pertes de vies humaines, destruction de bâtiments et d'infrastructures, contamination des sols, de l'eau et de l'air ainsi que des impacts sur la faune et la flore. Notamment : du pétrole s'est retrouvé dans le lac Mégantic et a souillé ses rives, puis il a atteint la rivière Chaudière et a également souillé ses rives; les municipalités de Saint-Georges, Sainte-Marie et Lévis (secteur de Charny) qui s'approvisionnaient en eau potable dans la rivière Chaudière ont pris des mesures pour s'approvisionner ailleurs; des impacts sont également appréhendés dans l'eau souterraine; les sols du centre-ville de Lac-Mégantic sont lourdement contaminés et il est également appréhendé que d'autres sols aient été contaminés par le panache de fumée des incendies; du pétrole s'est retrouvé dans le système d'égout et l'ouvrage d'assainissement des eaux usées de la Ville de Lac-Mégantic; la présence d'oiseaux englués et de poissons morts a été constatée. L'ampleur des dommages et de la contamination des sols et de l'eau n'est cependant pas encore connue de façon précise et la situation est toujours en évolution puisque la migration du pétrole se poursuit;
7. Plusieurs firmes ont été mandatées, notamment par Montréal, Maine & Atlantique Canada cie / Montréal, Maine & Atlantic Railway

Ltd, pour prendre des mesures afin de récupérer le pétrole ainsi que les autres contaminants qui ont été émis, déposés, dégagés et rejetés dans l'environnement et de limiter leur migration;

8. Les travaux suivants ont notamment été réalisés à ce jour : du pétrole a été récupéré sur le lac Mégantic; du pétrole a été récupéré dans le secteur où le déraillement du train est survenu et une tranchée a également été creusée dans ce secteur pour limiter la propagation des eaux huileuses et du pétrole; la vidange de wagons a été réalisée et la décontamination et le découpage de ces wagons se poursuivent; des cheminées de ventilation ont été installées sur le réseau d'égout de la Ville de Lac-Mégantic et des eaux huileuses ont été pompées de ce réseau; l'ouvrage d'assainissement des eaux usées de la Ville de Lac-Mégantic a été nettoyé en partie et peut à nouveau traiter toutes les eaux usées de la Ville de Lac-Mégantic;
9. Certaines firmes mandatées par Montréal, Maine & Atlantique Canada cie / Montréal, Maine & Atlantic Railway Ltd ont arrêté leurs travaux au courant de la journée du 17 juillet 2013 et ont demandé d'être payées pour les poursuivre. Les firmes ont par la suite repris leurs travaux, après que la Ville de Lac-Mégantic ait donné l'assurance qu'elle s'assurerait du paiement des sommes dues ou pouvant le devenir, à défaut par Montréal, Maine & Atlantique Canada cie / Montréal, Maine & Atlantic Railway Ltd de rencontrer ses obligations;
10. Le 23 juillet 2013, une mise en demeure a été signifiée par les procureurs de la Ville de Lac-Mégantic à Montréal, Maine & Atlantique Canada cie et Montréal, Maine & Atlantic Railway Ltd. Il y est notamment indiqué que la Ville de Lac-Mégantic a payé certaines firmes mandatées par Montréal, Maine & Atlantique Canada cie / Montréal, Maine & Atlantic Railway Ltd pour éviter une interruption des travaux de nettoyage et de récupération du pétrole;
11. Le 25 juillet 2013, le procureur de Montréal, Maine & Atlantique Canada cie / Montréal, Maine & Atlantic Railway Ltd, répond à la mise en demeure du 23 juillet 2013 et fait état d'un différend avec l'assureur en responsabilité civile de sa cliente ainsi que de l'impossibilité de cette dernière de rencontrer cet assureur avant le 30 juillet 2013. Cette réponse n'est pas satisfaisante pour les autorités municipales et provinciales considérant, notamment, l'urgence de la situation et l'incertitude qui persiste sur le chantier quant au paiement des fournisseurs et quant à la poursuite des travaux de nettoyage et de récupération du pétrole et des autres contaminants;
12. Western Petroleum Company et World Fuel Services Corporation ont seulement manifesté leur intention de récupérer le pétrole qui n'a pas été émis, déposé, dégagé ou rejeté dans l'environnement;
13. La situation est exceptionnelle et il est impératif que les travaux de nettoyage et de récupération du pétrole et des autres contaminants

se poursuivent mais aussi que d'autres travaux soient amorcés dans les plus brefs délais, soit notamment : l'enlèvement des boues huileuses dans le secteur où le déraillement du train est survenu; la caractérisation des sols et de l'eau, puis leur décontamination; la récupération du pétrole sur les rives de la rivière Chaudière;

14. Plusieurs personnes sont toujours évacuées et ne peuvent pas regagner leur domicile, soit qu'il a été détruit et que la contamination empêche la reconstruction, soit que la présence de pétrole et la contamination des sols et des bâtiments présentent un risque pour la santé et la sécurité de ces personnes;
15. Les municipalités de Saint-Georges, Sainte-Marie et Lévis (secteur de Charny), qui ont pris des mesures pour s'approvisionner en eau potable ailleurs que dans la rivière Chaudière, doivent maintenir ces mesures et par le fait même, imposer à leurs citoyens des restrictions quant à la consommation en eau potable;
16. L'article 114.1 de la *Loi sur la qualité de l'environnement* permet au ministre du Développement durable, de l'Environnement, de la Faune et des Parcs d'ordonner, lorsqu'il estime qu'il y a urgence, à toute personne qui est propriétaire de certains contaminants ou qui en avait la garde ou le contrôle, de ramasser ou d'enlever tout contaminant déversé, émis, dégagé ou rejeté dans l'eau ou sur le sol, accidentellement ou contrairement aux dispositions de cette loi ou des règlements du gouvernement et de prendre les mesures requises pour nettoyer l'eau et le sol et pour que ces contaminants cessent de se répandre ou de se propager dans l'environnement;
17. La situation est suffisamment urgente pour permettre au ministre du Développement durable, de l'Environnement, de la Faune et des Parcs de se prévaloir de l'article 118.1.1 de la *Loi sur la qualité de l'environnement* qui lui permet alors de notifier une ordonnance sans avis préalable.

**POUR CES MOTIFS ET EN VERTU DES POUVOIRS QUI ME SONT CONFÉRÉS PAR L'ARTICLE 114.1 DE LA LOI SUR LA QUALITÉ DE L'ENVIRONNEMENT, JE, SOUSSIGNÉ, MINISTRE DU DÉVELOPPEMENT DURABLE, DE L'ENVIRONNEMENT, DE LA FAUNE ET DES PARCS :**

**ORDONNE À MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE, MONTRÉAL, MAINE & ATLANTIC RAILWAY LTD, WESTERN PETROLEUM COMPANY ET WORLD FUEL SERVICES CORPORATION DE :**

**RÉCUPÉRER** dès la notification de la présente ordonnance, le pétrole ainsi que tous les autres contaminants qui ont été émis, déposés, dégagés et rejetés dans l'eau ou sur le sol à la suite du déraillement du train le 6 juillet 2013 au centre-ville de la Ville de Lac-Mégantic, et en disposer dans un site autorisé. Cela inclut notamment, sans s'y restreindre, le pétrole ainsi que les autres contaminants qui se trouvent dans la Ville de Lac-Mégantic, dans la rivière Chaudière et ses rives et dans tout autre endroit où il y eu migration, incluant par voie aérienne;

**EMPÊCHER** dès la notification de la présente ordonnance, que le pétrole ainsi que tous les autres contaminants qui ont été émis, déposés, dégagés et rejetés dans l'eau ou sur le sol à la suite du déraillement du train le 6 juillet 2013 au centre-ville de la Ville de Lac-Mégantic, se propagent dans l'environnement, notamment dans l'air, le sol et l'eau (de surface et souterraine) ainsi que dans les systèmes d'égout, d'aqueduc, les bâtiments et les infrastructures;

**RÉALISER** à la satisfaction du ministre, les mesures visant à récupérer le pétrole ainsi que tous les autres contaminants qui ont été émis, déposés, dégagés et rejetés dans l'eau ou sur le sol à la suite du déraillement du train le 6 juillet 2013 au centre-ville de la Ville de Lac-Mégantic et à empêcher leur propagation dans l'environnement, et respecter au quotidien, le cas échéant, les instructions données par le ministre ou par toute personne qu'il a désignée;

