CANADA

PROVINCE OF QUÉBEC
DISTRICT OF ST-FRANÇOIS

N°: 450-11-000167-134

SUPERIOR COURT
(Commercial Division)

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

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

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

Debtor

and

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

Monitor-Petitioner

MOTION FOR DIRECTIONS

(Section 11 of the Companies' Creditors Arrangement Act, paragraph 54 of the Initial Order and the Cross Border Protocol filed in the Court record)

TO THE HONOURABLE JUSTICE GAETAN DUMAS, J.C.S., THE PETITIONER RESPECTFULLY SUBMITS:

1. The Motion for Joint Status Conference attached hereto as **Exhibit R-1** ("**Motion**") was filed today by the Official Committee of Victims in the Chapter 11 proceedings of Montreal, Maine & Atlantic Railway, Ltd;

2. As appears from the Motion, the purpose of the Motion is to request a Joint Status Conference before the US Bankruptcy Court and this Honourable Court for the purposes set out in the Motion;

3. The Monitor has reviewed the Motion and supports the request for a Joint Status Conference;

WHEREFORE, MAY IT PLEASE THE COURT:

GRANT the present Motion;

ORDER that a Joint Status Conference be held before the US Bankruptcy Court and this honourable Court on a date and at a location to be determined by this Court in consultation with the US Bankruptcy Court;

THE WHOLE WITHOUT COSTS.

MONTREAL, February 7, 2014

Woods LLP

WOODS LLP
Attorneys for the Monitor

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Monitor-Petitioner

AFFIDAVIT OF ANDREW ADESSKY

I, the undersigned, Andrew Adessky, partner at Richter Advisory Group Inc., doing business at 1981 McGill College, 11th Floor, Montreal, Québec, H3A 0G6, solemnly declare as follows:

1. I am an authorized representative of the Monitor;

2. All the facts alleged in the *Motion for Directions* are true.

AND I HAVE SIGNED:

ANDREW ADESSKY

SWORN TO before me in Montreal, Québec,
this 7 day of February 2014

Commissioner of oaths for the province of Québec

COMMISSAIRE À L'ASSERMENTATION POUR LE QUÉBEC
Christiane Girard
133331

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NOTICE OF PRESENTATION

TO: SERVICE LIST (see attached)

TAKE NOTICE that the present *Motion for directions* will be presented for adjudication before the Honourable Gaetan Dumas, J.S.C., sitting in practice division in and for the district of St-François in **room 1** of the Sherbrooke Courthouse, located at 375 King Street West in Sherbrooke, on **February 11, 2014, at 9:00 a.m.** or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, February 7, 2014

Woods LLP

WOODS LLP
Attorneys for the Monitor

CANADA

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and

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Monitor

LIST OF EXHIBIT

EXHIBIT R-1: Motion for Joint Status Conference.

MONTREAL, February 7, 2014

Woods LLP

WOODS LLP
Attorneys for the Monitor

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

In re: **MONTREAL MAINE & ATLANTIC RAILWAY, LTD.,** **Debtor.**	**Chapter 11** **Case No. 13-10670 (LHK)**

MOTION OF OFFICIAL COMMITTEE OF VICTIMS PURSUANT TO CROSS-BORDER INSOLVENCY PROTOCOL REQUESTING JOINT STATUS CONFERENCE BEFORE U.S. AND CANADIAN COURT

The Official Committee of Victims (the "Committee") appointed in the chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), by and through its undersigned proposed counsel, hereby submits this motion (the "Motion") pursuant to the Cross-Border Insolvency Protocol approved by the Court [Docket Nos. 126 & 168] requesting that a joint procedural/scheduling conference be held before this Court and the Canadian Court (as defined herein) on February 11, 2014 at 10:00 a.m. to consider the need for a subsequent substantive in-person status conference to address certain critical cross-border issues that will affect the chapter 11 case and the CCAA Proceeding (as defined herein). In support of this Motion, the Committee states as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 & 1334 and D. ME. LOCAL R. 83.6(a), pursuant to which all cases filed in Maine under chapter 11 of the Bankruptcy Code are referred to bankruptcy judges of this district.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

BACKGROUND

3. On August 7, 2013, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the "Petition Date") in the United States Bankruptcy Court for the District of Delaware (the "Court").

4. On August 21, 2013, the U.S. Trustee, pursuant to Bankruptcy Code section 1163, appointed Robert J. Keach as the trustee (the "Trustee") in the chapter 11 case.