**FOURNIR** à la demande ou selon la fréquence indiquée par le ministre ou par toute personne qu'il a désignée, toute information pertinente demandée relativement aux travaux ordonnés aux paragraphes précédents;

**TRANSMETTRE**

pour approbation du ministre ou de toute personne qu'il a désignée, dans un délai de sept (7) jours suivant la notification de la présente ordonnance, un plan d'action global avec échéancier incluant notamment les éléments suivants :

- la caractérisation environnementale de ce qui est susceptible d'avoir été affecté par le pétrole ainsi que par tous les autres contaminants qui ont été émis, déposés, dégagés et rejetés à la suite du déraillement du train le 6 juillet 2013 au centre-ville de la Ville de Lac-Mégantic, notamment les terrains, les cours d'eau et les plans d'eau, les bâtiments et les infrastructures;

- les mesures de nettoyage et de décontamination des terrains, des cours d'eau et des plans d'eau, des bâtiments et des infrastructures affectés par le pétrole ainsi que par tous les autres contaminants qui ont été émis, déposés, dégagés et rejetés à la suite du déraillement du train le 6 juillet 2013 au centre-ville de la Ville de Lac-Mégantic, ou leur disposition dans un lieu autorisé si le nettoyage ou la décontamination n'est pas possible;

- les mesures de mitigation pour éviter de déverser, d'émettre, de dégager ou de rejeter des contaminants dans l'environnement lors de la réalisation des travaux de caractérisation environnementale, de nettoyage et de décontamination;

- les mesures de suivi environnemental;

Cela inclut notamment, sans s'y restreindre, le pétrole ainsi que les autres contaminants qui se trouvent dans la Ville de Lac-Mégantic, dans la rivière Chaudière et ses rives et dans tout autre lieu où il y a eu migration, incluant par voie aérienne, à la suite du déraillement du train le 6 juillet 2013 au centre-ville de la Ville de Lac-Mégantic;

**TRANSMETTRE**

pour approbation du ministre ou de toute personne qu'il a désignée, à la demande ou selon la fréquence indiquée par ce dernier ou cette dernière, une mise à jour du plan d'action global;

**TRANSMETTRE**

pour approbation du ministre ou de toute personne qu'il a désignée, à la demande ou selon la fréquence indiquée par ce dernier ou cette dernière, un plan détaillé de certaines actions prévues au plan d'action global;

**RÉALISER**

les travaux de caractérisation environnementale, de nettoyage et de décontamination, les mesures

de mitigation et les mesures de suivi environnemental conformément à la plus récente version du plan d'action global approuvé et des plans détaillés approuvés;

**TRANSMETTRE**

au ministre ou à toute personne qu'il a désignée, aux dates prévues par ce dernier ou cette dernière :

- un rapport hebdomadaire de l'évolution des travaux;

- un rapport de suivi mensuel, lequel indique notamment ce qui a été réalisé en fonction du plan d'action global approuvé et des plans détaillés approuvés, avec l'attestation de la conformité à ces plans d'un professionnel compétent dans le domaine et les résultats d'analyse à l'appui, le cas échéant, et les mesures de suivi environnemental;

- un rapport final, une fois les travaux complétés, lequel indique notamment ce qui a été réalisé en fonction du plan d'action global approuvé et des plans détaillés approuvés, avec l'attestation de la conformité à ces plans d'un professionnel compétent dans le domaine et les résultats d'analyse à l'appui;

- un rapport annuel sur les mesures de suivi environnemental une fois les travaux complétés. Après une période de dix ans, le ministre ou toute personne qu'il a désignée pourra approuver une fréquence différente de transmission de ce rapport ou la cessation des mesures de suivi;

- toute information pertinente demandée par le ministre ou par toute personne qu'il a désignée, relativement à l'état de l'environnement à la suite du déraillement du train le 6 juillet 2013 au centre-ville de la Ville de Lac-Mégantic et aux travaux ordonnés;

**CONFIRMER**

au ministre, dans les vingt-quatre heures de la notification de la présente ordonnance, votre intention d'exécuter l'ordonnance.

**PRENEZ AVIS** que la présente ordonnance est exécutoire dès sa notification mais que vous pouvez présenter vos observations au ministre du Développement durable, de l'Environnement, de la Faune et des Parcs, dans les dix (10) jours suivant la date de la notification de cette ordonnance pour en permettre le réexamen, à l'adresse suivante :

Secrétariat général et direction de la vérification interne  
Ministère du Développement durable, de l'Environnement,  
de la Faune et des Parcs  
Édifice Marie-Guyart, 30<sup>e</sup> étage  
675, boulevard René-Lévesque Est,  
Québec (Québec)  
G1R 5V7

**PRENEZ AVIS** que, conformément aux articles 96 et suivants de la *Loi sur la qualité de l'environnement*, une ordonnance rendue en vertu de l'article 114.1 de cette loi peut être contestée devant le Tribunal administratif du Québec et qu'un tel recours doit être formé dans les trente (30) jours suivant la date de la notification de cette ordonnance.

Le ministre du Développement durable, de  
l'Environnement, de la Faune et des Parcs,



YVES-FRANÇOIS BLANCHET



# **EXHIBIT R-5**

Tafisa Canada Inc.  
4660, rue Villeneuve  
Lac-Mégantic, Québec G6B 2C3  
Canada

Tél. : 819 583-2930  
Fax : 819 583-2931  
www.tafisa.ca



Lac-Mégantic, July 17, 2013

**VIA COURIER AND EMAIL**

***WITHOUT PREJUDICE***

Mr. Edward A. Burkhardt, President  
**Montréal, Maine & Atlantic Canada Co.**

-and-

Mr. Robert C. Grindrod, President  
**Montréal, Maine & Atlantic Railway, Ltd.**  
15 Iron Road  
Hermon, Maine 04401-1136  
United States of America

**Re: Notice of Claim Relating to the Lac-Mégantic Derailment**

Sirs:

As you know, Tafisa Canada Inc. ("**Tafisa**") owns and operates North America's largest particleboard and thermofused melamine production facility in Lac-Mégantic, Québec. Tafisa's facility is connected to a rail line owned by Montréal, Maine & Atlantic Railway, Ltd. ("**MMA**") via a spur line in the industrial park of Lac-Mégantic. Under an agreement between MMA and Tafisa, Tafisa would ship approximately 50 to 60 carloads of particleboard and melamine every week to its customers by MMA trains on the MMA rail line.

On July 6, 2013, an MMA train derailed on the MMA rail line, resulting in the loss of many lives and the destruction of a portion of Lac-Mégantic, as well as rendering the rail line inoperable. Tafisa's employees and executives, many of which were personally and tragically affected, were deeply saddened by the loss suffered by the people of Lac-Mégantic and have supported the victims as best as they could.

Aside from this terrible loss, Tafisa's business is suffering continuing losses as a result of the derailment and the inoperability of the MMA rail line. Indeed, Tafisa can no longer ship its products to its customers by MMA trains on the MMA rail line. As a result, Tafisa has had no alternative but to implement costly contingencies consisting in shipping its products to customers directly by truck or by transshipment via trucks and trains with inherent added storage, handling and trucking costs.

8381220.1



It is now apparent that the derailment was the result of the negligence of MMA and its agents and servants. Moreover, the inoperability of the MMA rail line constitutes a breach of the agreement between MMA and Tafisa. Consequently, MMA is liable for the extra costs incurred by Tafisa during such time as the MMA rail line remains inoperable.

For these reasons, Tafisa is hereby claiming from MMA damages amounting to these extra costs and such other damages caused by the derailment and the inoperability of the MMA rail line. Tafisa is currently calculating the amount of said damages and will present a detailed claim thereafter. Tafisa also demands that you advise MMA's insurers of the present claim.

DO GOVERN YOURSELVES ACCORDINGLY.

**TAFISA CANADA INC.**

A handwritten signature in black ink, appearing to read "Louis Brassard". The signature is fluid and cursive, written over a white background.

Louis Brassard  
Chief Executive Officer

C.c. *Gowling Lafleur Henderson LLP* as agent for service in Québec (via facsimile)

# **EXHIBIT R-6**



**WESTERN PETROLEUM COMPANY**

July 26, 2013

Joseph McGonigle  
Vice President, Sales & Marketing  
Montreal, Maine & Atlantic Railway  
15 Iron Rd  
Hemon, ME 04401

[jrmcgonigle@mmarail.com](mailto:jrmcgonigle@mmarail.com)

**Re: Notice of Intent to File Claim  
Rail Cars from Train 606-282**

Dear Mr. McGonigle:

Western Petroleum Company ("WPC") is providing notice of its intent to file a claim as may be appropriate because of the damage and destruction of its leased rail cars as a result of the recent derailment of a train operated by Montreal, Maine & Atlantic Railway ("MMA"). Providing this intent to file a notice is made without prejudice to bring any applicable claim for railcars and/or cargo damage and loss as permitted under applicable law. Our direct notice to MMA regarding the railcars, notwithstanding that our commercial agreement is only with Canadian Pacific Railway ("CP"), is solely because of the manner in which the AAR Interchange Rules are implemented for rail car damage and destruction.

Train Number 606-282 was transporting petroleum crude oil from New Town, ND to Saint John, NB. MMA operated in joint rate service with the CP in this transportation under CP waybill number 243537. The transportation of Train 606-282 began in New Town on June 29, 2013. A few days later, MMA accepted approximately seventy-six (76)<sup>1</sup> loaded WPC rail cars comprising Train 606-282 in interchange from CP in or near Montreal, Quebec.

As WPC understands the facts, most of the rail cars of Train 606-282 derailed and were destroyed in a derailment in the early morning hours of July 6, 2013. WPC has heard reports that nine (9) of the rail cars comprising Train 606-282 may not have derailed and are being held in Nantes, Quebec. At this time, however, it is clear that most if not all of WPC's rail cars from Train 606-282 have been lost. WPC is the lessee of these rail cars under various agreements with third-party lessors. Pursuant to the Interchange Rules of the Association of American Railroads, particularly Rules 107 and 115, MMA has an obligation to provide notification and certain information via the Damaged and Defective Car Tracking System ("DDCT") within seven (7) days of an incident. Please provide WPC with the status of MMA's DDCT notification for each rail car involved in Train 606-282.

<sup>1</sup> WPC has received conflicting reports on the number of rail cars.

WPC expects MMA to fully compensate WPC for all rail car damages incurred as a result of the derailment of Train 606-282 under the AAR rules and other applicable authority. This letter is WPC's formal notice to MMA that MMA is responsible for these damages.

Please do not hesitate to contact me with any questions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Neville', written in a cursive style.

Richard S. Neville,  
President & Chief Operating Officer

cc: Keith Creel,  
President & Chief Operating Officer  
Canadian Pacific Railway Company

# **EXHIBIT R-7**



**CANADIAN  
PACIFIC**

**FINAL DEMAND**

MONTREAL MAINE & ATLANTIC RAILWAY  
15 Iron Road  
Hermon ME  
04401, USA

Re: CP Account #'s - 1029006, 1029070, 1029608, 51000536

July 26<sup>th</sup>, 2013

**Attention: M Donald Gardner and Robert Grindrod;**

Please find below details reflecting outstanding charges owed Canadian Pacific as of July 26, 2013.

Equipment lease:

\$ 509, 109.30 CAD past due - MMA Leased June 2012 - Dec 2012

\$ 358,032.15 CAD past due - MMA Leased Jan 2013 - June 2013

AAR Car Repairs:

\$ 109,970.32 USD with \$ 93,889.65 USD

Other items (mishaps, ES & Real Estate):

\$ 41,309.08 CAD past due

\$ 1,836.17 USD past due

Total outstanding Due:

\$908,098.82 CAD- Equipment Lease

\$16,093.30 CAD - Stop Payment

\$110,140.57 USD – AAR Car Repair

We were advised July 18, 2013 that a stop payment was placed on a check in the amount \$16,093.30 CAD with no reason provided which has been added in above.

In addition to the above it is our intention to offset in our August 2 Interline Settlement transfer to the MMA Railroad the amount of \$660,460.00 CAD for traffic that did not make destination and empties that did not return to Canadian Pacific. Additional movements are currently being analyzed which may warrant further offsets.

Canadian Pacific requires payment on all past due items, as well as consistent payment within terms on both current and overdue invoices. If payment terms are not adhered to, CP will be forced to invoke AAR General Mandatory Rule 1 – Right to Offset.

Please make arrangements for the full payments of **\$924,192.12 CAD and \$110,140.57 USD** to be received by CP no later than **Wednesday July 31, 2013**. No further time extension can be entertained by CP in this matter.

Thank you for your immediate attention to this matter.

**Tracey Harrison  
Manager, Collections**

**Canadian Pacific Railway**



# **EXHIBIT R-8**

**LETTERS OF DEMAND RECEIVED - MMA – LAC MÉGANTIC 2013**

<b>INSURERS AND/OR ATTORNEYS</b>	<b>INSURED AND/OR CLIENT</b>	<b>DEFENDANTS</b>	<b>DATE</b>	<b>AMOUNT</b>
Les Expertises Lévesque (Groupe Desjardins assurances générales)	Caisse Desjardins du Mont-Bellevue de Sherbrooke	Montreal, Maine & Atlantic Railway Ltd.	July 12, 2013	N/A
Les Expertises Lévesque (Groupe Desjardins assurances générales)	Caisse Desjardins de la Région de Mégantic	Montreal, Maine & Atlantic Railway Ltd.	July 12, 2013	N/A
Les Expertises Lévesque (Groupe Desjardins assurances générales)	Dr Gérard Chaput	Montreal, Maine & Atlantic Railway Ltd.	July 12, 2013	N/A
Les Expertises Lévesque (Groupe Desjardins assurances générales)	M. Charles Bolduc Gagnon	Montreal, Maine & Atlantic Railway Ltd.	July 12, 2013	N/A
Les Expertises Lévesque (Groupe Desjardins assurances générales)	M. Jacques Grenier et M. Maurice Gagné	Montreal, Maine & Atlantic Railway Ltd.	July 12, 2013	N/A
SSQ Auto	Gatien Blais et Thérèse Jacques Blais	Montreal, Maine & Atlantic Railway Ltd.	July 12, 2013	N/A
Bell Aliant	Bell Aliant	Montréal Maine & Atlantique Canada Cie	July 15, 2013	N/A
Tafisa Canada Inc.	Tafisa Canada Inc.	Mr. Edward A. Burkhardt,	July 17, 2013	N/A

<b>INSURERS AND/OR ATTORNEYS</b>	<b>INSURED AND/OR CLIENT</b>	<b>DEFENDANTS</b>	<b>DATE</b>	<b>AMOUNT</b>
		President Montreal, Maine & Atlantic Canada Co. Mr. Robert C. Grindrod, President Montreal, Maine & Atlantic Railway, Ltd.		
La Capitale Assurances générales	Succession Andrée Sévigny Sévigny	Montreal, Maine & Atlantic Railway Ltd. Montréal, Maine and Atlantic Canada Cie	July 18, 2013	N/A
SSQAuto	Marie-Claude Boulet et Daniel Gendron	Montreal, Maine & Atlantic Railway Ltd.	July 18, 2013	N/A
Lester Raymond	R.S.R. Environnement Inc. (contractor)	Montreal, Maine & Atlantic Railway Ltd.	July 23, 2013	\$126 770,51 plus \$25 costs of the letter of demand
Me Paul Wayland et Me Jean-François Girard Dufresne Hébert Comeau Inc.	Ville de Lac-Mégantic (payment of contractor)	Montreal Maine and Atlantic Railway Ltd. Montreal Maine and Atlantic Canada Company	July 23, 2013	\$7 796 000,00
L'Unique Assurances générales	Gabriel Beaudoin Parent, 9237-71118 Québec Inc.	MMA Canada Cie and MMA Railway, Ltd.	July 25, 2013	N/A