CCAA Proceeding

5. Concurrently with seeking chapter 11 relief in this Court, on August 7, 2013, Montreal, Maine & Atlantic Canada Co. ("MMA Canada"), the Debtor's wholly-owned subsidiary, commenced a proceeding (the "CCAA Proceeding") in the Superior Court (Commercial Division) of the Province of Québec, District of Montreal, which case was transferred to the court located in Sherbrooke, District of St. Francois, Province of Québec (the "Canadian Court"), under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "CCAA").

6. Richter Advisory Group Inc. has been appointed as the monitor in the CCAA Proceeding (the "Monitor").

Cross-Border Insolvency Protocol

7. On September 4, 2013, the Court entered the *Order Adopting Cross-Border Insolvency Protocol* [Docket No. 168] pursuant to which the Cross-Border Insolvency Protocol, a copy of which is attached hereto as Exhibit A, was adopted and made applicable in the

Debtor's chapter 11 case. The Canadian Court entered an order on September 4, 2013 approving the Cross-Border Insolvency Protocol as well.

8. The purpose of the Cross-Border Insolvency Protocol is to, among other things, (a) harmonize and coordinate the activities before this Court and the Canadian Court, (b) promote the orderly and efficient administration of the chapter 11 case and the CCAA Proceeding to, among other things, maximize the efficiency of both proceedings, reduce the costs associated therewith and avoid duplication of effort, and (c) facilitate the fair, open and efficient administration of the proceedings for the benefit of all of the Debtors' creditors and other interested parties, wherever located. *See* Cross-Border Insolvency Protocol, at ¶ 5.

9. To that end, the Cross-Border Insolvency Protocol permits this Court and the Canadian Court to conduct joint hearings. Specifically, paragraph 11.d provides that: "The U.S. Court and the Canadian Court may conduct joint hearings with respect to any cross-border matter or the interpretation or implementation of this Protocol where both the U.S. Court and the Canadian Court consider such a joint hearing to be necessary or advisable." *See* Cross-Border Insolvency Protocol, at ¶ 11.d; *see also Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* (attached to the Cross-Border Insolvency Protocol), at Guideline 9. In fact, this Court and the Canadian Court have previously held such joint hearings and another joint hearing is scheduled for February 11, 2014.

Appointment of Official Committee of Victims in the Chapter 11 Case

10. On August 30, 2013, the Informal Committee of Québec Claimants, comprised of (i) the government of the Province of Québec, Canada (the "Québec Government"), (ii) the municipality of Lac-Mégantic, Québec (the "City of Lac-Mégantic"), and (iii) the representatives of a Canadian class action lawsuit consisting of victims of the July 6, 2013 derailment that led to

this chapter 11 case (the "Québec Class Action Representatives"), filed the *Motion Of Informal Committee Of Québec Claimants For Appointment Of Creditors' Committee Pursuant To Bankruptcy Code Section 1102(a)(2)* [Docket No. 127] (the "Committee Motion"). On October 18, 2013, the Court granted the Committee Motion and entered the *Order Authorizing the Appointment of a Victims' Committee* [Docket No. 391], pursuant to which the U.S. Trustee was authorized to appoint a victims' committee in this case.

11. On November 27 and December 10, 2013, the U.S. Trustee appointed the members of the Committee. On December 10, 2013, the members of the Committee voted to make the Québec Government and the City of Lac-Mégantic *ex officio* members of the Committee.

CROSS-BORDER ISSUES AFFECTING BOTH CASES

12. On January 29, 2014, the Unofficial Committee of Wrongful Death Claimants (the "Wrongful Death Claimants") filed the *Chapter 11 Plan Dated January 29, 2014 Proposed By The Unofficial Committee Of Wrongful Death Claimants* [Docket No. 600] (the "WDC Plan") and *Disclosure Statement For Chapter 11 Plan Dated January 29, 2014 Proposed By The Unofficial Committee Of Wrongful Death Claimants* [Docket No. 601] (the "WDC Disclosure Statement"). A hearing on the approval of the WDC Disclosure Statement is currently scheduled for March 12, 2014 and objections thereto are due on or before February 28, 2014. Upon information and belief, the Trustee intends to oppose the WDC Plan and WDC Disclosure Statement on the basis that the WDC Plan, among other things, is not confirmable. The WDC Plan purports to allocate 75% of the $25 million in proceeds of a certain insurance policy (the "XL Policy") that the Debtor has with XL Insurance Company Limited ("XL Insurance") to the "U.S. estate" and 25% of such proceeds to the "Canadian estate". *See* WDC Plan, at 2.