<b>INSURERS AND/OR ATTORNEYS</b>	<b>INSURED AND/OR CLIENT</b>	<b>DEFENDANTS</b>	<b>DATE</b>	<b>AMOUNT</b>
L'Unique Générales Assurances	Stephane Breton and Gervaise Morin	MMA Railway Ltd. and MMA Canada Cie	July, 25, 2013	N/A
L'Unique Générales Assurances	Bianka Tardif and François Quirion	MMA Railway Ltd. and MMA Canada Cie	July, 25, 2013	N/A
L'Unique Générales Assurances	Sylvain Tougas and Jennifer Turcotte	MMA Railway Ltd. and MMA Canada Cie	July, 25, 2013	N/A
L'Unique Générales Assurances	Jennifer Turcotte	MMA Railway Ltd. and MMA Canada Cie	July, 25, 2013	N/A
L'Unique Générales Assurances	Annie Gosselin	MMA Railway Ltd. and MMA Canada Cie	July, 25, 2013	N/A
L'Unique Générales Assurances	Stephanie Turnel and Keven Jacques	MMA Railway Ltd. and MMA Canada Cie	July, 26, 2013	N/A
L'Unique Générales Assurances	Jean Tougas	MMA Railway Ltd. and MMA Canada Cie	July, 26, 2013	N/A
L'Unique Générales Assurances	Carmen Roy	MMA Railway Ltd. and MMA Canada Cie	July, 26, 2013	N/A
L'Unique Générales Assurances	Nancy Guay and Eugene Fortin	MMA Railway Ltd. and MMA Canada Cie	July, 26, 2013	N/A

# **EXHIBIT R-9**

**Montreal, Maine & Atlantic, Canada Co**  
**Unaudited Balance Sheet as at July 31, 2013**

<b>Assets</b>	<i>Net Book Value</i>
Cash	274 000
Accounts Receivable, trade	273 000
Prepaid expenses	29 000
Buildings, land and track structure	17 384 000
Security deposits	14 000
	<hr/> 17 974 000 <hr/>
 <b>Liabilities</b>	
Accounts payable and accrued liabilities	4 758 000
Due to parent company	43 400 000
Contingent liabilities <sup>1</sup>	tbd
Secured claim <sup>2</sup>	tbd
Line of credit <sup>3</sup>	tbd
	<hr/> 48 158 000
Deficit	(30 184 000)
	<hr/> 17 974 000 <hr/>

1. *The contingent liabilities are those potential claims that resulted from the July 6, 2013 derailment in the municipality of Lac-Megantic, Quebec. Said claims cannot be determined at this stage.*
2. *The assets of Montreal Maine & Atlantic, Canada Co are pledged in favor of the United States of America represented by the Federal Railroad Administration as security for a debt in excess of \$30M.*
3. *Montreal Maine & Atlantic, Canada Co is jointly liable with its parent company for a line of credit of \$6M granted by Wheeling Lake Erie Railway Company. Said line of credit is unsecured has no security on Montreal Maine & Atlantic, Canada Co's assets.*

# **EXHIBIT R-10**

Rolling Weekly Cash Forecast

Montreal, Maine & Atlantic Railway Ltd. US Dollars

	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Week Ending:	2013-07-19	2013-07-26	2013-08-02	2013-08-09	2013-08-16	2013-08-23	2013-08-30	2013-09-06	2013-09-13	2013-09-20	2013-09-27			
<b>MMA Cash Receipts:</b>														
Deposits & Wire Transfers	769 498	378 915	335 582	244 502	250 000	250 000	250 000	250 000	250 000	250 000	250 000	250 000	250 000	250 000
ISS			1 019 379											
Other Items (45G, LOC)														
<b>Total</b>	<b>769 498</b>	<b>378 915</b>	<b>1 354 961</b>	<b>244 502</b>	<b>250 000</b>	<b>250 000</b>	<b>250 000</b>	<b>250 000</b>	<b>250 000</b>	<b>250 000</b>	<b>250 000</b>	<b>250 000</b>	<b>250 000</b>	<b>250 000</b>
<b>MMA Disbursements:</b>														
Payroll & Related Taxes														
Diesel Fuel	81 514	0	0	0	200 000	75 000	200 000	75 000	75 000	75 000	200 000	75 000	75 000	200 000
A/P	42 571	50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000
Insurance Claims (Incl FSA)	91 713	32 000	32 000	32 000	32 000	32 000	32 000	16 000	16 000	16 000	16 000	16 000	16 000	16 000
Car Hire Rec. / Pay.						(42 500 )								
Special Payments														
Scheduled Pay. (RRIF)			500 000											
MNR / NBSR		10 739												
<b>Total</b>	<b>215 799</b>	<b>7 739</b>	<b>794 500</b>	<b>94 500</b>	<b>12 500</b>	<b>369 500</b>	<b>127 000</b>	<b>369 500</b>	<b>153 500</b>	<b>353 500</b>	<b>111 000</b>	<b>353 500</b>	<b>111 000</b>	<b>353 500</b>

Intercompany Transactions	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Acct Trans. MMA/MCC/MMC	2013-07-19	2013-07-26	2013-08-02	2013-08-09	2013-08-16	2013-08-23	2013-08-30	2013-09-06	2013-09-13	2013-09-20	2013-09-27			
Net - US Funds	648 169	221 883	536 445	(42 654 )	(243 000 )	(114 500 )	(243 000 )	14 000	(227 000 )	(98 500 )	(227 000 )			
Cash Balance - MMA	578 887	800 770	1 337 215	1 294 560	1 051 560	937 060	694 060	708 060	481 060	382 560	155 560			

Montreal, Maine & Atlantic Canada Co. CDN Dollars

	Actual	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Week Ending:	2013-07-19	2013-07-26	2013-08-02	2013-08-09	2013-08-16	2013-08-23	2013-08-30	2013-09-06	2013-09-13	2013-09-20	2013-09-27			
<b>MCC Cash Receipts:</b>														
Deposits & Wire Transfers	106 149	72 849	24 720	17 204	20 000	20 000	20 000	20 000	20 000	20 000	20 000	20 000	20 000	20 000
<b>Total - CDN Funds</b>	<b>106 149</b>	<b>72 849</b>	<b>24 720</b>	<b>17 204</b>	<b>20 000</b>	<b>20 000</b>	<b>20 000</b>	<b>20 000</b>	<b>20 000</b>	<b>20 000</b>	<b>20 000</b>	<b>20 000</b>	<b>20 000</b>	<b>20 000</b>
<b>MCC Disbursements:</b>														
Payroll & Related Taxes	6 124	180 000	50 000	120 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000
A/P	(19 090 )	50 000	50 000	50 000	50 000	50 000	50 000	150 000	50 000	50 000	50 000	50 000	50 000	50 000
NBSR				50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000
Diesel Fuel					50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000	50 000
<b>Total - CDN Funds</b>	<b>(12 966 )</b>	<b>230 000</b>	<b>50 000</b>	<b>220 000</b>	<b>150 000</b>	<b>270 000</b>	<b>150 000</b>	<b>370 000</b>	<b>150 000</b>	<b>270 000</b>	<b>150 000</b>	<b>270 000</b>	<b>150 000</b>	<b>150 000</b>
<b>Intercompany Transactions</b>														
Acct Trans. MMA/MCC/MMC	100 000	157 151	25 280	202 796	130 000	250 000	130 000	350 000	130 000	250 000	130 000	250 000	130 000	130 000
<b>Net - CDN Funds</b>	<b>19 115</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Cash Balance - MCC</b>	<b>20 012</b>	<b>20 012</b>	<b>20 012</b>	<b>20 012</b>	<b>20 012</b>	<b>20 012</b>	<b>20 012</b>	<b>20 012</b>	<b>20 012</b>	<b>20 012</b>	<b>20 012</b>	<b>20 012</b>	<b>20 012</b>	<b>20 012</b>
<b>MMA Consolidated (US Funds)</b>	<b>597 898</b>	<b>819 781</b>	<b>1 356 226</b>	<b>1 313 572</b>	<b>1 070 572</b>	<b>956 072</b>	<b>713 072</b>	<b>727 072</b>	<b>500 072</b>	<b>401 572</b>	<b>174 572</b>			



# **EXHIBIT R-11**

This report lists registrations in the Personal Property Registry that match the following search criteria:

**Province or Territory Searched:** Nova Scotia  
**Type of Search:** Debtors (Enterprise)  
**Search Criteria:** MONTREAL, MAINE & ATLANTIC CANADA  
 CO./MONTREAL, MAINE & ATLANTIQUE CANADA CIE  
**Date and Time of Search:** 2013-07-22 12:07 (Atlantic)  
**Transaction Number:** 10195241  
**Searched By:** V187448

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
*	*	17569831	MONTREAL, MAINE & ATLANTIC CANADA CO./MONTREAL, MAINE & ATLANTIQUE CANADA CIE	FARNHAM
		17569831	MONTREAL, MAINE & ATLANTIQUE CANADA CIE/MONTREAL, MAINE & ATLANTIC CANADA CO.	FARNHAM

An '\*' in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.

An '\*' in the 'Included' column indicates that the registration's details are included within the Search Result Report.

1 registration(s) contained information that **exactly** matched the search criteria you specified.

1 registration(s) contained information that **closely** matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

### Registration Details for Registration Number: 17569831

**Province or Territory:** Nova Scotia  
**Registration Type:** PPSA Financing Statement

### Registration History

Registration Activity	Registration Number	Date/Time (Atlantic)	Expiry Date	File Number
Original	17569831	2011-01-04 10:36	2033-01-04	SM001764.73

This registration has **not** been the subject of an Amendment or Global Change. The following registration information was added by the original registration and has not been deleted.

### Debtors

Type: Enterprise  
MONTREAL, MAINE & ATLANTIC CANADA CO./MONTREAL, MAINE & ATLANTIQUE  
CANADA CIE  
191, RUE VICTORIA  
FARNHAM PQ J2N 1S3  
Canada

Type: Enterprise  
MONTREAL, MAINE & ATLANTIC CANADA CO.  
191, RUE VICTORIA  
FARNHAM PQ J2N 1S3  
Canada

Type: Enterprise  
MONTREAL, MAINE & ATLANTIQUE CANADA CIE  
191, RUE VICTORIA  
FARNHAM PQ J2N 1S3  
Canada

Type: Enterprise  
MONTREAL, MAINE & ATLANTIQUE CANADA CIE/MONTREAL, MAINE & ATLANTIC  
CANADA CO.  
191, RUE VICTORIA  
FARNHAM PQ J2N 1S3  
Canada

### **Secured Parties**

Type: Enterprise  
THE UNITED STATES OF AMERICA, represented by the Secretary of Transportation  
acting through the ADMINISTRATOR of the Federal Railroad Administration  
1200 NEW JERSEY AVENUE S.E.  
WASHINGTON DC 20590  
USA

### **General Collateral**

A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER ACQUIRED  
PERSONAL PROPERTY

***END OF REPORT***

This report lists registrations in the Personal Property Registry that match the following search criteria:

**Province or Territory Searched:** Nova Scotia  
**Type of Search:** Debtors (Enterprise)

**Search Criteria:** MONTREAL, MAINE & ATLANTIC CANADA CO.

**Date and Time of Search:** 2013-07-22 12:08 (Atlantic)  
**Transaction Number:** 10195242  
**Searched By:** V187448

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
*		17569831	MONTREAL, MAINE & ATLANTIC CANADA CO.	FARNHAM
		17569831	MONTREAL, MAINE & ATLANTIC CANADA CO./MONTREAL, MAINE & ATLANTIQUE CANADA CIE	FARNHAM
		17569831	MONTREAL, MAINE & ATLANTIQUE CANADA CIE/MONTREAL, MAINE & ATLANTIC CANADA CO.	FARNHAM

An '\*' in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.

An '\*' in the 'Included' column indicates that the registration's details are included within the Search Result Report.

1 registration(s) contained information that **exactly** matched the search criteria you specified.

2 registration(s) contained information that **closely** matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

**END OF REPORT**

This report lists registrations in the Personal Property Registry that match the following search criteria:

**Province or Territory Searched:** Nova Scotia  
**Type of Search:** Debtors (Enterprise)

**Search Criteria:** MONTREAL, MAINE & ATLANTIQUE CANADA CIE

**Date and Time of Search:** 2013-07-22 12:08 (Atlantic)  
**Transaction Number:** 10195245  
**Searched By:** V187448

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
*		17569831	MONTREAL, MAINE & ATLANTIQUE CANADA CIE	FARNHAM
		17569831	MONTREAL, MAINE & ATLANTIC CANADA CO./MONTREAL, MAINE & ATLANTIQUE CANADA CIE	FARNHAM
		17569831	MONTREAL, MAINE & ATLANTIQUE CANADA CIE/MONTREAL, MAINE & ATLANTIC CANADA CO.	FARNHAM

An '\*' in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.

An '\*' in the 'Included' column indicates that the registration's details are included within the Search Result Report.

1 registration(s) contained information that **exactly** matched the search criteria you specified.

2 registration(s) contained information that **closely** matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

**END OF REPORT**

This report lists registrations in the Personal Property Registry that match the following search criteria:

---

**Province or Territory Searched:** Nova Scotia  
**Type of Search:** Debtors (Enterprise)

**Search Criteria:** MONTREAL, MAINE & ATLANTIQUE CANADA  
 CIE/MONTREAL, MAINE & ATLANTIC CANADA CO.

**Date and Time of Search:** 2013-07-22 12:08 (Atlantic)  
**Transaction Number:** 10195247  
**Searched By:** V187448

The following table lists records that match the Debtors (Enterprise) you specified.

Exact	Included	Original Registration Number	Enterprise Name	Place
*		17569831	MONTREAL, MAINE & ATLANTIQUE CANADA CIE/MONTREAL, MAINE & ATLANTIC CANADA CO.	FARNHAM
		17569831	MONTREAL, MAINE & ATLANTIC CANADA CO./MONTREAL, MAINE & ATLANTIQUE CANADA CIE	FARNHAM

An '\*' in the 'Exact' column indicates that the Debtor (Enterprise) exactly matches the search criteria.

An '\*' in the 'Included' column indicates that the registration's details are included within the Search Result Report.

1 registration(s) contained information that **exactly** matched the search criteria you specified.

1 registration(s) contained information that **closely** matched the search criteria you specified.

When reviewing the registrations below, note that a registration which has expired or been discharged within the last 30 days can still be re-registered by the secured party.

All registration date/time values are stated in Atlantic Time.

For more information concerning the Personal Property Registry, go to [www.acol.ca](http://www.acol.ca)

**END OF REPORT**




Date, heure, minute de certification : 2013-07-16 12:16

Critère de recherche      Nom d'organisme : **MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE**

**Résultat exact (1)**

Fiche	Inscription	Date	h:min
001	DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR 10-0221076-0002	2010-04-13	14:02

Registre  
des droits personnels  
et réels mobiliers

Québec 

Date, heure, minute de certification : 2013-07-16 12:16

Critère de recherche Nom d'organisme : MONTREAL, MAINE & ATLANTIC CANADA INC.

Critère de sélection Nom d'organisme : MONTREAL MAINE & ATL... Code Postal : J2N1S3

Fiche 001 - Détail de l'inscription 1 (de 1)

INSCRIPTION	DATE-HEURE-MINUTE	DATE EXTRÊME D'EFFET
10-001078-0001	2010-04-13 14:02	2017-04-13
DROITS DE PROPRIÉTÉ DU CRÉDIT-BAILLEUR		

#### PARTIES

##### Crédit-bailleur

Cayman Inc.  
Suite 300, 666 Burrard St., Vancouver, BC V6C 1X8

##### Crédit-preneur

Montreal, Maine & Atlantique Canada Cie  
191 rue Victoria, Farnham, QC J2N 1S3

#### BIENS

(1) photocopieur kyocera km-4050 n/s 8201674 (1) alimenteur dp700 n/s 211022 (1) trousseur df-210 unite de perforation (1) fax together with all attachments accessories accessories replacements substitutions additions and improvements thereto and all proceeds in any form derived directly or indirectly from any sale and or dealings with the collateral and a right to an insurance payment or other payment that indemnifies or compensates for loss or damage to the collateral or proceeds of the collateral

#### MENTIONS

##### Référence à l'acte constitutif

Forme de l'acte : Sous seing privé  
Date : 2010-04-13  
Lieu : province de quebec



Date, heure, minute de certification : 2013-07-16 15:00

Critère de recherche      Nom d'organisme : MONTRÉAL, MAINE & ATLANTIC CANADA CO.