However, the WDC Plan provides that if the "Canadian estate" objects, the percentage allocation between the two estates will be determined by joint order of the U.S. and Canadian courts based on the relative aggregate amounts of the U.S.-estate claims and the Canadian-estate claims for disaster-related compensation. *See id.*

13. In the CCAA Proceeding, counsel for the Québec Class Action Representatives submitted a letter dated January 30, 2014 (the "CCAA Proposal") to Justice Dumas of the Canadian Court outlining the terms of a potential plan in the CCAA Proceeding.[1]

RELIEF REQUESTED

14. Pursuant to the Cross-Border Insolvency Protocol, the Committee requests that this Court and the Canadian Court hold a joint procedural/scheduling conference on February 11, 2014 at 10:00 a.m. to discuss the necessity of a future in-person substantive joint status conference to address certain critical cross-border issues that will affect both cases such as the plans proposed in the chapter 11 case and the CCAA Proceeding.

15. The Trustee and the Monitor support the joint procedural/scheduling conference requested by the Committee, and the Committee understands that the Monitor will send a letter to the Canadian Court attaching this Motion requesting that a joint procedural/scheduling conference be held.[2]

16. The WDC Plan and CCAA Proposal will affect both cases because they are inconsistent with each other. Among other things, the WDC Plan and CCAA Proposal propose different treatment for the proceeds of the XL Policy, which proceeds could be the only immediate source of recovery for victims of the derailment. The Committee has been informed

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1 A copy of the CCAA Proposal is attached as Exhibit B.

2 The relief requested in this Motion is obviously subject to the consent and availability of the Canadian Court.

that the Trustee intends to oppose the WDC Plan. Given the scarce resources in both the chapter 11 case and CCAA Proceeding, it would be counterproductive to conduct expensive motion practice in both cases related to the plan proposals when all parties should agree on the same goal of distributing the $25 million in proceeds of the XL Policy to victims in the near future. Conducting a joint procedural/scheduling conference before this Court and the Canadian Court to address the need for a further in-person substantive joint status conference will further the goals of the Cross-Border Insolvency Protocol to coordinate activities between the courts and maximize the efficiency of both cases.

17. Objections to the WDC Disclosure Statement are due by February 28, 2014 (approximately three weeks from the date of this Motion) and the hearing on the approval of the WDC Disclosure Statement is currently set for March 12, 2014. Accordingly, time is of the essence in order for both courts to consider certain critical cross-border issues that will affect both cases and to provide guidance and, if necessary, coordinated directions to principal parties in interest regarding the most cost-effective and prompt way to administer these cross-border cases to ensure that, among other things, the $25 million in proceeds of the XL Policy are distributed to victims of the derailment promptly.

18. The Committee respectfully requests that the hearing currently scheduled before the Court on February 11, 2014 at 10:00 a.m. be used as the procedural/scheduling conference to lay the framework for a subsequent in-person substantive joint status conference before this Court and the Canadian Court to address the cross-border issues discussed herein. The Committee suggests that the future substantive joint status conference be held in-person before your Honor and Justice Dumas (in a location convenient to both courts) and that key parties in interest be invited to discuss and possibly resolve issues such as distribution of the $25 million

proceeds of the XL Policy and the competing plan proposals. The $25 million in proceeds of the XL Policy are an asset which should be readily available for distribution to the victims of the derailment and it is critical to immediately address and resolve the issues concerning the availability of such insurance proceeds.

WHEREFORE, the Committee respectfully requests that the Court enter an order (i) setting a joint procedural/scheduling conference before the Court and the Canadian Court and (ii) granting such other relief as this Court may deem just and proper.

Dated: February 7, 2014

Respectfully submitted,

/s/ Richard P. Olson

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-and-

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Proposed Co-counsel to the Official Committee of Victims

EXHIBIT A

CROSS-BORDER INSOLVENCY PROTOCOL

EXHIBIT
A

CROSS-BORDER INSOLVENCY PROTOCOL

This cross-border insolvency protocol (the "Protocol") shall govern the conduct of all parties in interest in the Insolvency Proceedings (as such term is defined herein).

The American Law Institute's Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (the "Guidelines") attached as Schedule "A" hereto, shall be incorporated by reference and form part of this Protocol. Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

A. Background

1. Montreal, Maine & Atlantic Railway Ltd. ("MMA") operates in an integrated, international shortline freight railway system with its wholly-owned Canadian subsidiary, Montreal, Maine & Atlantic Canada Co. ("MMA Canada"). MMA is a Delaware corporation and operates from its head office in Hermon, Maine. MMA and MMA Canada, while separate companies, have fully integrated business operations and accounting, with MMA collecting most of the revenue and then transferring to MMA Canada the funds it requires to pay its expenses.