Résultats exacts (2)

Nom	Code postal	Nombre de fiches détaillées								
<input type="checkbox"/> MONTREAL MAINE & ATLANTIC CANADA CO		1								
<table border="1"> <thead> <tr> <th>Fiche</th> <th>Inscription</th> <th>Date</th> <th>h:min</th> </tr> </thead> <tbody> <tr> <td>001</td> <td>DROITS RÉSULTANT D'UN BAIL 09-0078357-0001</td> <td>2009-02-17</td> <td>09:00</td> </tr> </tbody> </table>	Fiche	Inscription	Date	h:min	001	DROITS RÉSULTANT D'UN BAIL 09-0078357-0001	2009-02-17	09:00		
Fiche	Inscription	Date	h:min							
001	DROITS RÉSULTANT D'UN BAIL 09-0078357-0001	2009-02-17	09:00							
<input type="checkbox"/> MONTREAL MAINE & ATLANTIC CANADA CO	H3B 3P4	1								
<table border="1"> <thead> <tr> <th>Fiche</th> <th>Inscription</th> <th>Date</th> <th>h:min</th> </tr> </thead> <tbody> <tr> <td>001</td> <td>HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION 10-0898865-0001</td> <td>2010-12-22</td> <td>11:55</td> </tr> </tbody> </table>	Fiche	Inscription	Date	h:min	001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION 10-0898865-0001	2010-12-22	11:55		
Fiche	Inscription	Date	h:min							
001	HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION 10-0898865-0001	2010-12-22	11:55							

Date, heure, minute de certification : 2013-07-16 11:28

Critère de recherche Nom d'organisme : MONTREAL, MAINE & ATLANTIC CANADA INC.

Critère de sélection Nom d'organisme : MONTREAL MAINE & ATL... Code Postal :

Fiche 001 - Détail de l'inscription 1 (de 1)

---

INSCRIPTION	DATE-HEURE-MINUTE	DATE EXTRÊME D'EFFET
09-0078357-0001	2009-02-17 09:00	2019-02-17

DROITS RÉSULTANT D'UN BAIL

Il s'agit d'une inscription globale (art.2961.1 Code civil).

#### PARTIES

##### Locateur

MONTREAL MAINE AND ATLANTIC CANADA CO.  
15 IRON ROAD, HERMON, MAINE U.S.A. 04401

##### Locataire

ORFORD EXPRESS INC  
1080 CÔTE DE BEAVER HALL SUITE 1610 MONTREAL QUÉBEC H2Z 1S8

#### BIENS

baill sur rail de chemin de fer entre Sherbrooke et Eastman au Québec

#### MENTIONS

##### Référence à l'acte constitutif

Forme de l'acte : Sous seing privé  
Date : 2008-10-25  
Lieu : MONTREAL

Date, heure, minute de certification : 2013-07-16 12:16

Critère de recherche Nom d'organisme : MONTREAL, MAINE & ATLANTIC CANADA INC.

Critère de sélection Nom d'organisme : MONTREAL MAINE & ATL... Code Postal : H3B3P4

Fiche 001 - Détail de l'inscription 1 (de 1)

INSCRIPTION	DATE-HEURE-MINUTE	DATE EXTRÊME D'EFFET
10-0898865-0001	2010-12-22 11:55	2020-12-22

HYPOTHÈQUE CONVENTIONNELLE SANS DÉPOSSESSION

#### PARTIES

##### Titulaire

UNITED STATES OF AMERICA  
1200 New Jersey Avenue S.E., Washington, DC, 20590, USA  
Représenté par : SECRETARY OF TRANSPORTATION,

##### Constituant

MONTREAL, MAINE & ATLANTIC CANADA CO.  
1 Place Ville-Marie, 37th Floor, Montreal, Québec

H3B 3P4

#### BIENS

The universality of the movable and immoveable property, corporeal and incorporeal, present and future, of the Constituant (the "Collateral"), including without limitation:

1.1 all right, title and interest in that certain immoveable property described in the First Schedule to the deed referred to herein under the heading entitled "Référence à l'acte constitutif" (the "Deed") and in the leased property described in the Second Schedule of the Deed, as the said property now subsists, together with all of its rights, members and appurtenances, without exception or reserve of any kind (the "Lands").

1.2 all buildings, structures, fixtures, additions, modifications, repairs, replacements and other improvements of every kind or nature now or hereafter located on the Lands from time to time other than any movable property owned by tenants and trade fixtures and other leasehold improvements which any tenant is permitted to remove pursuant to the provisions of its Lease (as hereinafter defined) or under applicable laws (the "Improvements", together with the Lands sometimes herein referred to as the "Property");

1.3 all machinery, equipment, fittings, apparatus, appliances, furniture, furnishings, tools, fixtures (including all heating, air conditioning, ventilating, waste disposal, sprinkler and fire and theft protection equipment, plumbing, lighting, communications and elevator fixtures) and other similar property of every kind and nature whatsoever which are (i) now or hereafter located upon or used in connection with the Lands or the Improvements, and (ii) in which the Constituant has or shall have an ownership interest other than any

movable property owned by tenants and trade fixtures and other leasehold improvements which any tenant is permitted to remove pursuant to the provisions of its Lease or under applicable laws (the "Equipment");

1.4 all present and future leases, offers to lease, subleases, concessions, licenses and other contracts and agreements which now or hereafter affect the use, enjoyment or occupancy of the Property or the Enterprise (as defined in the Deed) or any portion thereof now or hereafter entered into together with all rights, options, claims, causes of action, guarantees, indemnities, security deposits and other security held by or on behalf of the Constituant in connection therewith (the "Leases");

1.5 all revenues, receipts, income, credits, deposits, profits, royalties, rents, additional rents, recoveries, accounts receivable and other receivables of any kind and nature whatsoever relating to the Property and arising from or relating to the Enterprise (the "Rents");

1.6 any agreements, contracts or other instruments of a material nature relating to the Enterprise, Lands, Improvements or Equipment or the management or operation thereof, and all amendments, supplements, and replacements thereto, including but not limited to all development, servicing, site plan and other similar agreements with any governmental authority or public utility, management agreements, reciprocal restrictions or operating agreements, license or franchise agreements, service contracts, warranties, guaranties, supply and maintenance contracts, equipment leases and insurance policies (the "Material Agreements");

1.7 all permits, consents, licenses, rights, certificates, authorizations and other approvals issued or granted by any governmental authority or any public utility relating to the Enterprise, Lands, Improvements, Equipment, Leases and/or Material Agreements (the "Permits");

1.8 all awards or payments, including any interest thereon, which may hereafter be made with respect to the Enterprise, Lands, Improvements, Equipment, Leases, Rents and/or Material Agreements by means of expropriation and any and all refunds with respect to the payment of property taxes and assessments, and all other proceeds of the conversion, voluntary or involuntary, of the Lands, Improvements, Equipment, Leases, Rents and/or Material Agreements, into cash, credit or liquidated claims;

1.9 all proceeds of and any unearned premiums accrued, accruing or to accrue under any insurance policies including, without limitation, property insurance or any other insurance now or hereafter maintained covering the Enterprise, Lands, Improvements, Equipment, Leases, Rents and/or Material Agreements, including without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Lands, Improvements, Equipment, Leases, Rents and/or Material Agreements, and interest paid or payable with respect thereto;

1.10 all claims against any Person (as defined hereinafter) with respect to any damage to or loss of the Lands, Improvements, Equipment, Leases, Rents and/or Material Agreements, including, without limitation, damage arising from any defect in or with respect to the design or construction of the Improvements, Equipment or other property of the Constituant and any damage resulting therefrom;

1.11 all deposits or other security or advance payments, including rental payments made by or on behalf of the Constituant, directly or indirectly, to others, with respect to the Lands, Improvements, Equipment, Leases, Rents and/or Material Agreements, including but not limited to (i) insurance policies, (ii) utility services, (iii) cleaning, maintenance, repair or similar services, (iv) refuse removal or sewer service, (v) parking or similar services or rights and (vi) rental of Equipment, if any;

1.12 all intangible property relating to the Enterprise, Lands, Improvements, Equipment, Leases, Rents, Material Agreements, or the operation thereof, including, without limitation, trade names, trademarks, logos, building names and goodwill;

1.13 all advertising material, guarantees, warranties, soil tests, appraisals and other documents, materials and/or personal property of any kind now or hereafter existing in or relating to the Enterprise, Lands, Improvements, Equipment, Rents, Leases and/or Material Agreements;

1.14 all drawings, designs, plans and specifications prepared by the architects, engineers, interior designers, landscape designers and any other consultants or professionals for the design, development, construction, repair and/or improvement of the Enterprise, Lands, Improvements or Equipment;

1.15 all appurtenances and utility rights pertaining to the Enterprise, Lands, Improvements, Equipment, Leases, Material Agreements or any portion thereof, all service contracts, supply and maintenance contracts, equipment leases, and any renewal, modification, amendment, supplement or replacement thereof, which affects or is used in connection with the Enterprise, Lands, Improvements, Equipment, Leases or any part thereof;

1.16 all renewals, substitutions, improvements, accessions, attachments, additions, replacements and all proceeds to or of each of the foregoing, and all conversions of the security constituted thereby so that, immediately upon such acquisition, construction, assemblage, placement or conversion, as the case may be, and in each such case, the foregoing shall be deemed a part of the Collateral and shall automatically become subject to the hypothec granted hereunder as fully and completely and with the same priority and effect as though now owned by the Constituant, directly or indirectly, and specifically described herein, without any further hypothecation or assignment or conveyance by the Constituant, directly or indirectly;

1.17 the proceeds of any sale, lease or other disposition of the property described in Section 3.1 of the Deed, any debt resulting from

such sale, lease or other disposition, as well as any property acquired to replace the Collateral;

1.18 any insurance or expropriation indemnity payable in respect of the Collateral;

1.19 any rights attached to the Collateral, as well as the fruits and revenues produced thereby;

1.20 where the Collateral includes shares or securities, all shares and securities issued in replacement of these shares or securities; and

1.21 all deeds, documents, registers, invoices and books of account evidencing the Collateral or relating thereto.

For the purposes hereof,

"Person": means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

#### **MENTIONS**

##### **Somme de l'hypothèque**

CAD\$81,600,000.00 with interest at the rate of 25% per annum from the date of the Deed. This amount includes an additional hypothec equivalent to 20% of the principal amount of CAD\$68,000,000.00

##### **Référence à l'acte constitutif**

Forme de l'acte : Notarié en minute

Date : 2010-12-21

Lieu : Washington, DC, United States of America

N° de minute : 179

Nom du notaire : LAVIGNE FRÉDÉRIC

##### **Autres mentions :**

Continuation of the heading entitled "Représenté par" of the Titulaire Section: "..., acting through the ADMINISTRATOR of the FEDERAL RAILROAD ADMINISTRATION".

For greater certainty, the UNITED STATES OF AMERICA are represented by the SECRETARY OF TRANSPORTATION, acting through the ADMINISTRATOR of the FEDERAL RAILROAD ADMINISTRATION.

The Constituant may collect all debts and claims, including Rents, forming part of the Collateral until the Titulaire withdraws its authorization for the Constituant to do so following the occurrence and during the continuance of an Event of Default (as defined in the Deed).

#### **AVIS D'ADRESSE**

N° 043520

# **EXHIBIT R-12**

**RICHTER**  
Robillard

August 6, 2013

**Me Denis St-Onge**  
**Gowling Lafleur Henderson LLP**  
**1 Place Ville Marie**  
**Montreal, Quebec, H3B 3P4**

**Re: Montreal Maine & Atlantic Canada Co.**

Dear Sir,

We hereby agree to act as Monitor under the Companies' Creditors Arrangement Act, pursuant to the Petition for the issuance of an Initial Order to be filed by Montreal Maine & Atlantic Canada Co.

Yours very truly,

**Richter Advisory Group Inc.**  
Proposed Monitor



**Gilles Robillard, CPA, CA, CIRP**

**RICHTER**

T. 514.934.3484  
C. 514.824.4777  
grobillard@richter.ca

Richter Groupe Conseil Inc.  
Richter Advisory Group Inc.  
1981 McGill College  
Mtl (Qc) H3A 0G6  
www.richter.ca

Montréal, Toronto





# **EXHIBIT R-13**

CANADA

**SUPERIOR COURT**  
(Commercial Division)

---

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

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

N°:

Montreal, August\_\_\_\_, 2013

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

---

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

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

**PETITIONER**

and

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

**MONITOR**

---

**INITIAL ORDER**

---

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

GIVEN the provisions of the CCAA;

**WHEREFORE, THE COURT:**

[1] **GRANTS** the Petition.

[2] **ISSUES** an order pursuant to the CCAA (the "**Order**"), divided under the following headings:

- a) Service;
- b) Application of the CCAA;
- c) Effective Time;
- d) Plan of Arrangement;
- e) Stay of Proceedings against the Petitioner and the Property and against Non-Petitioner Defendants;
- f) Stay of Proceedings against the Directors and Officers;
- g) Possession of Property and Operations;
- h) No Exercise of Rights or Remedies;
- i) No Interference with Rights;
- j) Continuation of Services;
- k) Non-Derogation of Rights;
- l) Directors' and Officers' Indemnification and Charge;
- m) Restructuring;
- n) Powers of the Monitor;
- o) Priorities and General Provisions Relating to CCAA Charges;

p) General.

**Service**

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

**Application of the CCAA**

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

**Effective time**

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

**Plan of Arrangement**

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

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

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

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

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

- [8] **ORDERS** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Petitioner nor against any person deemed to be a director or an officer of the Petitioner under subsection 11.03(3)CCAA (each, a "Director", and collectively the "Directors") in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Petitioner where it is alleged that any of the Directors is under any law liable in such capacity for the payment or performance of such obligation or which relate to the Derailment.

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

- [9] **ORDERS** that the Petitioner shall remain in possession and control of its present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "Property"), the whole in accordance with the terms and conditions of this Order including, but not limited, to paragraph [25] hereof.
- [10] **AUTHORIZES** the Petitioner to continue to carry on its business and financial affairs in a manner consistent with past periods and the commercially reasonable preservation

thereof;

[11] ORDERS that the Petitioner shall be authorized and empowered to continue to retain and employ the employees, consultants, individuals self-employed contractors, agents, experts, accountants, counsels, and such other persons (collectively, "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

[12] ORDERS that the Petitioner shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- a) all outstanding and future wages, salaries, commissions, vacation pay, current pension contributions and other benefits, reimbursement of expenses (including, without limitation, amounts charged by employees to credit cards) and other amounts payable to former, current or future employees on or after the date of this Order and reimbursements of expenses payable to officers or directors on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- b) the fees and disbursements of any Assistants retained or employed by Petitioner in respect of these proceedings, at their standard rates and charges; and
- c) subject to the prior written approval of the Monitor, outstanding amounts that became due prior to this Order to creditors who have liens or rights of retention on assets held by them for Petitioner or for Petitioner on behalf of its clients;

[13] ORDERS that, except as otherwise provided to the contrary herein, the Petitioner shall be entitled but not required to pay all reasonable expenses incurred by it in carrying on the business in the ordinary course from and after the date of this Order, and in carrying out the provisions of this Order;

[14] ORDERS that, except as otherwise provided to the contrary herein, the Petitioner shall remit, in accordance with legal requirements, or pay:

- a) any statutory deemed trust amounts in favour of the Crown in right of Canada or

of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension plan, and (iv) income taxes;

- b) amounts accruing and payable by the Petitioner in respect of employment insurance, Canada Pension Plan, workers compensation, employer health taxes and similar obligations of any jurisdiction with respect to employees;
- c) all goods and services or other applicable sales taxes (collectively "Sales Taxes") required to be remitted by the Petitioner in connection with the sale of goods and services by the Petitioner but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the business by the Petitioner.

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

- [15] **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof, including the Cleanup Order, are hereby stayed and suspended except with leave of this Court.
- [16] **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Petitioner or any of the Property or the Business may expire (other than pursuant to the terms of any

contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioner becomes bankrupt or a receiver as defined in subsection 243(2) of the Bankruptcy and Insolvency Act (Canada) (the "BIA") is appointed in respect of the Petitioner, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioner in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

#### **No Interference with Rights**

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

#### **Continuation of Services**

- [18] **ORDERS** that during the Stay Period and subject to paragraph [20] hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioner or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioner, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating such agreements or the supply of such goods or services as may be required by the Petitioner, and that the Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Petitioner, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner, with the consent of the Monitor, or as may be ordered by this Court.

- [19] **ORDERS** that, notwithstanding anything else contained herein and subject to



subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioner on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Petitioner.

- [20] **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Petitioner with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

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

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

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

- [22] **ORDERS** that the Petitioner shall indemnify its Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Petitioner after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, willful misconduct or gross or intentional

fault as further detailed in Section 11.51 CCAA.