2. MMA (the "U.S. Debtor") has commenced reorganization proceedings (the "U.S. Proceedings") under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Maine (the "U.S. Court"). The U.S. Debtor is continuing in possession of its properties and is operating and managing its business, as debtor in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. MMA Canada (the "Canadian Debtor"), has commenced a concurrent proceeding (the "Canadian Proceeding") under Canada's Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, seeking relief from its creditors (collectively, the "Canadian Proceedings"). The Canadian Debtor has obtained an initial order of the Canadian Court (as amended and restated, the "Canadian Order"), under which, inter alia: (a) the Canadian Debtor has been determined to be entitled to relief under the CCAA; (b) Richter Advisory Group Inc. has been appointed as monitor (the "Monitor") of the Canadian Debtor, with the rights, powers, duties and limitations upon liabilities set forth in the CCAA and the Canadian Order; and (c) a stay of proceedings in respect of the Canadian Debtor has been granted.

4. For convenience, (a) the U.S. Debtor and the Canadian Debtor shall be referred to herein collectively as the "Debtors," (b) the U.S. Proceedings and the Canadian Proceedings shall be referred to herein collectively as the "Insolvency Proceedings," and (c) the U.S. Court and the Canadian Court shall be referred to herein collectively as the "Courts", and each individually as a "Court."

B. Purpose and Goals

5. Though full and separate plenary proceedings are pending in the United States for the U.S. Debtor and in Canada for the Canadian Debtor, the implementation of administrative

procedures and cross-border guidelines is both necessary and desirable to coordinate certain activities in the Insolvency Proceedings, protect the rights of parties thereto, ensure the maintenance of the Courts' respective independent jurisdiction and give effect to the doctrines of comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in the Insolvency Proceedings:

a. harmonize and coordinate activities in the Insolvency Proceedings before the Courts;

b. promote the orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith and avoid duplication of effort;

c. honor the independence and integrity of the Courts and other courts and tribunals of the United States and Canada, respectively;

d. promote international cooperation and respect for comity among the Courts, the Debtors, the Estate Representatives (which include the Chapter 11 Representatives and the Canadian Representatives as such terms are defined below) and other creditors and interested parties in the Insolvency Proceedings;

e. facilitate the fair, open and efficient administration of the Insolvency Proceedings for the benefit of all of the Debtors' creditors and other interested parties, wherever located; and

f. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Insolvency Proceedings.

As the Insolvency Proceedings progress, the Courts may also jointly determine that other cross-border matters that may arise in the Insolvency Proceedings should be dealt with under and in accordance with the principles of this Protocol. Where an issue is to be addressed only to one Court, in rendering a determination in any cross-border matter, such Court may: (a) to the extent practical or advisable, consult with the other Court; and (b) in its sole discretion and bearing in mind the principles of comity, either (i) render a binding decision after such consultation; (ii) defer to the determination of the other Court by transferring the matter, in whole or in part to the other Court; or (iii) seek a joint hearing of both Courts.

C. Comity and Independence of the Courts

6. The approval and implementation of this Protocol shall not divest nor diminish the U.S. Court's and the Canadian Court's respective independent jurisdiction over the subject matter of the U.S. Proceedings and the Canadian Proceedings, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors nor any

creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States of America or Canada.

7. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Proceedings and the hearing and determination of matters arising in the U.S. Proceedings. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceedings and the hearing and determination of matters arising in the Canadian Proceedings.

8. In accordance with the principles of comity and independence recognized herein, nothing contained herein shall be construed to:

a. increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an ex parte or "limited notice" basis;

b. require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States;

c. require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

d. require the Debtors, the Estate Representatives or the U.S. Trustee to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

e. authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or preclude the Debtors, the U.S. Trustee, any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other relevant jurisdiction including, without limitation, the rights of parties in interest to appeal from the decisions taken by one or both of the Courts.

9. The Debtors, the Estate Representative and their respective employees, members, agents and professionals shall respect and comply with the independent, non-delegable duties imposed upon them, if any, by the Bankruptcy Code, the CCAA, the CCAA Order and other applicable laws.

D. Cooperation

10. To assist in the efficient administration of the Insolvency Proceedings and in recognizing that the U.S. Debtor and Canadian Debtor may be creditors of the others' estates, the

Debtors and their respective Estate Representatives shall, where appropriate: (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court and (b) take any other appropriate steps to coordinate the administration of the Insolvency Proceedings for the benefit of the Debtors' respective estates.

11. To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court. In furtherance of the foregoing:

a. The U.S. Court and the Canadian Court may communicate with one another with respect to any procedural matter relating to the Insolvency Proceedings.

b. Where the issue of the proper jurisdiction or Court to determine an issue is raised by an interested party in either of the Insolvency Proceedings with respect to a motion or application filed in either Court, the Court before which such motion or application was initially filed may contact the other Court to determine an appropriate process by which the issue of jurisdiction will be determined; which process shall be subject to submissions by the Debtors, the U.S. Trustee, the Monitor and any interested party prior to a determination on the issue of jurisdiction being made by either Court.

c. The Courts may, but are not obligated to, coordinate activities in the Insolvency Proceedings such that the subject matter of any particular action, suit, request, application, contested matter or other proceeding is determined in a single Court.

d. The U.S. Court and the Canadian Court may conduct joint hearings with respect to any cross-border matter or the interpretation or implementation of this Protocol where both the U.S. Court and the Canadian Court consider such a joint hearing to be necessary or advisable. With respect to any joint hearings, unless otherwise ordered, the following procedures will be followed:

(i) A telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court.

(ii) Submissions or applications by any party that are or become the subject of a joint hearing of the Courts (collectively, "Pleadings") shall be made or filed initially only to the Court in which such party is appearing and seeking relief Promptly after the scheduling of any joint hearing, the party submitting such Pleadings to one Court shall file courtesy copies with the other Court. In any event, Pleadings seeking relief from both Courts shall be filed with both Courts.

(iii)Any party intending to rely on any written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in

connection with any joint hearing or application (collectively, "Evidentiary Materials") shall file or otherwise submit such materials to both Courts in advance of the joint hearing. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court.

(iv) If a party has not previously appeared in or attorned or does not wish to attorn to the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the joint hearing without, by the mere act of such filings, being deemed to have attorned to the jurisdiction of the Court in which such material is filed, so long as it does not request in its materials or submissions any affirmative relief from such Court.

(v) The Judge of the U.S. Court and the Justice of the Canadian Court who will preside over the joint hearing shall be entitled to communicate with each other in advance of any joint hearing, with or without counsel being present, to establish guidelines for the orderly submission of Pleadings, Evidentiary Materials and other papers and for the rendering of decisions by the Courts, and to address any related procedural, administrative or preliminary matters.

(vi) The Judge of the U.S. Court and the Justice of the Canadian Court, shall be entitled to communicate with each other during or after any joint hearing, with or without counsel present, for the purposes of determining whether consistent rulings can be made by both Courts, coordinating the terms upon of the Courts' respective rulings, and addressing any other procedural or administrative matters.

12. Notwithstanding the terms of the paragraph 11 above, this Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to: (a) matters presented to such Court; and (b) the conduct of the parties appearing in such matters.

13. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court in order to determine an issue before it, the Court with jurisdiction over such matter may, among other things, hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to paragraph 26 herein.

E. Retention and Compensation of Estate Representative and Professionals

14. The Monitor, its officers, directors, employees, counsel and agents, wherever located, (collectively the "Monitor Parties") and any other estate representatives in the Canadian

Proceedings (collectively, the "Canadian Representatives") shall be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives' tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the Canadian Debtor and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Proceedings under the CCAA or other applicable Canadian law. The Canadian Representatives shall not be required to seek approval of their retention in the U.S. Court for services rendered to the Debtors. Additionally, the Canadian Representatives: (a) shall be compensated for their services to the Debtors solely in accordance with the CCAA, the CCAA Order and other applicable Canadian law or orders of the Canadian Court; and (b) shall not be required to seek approval of their compensation in the U.S Court.

15. The Monitor Parties shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceedings, the Monitor Parties shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Monitor, the carrying out of its duties or the provisions of the CCAA and the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or willful misconduct.