- [23] **ORDERS** that the Directors of the Petitioner shall be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$150,000.00 (the "**Directors' Charge**"), as security for the indemnity provided in paragraph [22] of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs [39] and [40] of this Order.
- [24] **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph [22] of this Order.

### **Restructuring**

- [25] **DECLARES** that, to facilitate the orderly restructuring of its business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioner shall have the right, subject to approval of the Monitor or further order of the Court, to:
- a) permanently or temporarily cease, downsize or shut down any of its operations or locations as it deems appropriate and make provision for the consequences thereof in the Plan;
  - b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
  - c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$10,000 or \$50,000 in the aggregate;

- d) terminate the employment of such of its employees or temporarily or permanently lay off such of its employees as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioner and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Petitioner may determine;
- e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of its agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Petitioner and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and
- f) subject to section 11.3 CCAA, assign any rights and obligations of Petitioner.

[26] **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of the Petitioner pursuant to section 32 of the CCAA and subsection [25]e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Petitioner and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Petitioner, provided nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

[27] **ORDERS** that the Petitioner shall provide to any relevant landlord notice of the Petitioner's intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Petitioner has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between the Petitioner and the landlord.

[28] **DECLARES** that, in order to facilitate the Restructuring, the Petitioner may, subject to

the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute and may pursue, with the assistance of the Monitor, the Restructuring, including, subject to Court approval, the settlement or other resolution of the claims related to the Derailment.

- [29] **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, the Petitioner is permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in its possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to its advisers (individually, a “**Third Party**”), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioner binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioner or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.

#### **Powers of the Monitor**

- [30] **ORDERS** that Richter Advisory Group Inc. is hereby appointed to monitor the business and financial affairs of the Petitioner as an officer of this Court (the “**Monitor**”) and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:
- a) shall, without delay, (i) publish once a week for two (2) consecutive weeks, or as otherwise directed by the Court, in *La Presse* and the *Globe & Mail* newspapers and (ii) within five (5) business days after the date of this Order (A) post on the Monitor’s website (the “**Website**”) a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed

under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioner of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;

- b) shall monitor the Petitioner's receipts and disbursements;
- c) shall assist the Petitioner, to the extent required by the Petitioner, in dealing with its creditors and other interested Persons during the Stay Period;
- d) shall assist the Petitioner, to the extent required by the Petitioner, with the preparation of its cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
- e) shall advise and assist the Petitioner, to the extent required by the Petitioner, to review the Petitioner's business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
- f) shall assist the Petitioner, to the extent required by the Petitioner, with the Restructuring and in its negotiations with its creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan, including, without limitation, participating as the Petitioner considers appropriate in any discussion and negotiation with creditors, claimants or others and assisting and facilitating the settlement or other resolution of the claims related to the Derailment.
- g) shall report to the Court on the state of the business and financial affairs of the Petitioner or developments in these proceedings or any related proceedings or the settlement or other resolution of the claims related to the Derailment, and any other matter deemed by the Monitor to be relevant to this proceeding, within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;

- h) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
- i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
- k) may assist the Petitioner with respect to any insolvency proceedings commenced by or with respect to any other member of its corporate group (including MM&AR) in any foreign jurisdiction (collectively, "Foreign Proceedings") and report to this Court, as it deems appropriate, on the Foreign Proceedings with respect to matters relating to the Petitioner;
- l) may act as a "foreign representative" of the Petitioner or in any other similar capacity in any insolvency, bankruptcy or reorganization or other proceedings outside of Canada;
- m) may give any consent or approval as may be contemplated by the Order or the CCAA; and
- n) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

[31] **ORDERS** that, unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioner, and that the Monitor is not empowered to take possession of the Property nor to manage or control any of the business and financial affairs of the Petitioner and nothing in this Order shall vest in the Monitor the care, ownership, control, charge, occupation, possession or management (separately and collectively, the "Possession"), or require

or obligate the Monitor to occupy, to take Possession of any Property or any source of contaminant which may be environmentally contaminated or contain a dangerous or designated substance, or (b) contain a pollutant or contaminant or cause or contribute to a spill, discharge, release or deposit of a substance in respect of which obligations of any sort may be imposed under any legislation enacted for the protection, conservation, enhancement, remediation or rehabilitation of the indoor or outdoor environment, or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Transportation of Dangerous Goods Act*, the *Environment Quality Act* (Québec), the *Act Respecting Occupational Health and Safety* (Québec) or the regulations thereunder, or under any other federal or provincial legislation or rule of law or equity, in any jurisdiction affecting the indoor or outdoor environment or the transportation of dangerous goods (collectively, “**Environmental Laws**”). For greater certainty, the Monitor shall not be deemed, as a result of this Order, to be in Possession within the meaning of any Environmental Laws of any Property or source of contaminant.

- [32] **ORDERS** that the Petitioner and its Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioner in connection with the Monitor’s duties and responsibilities hereunder.
- [33] **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Petitioner with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioner’s counsel. In the case of information that the Monitor has been advised by the Petitioner is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioner unless otherwise directed by this Court.
- [34] **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioner or continues the employment of the Petitioner’s employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
- [35] **DECLARES** that, if the Monitor acts in good faith and takes reasonable care in preparing

the reports referred to herein, the Monitor is not liable for loss or damage to any Person resulting from that person's reliance on any such report.

- [36] **DECLARES** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph 30 (i) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
- [37] **ORDERS** that Petitioner shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioner's legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
- [38] **DECLARES** that the Monitor, the Monitor's legal counsel (Woods LLP), the Petitioner's legal counsel (Gowling Lafleur Henderson LLP) and the Monitor and the Petitioner's respective advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order and directly related to these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$1,500,000 (the "**Administration Charge**"), having the priority established by paragraphs [39] and [40] hereof.

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

- [39] **DECLARES** that the priorities of the Administration Charge and any possible charge in favor of the Directors (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:
- a) first, the Administration Charge;
  - b) second, the Directors' Charge;
- [40] **DECLARES** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or



security of whatever nature or kind or deemed trusts (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances.

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

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

[43] **DECLARES** that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Petitioner (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

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

[44] **DECLARES** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner, and

(iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Petitioner pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.

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

#### **General**

- [46] **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the Petitioner or of the Monitor in relation to the Business or Property of the Petitioner, without first obtaining leave of this Court, upon five (5) days written notice to the Petitioner's counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
- [47] **DECLARES** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioner under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
- [48] **DECLARES** that, except as otherwise specified herein, the Petitioner and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioner and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.
- [49] **DECLARES** that the Petitioner and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a

PDF or other electronic copy of such materials to counsels' email addresses, provided that the Petitioner shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.

- [50] **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Petitioner and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings.
- [51] **DECLARES** that the Petitioner or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the order on notice only to each other and any other Person directly affected thereby, if any.
- [52] **DECLARES** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Petitioner, to the Petitioner's counsel (Gowling Lafleur Henderson LLP c/o Denis St-Onge, phone: 514-392-9519, fax: 514-876-9519, denis.st-onge@gowlings.com, 3700-1 Place Ville Marie, Montreal, Quebec, H3B 3P4), to the Monitor (Richter Advisory Group Inc., c/o Gilles Robillard, phone: 514-934-3484, fax: 514-934-3504, 1981, McGill College, Montreal, Québec, H3A 0G6), to the Monitor's counsel (Woods LLP c/o Sylvain Vauclair, phone: 514-982-4528, fax: 514-284-2046, svaclair@woods.qc.ca, 2000, avenue McGill College, suite 1700, Montreal, Québec, H3A 3H3) and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order, such application or motion shall be filed during the Stay Period ordered by this Order, unless otherwise ordered by this Court.
- [53] **DECLARES** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
- [54] **DECLARES** that the Monitor, with the prior consent of the Petitioner, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or

elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court, for which the Monitor shall be the foreign representative of the Petitioner, including, but without limitation, in respect of proceedings that may be commenced, the Chapter 15 of the U.S. Bankruptcy Code and any ancillary relief in respect thereto. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

[55] **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.

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

THE WHOLE WITHOUT COSTS, save and except in case of contestation.

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THE HONOURABLE MARTIN CASTONGUAY, J.S.C.

**EXHIBIT 14**  
**(UNDER SEAL)**