16. Any estate representative appointed in the U.S. Proceedings, including without limitation any examiners or trustees appointed in accordance with section 1163 of the Bankruptcy Code (collectively, the "Chapter 11 Representatives") shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the Chapter 11 Representatives' tenure in office; (b) the retention and compensation of the Chapter 11 Representatives; (c) the Chapter 11 Representatives' liability, if any, to any person or entity, including the U.S. Debtor and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the Chapter 11 Representatives arising in the U.S. Proceedings under the Bankruptcy Code or other applicable laws of the United States. The Chapter 11 Representatives and their counsel and other professionals retained therefor shall not be required to seek approval of their retention in the Canadian Court. Additionally, the Chapter 11 Representatives and their counsel and such other professionals: (a) shall be compensated for their services to the Debtors solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their compensation for services performed for the Debtors in the Canadian Court.

17. Any professionals retained by or with the approval of the Canadian Debtor (collectively, the "Canadian Professionals"), shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in Canada with respect to services performed on behalf of the Canadian Debtor; and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court with respect to services performed on behalf of the Canadian Debtor.

18. Any professionals retained by the U.S. Debtor (the "Chapter 11 Professionals") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the Chapter 11 Professionals: (a) shall be subject to the procedures and standard for retention and compensation applicable in the U.S. Court under the Bankruptcy Code with respect to services performed on behalf of the U.S. Debtor and any other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court with respect to services performed on behalf of the U.S. Debtor.

F. Appearances

19. Upon any appearance or filing, as may be permitted or provided for by the rules of the applicable Court, the Debtors, their creditors and other interested parties in the Insolvency Proceedings, including the Estate Representatives and the U.S. Trustee, shall be subject to the personal jurisdiction of the Canadian Court or the U.S. Court, as applicable, with respect to the particular matters as to which they appear before that Court.

G. Notices

20. Notice of any motion, application or other pleading or paper filed in one or both of the Insolvency Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, telecopier or other electronic forms of communication) to the following: (a) all creditors and interested parties, in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under clause (a) of this sentence, counsel to the Debtors; the U.S. Trustee; the Monitor and any other statutory committees appointed in these cases and such other parties as may be designated by either of the Courts from time to time. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the U.S. Debtor or the Canadian Debtor shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of any orders, decisions, opinions or similar papers issued by the other Court in the Insolvency Proceedings.

21. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notices shall be provided in the manner and to the parties referred to in paragraph 20 above.

H. Effectiveness; Modification

22. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

23. The Guidelines attached hereto as Schedule A are subject to the following modifications:

a. the words 'in which case Guideline 7 should apply" are deleted from Guideline 6(c) and are replaced with the words "in which case Guideline 7(d) should apply";

b. Guidelines 7(a), (b) and (c) are deleted;

c. Guidelines 8(b) and (c) are deleted;

d. the words "Subject to Guideline 7(b)" from Guidelines 9(d) and (e) are deleted; and

e. Guideline 9(e) is further amended as follows:

The Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural, substantive or nonsubstantive matters relating to the joint hearing.

24. This Protocol may not be supplemented, modified, terminated, or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceeding to supplement, modify, terminate or replace this Protocol shall be given accordance with the notice provisions set forth in paragraph 20 above.

I. Procedure for Resolving Disputes Under this Protocol

25. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to the U.S. Court, the Canadian Court or both Courts upon notice in accordance with the notice provisions outlined in paragraph 20 above. In rendering a determination in any such dispute, the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either: (i) render a binding decision after such consultation; (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to such other Court; or (iii) seek a joint hearing of both Courts in accordance with paragraph 11 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity and inherent jurisdiction of the other Court established under existing law.

26. In implementing the terms of this Protocol, the U.S. Court and the Canadian Court may, in their sole, respective discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

a. the U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;

b. the Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;

c. copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 20 hereof; and

d. the Courts may jointly decide to invite the Debtors, the Estate Representatives, the U.S. Trustee and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court.

J. Preservation of Rights

27. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall: (a) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Estate Representatives, the U.S. Trustee or any of the Debtors' creditors under applicable law, including the Bankruptcy Code and the CCAA, and the orders of the Courts; or (b) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the United States.

THE AMERICAN LAW INSTITUTE

in association with

THE INTERNATIONAL INSOLVENCY INSTITUTE

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

As Adopted and Promulgated in Transnational Insolvency: Principles of Cooperation Among the NAFTA Countries

BY

THE AMERICAN LAW INSTITUTE
At Washington, D.C., May 16, 2000

And as Adopted by

THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001

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Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

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THE AMERICAN LAW INSTITUTE
At Washington, D.C., May 16, 2000

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THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001

The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* were developed by The American Law Institute during and as part of its Transnational Insolvency Project and the use of the *Guidelines* in cross-border cases is specifically permitted and encouraged.

The text of the *Guidelines* is available in English and several other languages including Chinese, French, German, Italian, Japanese, Korean, Portuguese, Russian, Swedish, and Spanish on the website of the International Insolvency Institute at http://www.iiiglobal.org/international/guidelines.html.

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Foreword by the Director of The American Law Institute

In May of 2000 The American Law Institute gave its final approval to the work of the ALI's Transnational Insolvency Project. This consisted of the four volumes eventually published, after a period of delay required by the need to take into account a newly enacted Mexican Bankruptcy Code, in 2003 under the title of *Transnational Insolvency: Cooperation Among the NAFTA Countries*. These volumes included both the first phase of the project, separate Statements of the bankruptcy laws of Canada, Mexico, and the United States, and the project's culminating phase, a volume comprising *Principles of Cooperation Among the NAFTA Countries*. All reflected the joint input of teams of Reporters and Advisers from each of the three NAFTA countries and a fully transnational perspective. Published by Juris Publishing, Inc., they can be ordered on the ALI website (www.ali.org).

A byproduct of our work on the Principles volume, these *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* appeared originally as Appendix B of that volume and were approved by the ALI in 2000 along with the rest of the volume. But the *Guidelines* have played a vital and influential role apart from the *Principles*, having been widely translated and distributed, cited and applied by courts, and independently approved by both the International Insolvency Institute and the Insolvency Institute of Canada. Although they were initially developed in the context of a project arrived at improving cooperation among bankruptcy courts within the NAFTA countries, their acceptance by the III, whose members include leaders

of the insolvency bar from more than 40 countries, suggests a pertinence and applicability that extends far beyond the ambit of NAFTA. Indeed, there appears to be no reason to restrict the *Guidelines* to insolvency cases; they should prove useful whenever sensible and coherent standards for cooperation among courts involved in overlapping litigation are called for. See, e.g., American Law Institute, International Jurisdiction and Judgments Project § 12(e) (Tentative Draft No. 2, 2004).

The American Law Institute expresses its gratitude to the International Insolvency Institute for its continuing efforts to publicize the *Guidelines* and to make them more widely known to judges and lawyers around the world; to III Chair E. Bruce Leonard of Toronto, who as Canadian Co-Reporter for the Transnational Insolvency Project was the principal drafter of the Guidelines in English and has been primarily responsible for arranging and overseeing their translation into the various other languages in which they now appear; and to the translators themselves, whose work will make the *Guidelines* much more universally accessible. We hope that this greater availability, in these new English and bilingual editions, will help to foster better communication, and thus better understanding, among the diverse courts and legal systems throughout our increasingly globalized world.

LANCE LIEBMAN
Director
The American Law Institute

January 2004

Foreword by the Chair of the International Insolvency Institute

The International Insolvency Institute, a world-wide association of leading insolvency professionals, judges, academics, and regulators, is pleased to recommend the adoption and the application in cross-border and multinational cases of The American Law Institute's *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases*. The *Guidelines* were reviewed and studied by a Committee of the III and were unanimously approved by its membership at the III's Annual General Meeting and Conference in New York in June 2001.

Since their approval by the III, the *Guidelines* have been applied in several cross-border cases with considerable success in achieving the coordination that is so necessary to preserve values for all of the creditors that are involved in international cases. The III recommends without qualification that insolvency professionals and judges adopt the *Guidelines* at the earliest possible stage of a cross-border case so that they will be in place whenever there is a need for the courts involved to communicate with each other, e.g., whenever the actions of one court could impact on issues that are before the other court.

Although the *Guidelines* were developed in an insolvency context, it has been noted by litigation professionals and judges that the *Guidelines* would be equally valuable and constructive in any international case where two or more courts are involved. In fact, in multijurisdictional litigation, the positive effect of the *Guidelines* would be even greater in cases where several courts are involved. It

is important to appreciate that the *Guidelines* require that all domestic practices and procedures be complied with and that the *Guidelines* do not alter or affect the substantive rights of the parties or give any advantage to any party over any other party.

The International Insolvency Institute expresses appreciation to its members who have arranged for the translation of the *Guidelines* into French, German, Italian, Korean, Japanese, Chinese, Portuguese, Russian, and Swedish and extends its appreciation to The American Law Institute for the translation into Spanish. The III also expresses its appreciation to The American Law Institute, the American College of Bankruptcy, and the Ontario Superior Court of Justice Commercial List Committee for their kind and generous financial support in enabling the publication and dissemination of the *Guidelines* in bilingual versions in major countries around the world.

Readers who become aware of cases in which the *Guidelines* have been applied are highly encouraged to provide the details of those cases to the III (fax: 416-360-8877; e-mail: *info@iiiglobal.org*) so that everyone can benefit from the experience and positive results that flow from the adoption and application of the *Guidelines*. The continuing progress of the *Guidelines* and the cases in which the *Guidelines* have been applied will be maintained on the III's website at *www.iiiglobal.org*.

The III and all of its members are very pleased to have been a part of the development and success of the *Guidelines* and commend The American Law Institute for its vision in developing the *Guidelines* and in supporting

their worldwide circulation to insolvency professionals, judges, academics, and regulators. The use of the *Guidelines* in international cases will change international insolvencies and reorganizations for the better forever, and the insolvency community owes a considerable debt to The American Law Institute for the inspiration and vision that has made this possible.

E. BRUCE LEONARD
Chairman
The International Insolvency Institute

Toronto, Ontario
March 2004

Judicial Preface

We believe that the advantages of co-operation and co-ordination between Courts is clearly advantageous to all of the stakeholders who are involved in insolvency and reorganization cases that extend beyond the boundaries of one country. The benefit of communications between Courts in international proceedings has been recognized by the United Nations through the *Model Law on Cross-Border Insolvency* developed by the United Nations Commission on International Trade Law and approved by the General Assembly of the United Nations in 1997. The advantages of communications have also been recognized in the European Union Regulation on Insolvency Proceedings which became effective for the Member States of the European Union in 2002.

The *Guidelines for Court-to-Court Communications in Cross-Border Cases* were developed in the American Law Institute's Transnational Insolvency Project involving the NAFTA countries of Mexico, the United States and Canada. The *Guidelines* have been approved by the membership of the ALI and by the International Insolvency Institute whose membership covers over 40 countries from around the world. We appreciate that every country is unique and distinctive and that every country has its own proud legal traditions and concepts. The *Guidelines* are not intended to alter or change the domestic rules or procedures that are applicable in any country and are not intended to affect or curtail the substantive rights of any party in proceedings before the Courts. The *Guidelines* are intended to encourage and facilitate co-operation in international cases while observing all applicable rules and procedures of the Courts that are respectively involved.

The *Guidelines* may be modified to meet either the procedural law of the jurisdiction in question or the particular circumstances in individual cases so as to achieve the greatest level of co-operation possible between the Courts in dealing with a multinational insolvency or liquidation. The *Guidelines,* however, are not restricted to insolvency cases and may be of assistance in dealing with non-insolvency cases that involve more than one country. Several of us have already used the *Guidelines* in cross-border cases and would encourage stakeholders and counsel in international cases to consider the advantages that could be achieved in their cases from the application and implementation of the *Guidelines.*

Mr. Justice David Baragwanath
High Court of New Zealand
Auckland, New Zealand

Chief Justice Donald I. Brenner
Supreme Court of British Columbia
Vancouver

Hon. Sidney B. Brooks
United States Bankruptcy Court
District of Colorado
Denver

Hon. Charles G. Case, II
United States Bankruptcy Court
District of Arizona
Phoenix

Mr. Justice Miodrag Dordević
Supreme Court of Slovenia
Ljubljana

Hon. James L. Garrity, Jr.
United States Bankruptcy Court
Southern District of New York (Ret'd)
Shearman & Sterling
New York

Mr. Justice Paul R. Heath
High Court of New Zealand
Auckland, New Zealand

Chief Judge Burton R. Lifland
United States Bankruptcy Appellate
Panel for the Second Circuit
New York

Hon. George Paine II
United States Bankruptcy Court
District of Tennessee
Nashville

Mr. Justice Adolfo A.N. Rouillon
Court of Appeal
Rosario, Argentina

Mr. Justice Wisit Wisitsora – At
Business Reorganization Office
Government of Thailand
Bangkok

Mr. Justice J.M. Farley
Ontario Superior Court of Justice
Toronto

Hon. Allan L. Gropper
Southern District of New York
United States Bankruptcy Court
New York

Hon. Hyungdu Kim
Supreme Court of Korea
Seoul

Mr. Justice Gavin Lightman
Royal Courts of Justice
London

Hon. Chiyong Rim
District Court
Western District of Seoul
Seoul, Korea

Hon. Shinjiro Takagi
Supreme Court of Japan (Ret'd)
Industrial Revitalization Corporation of Japan
Tokyo

Mr. Justice R.H. Zulman
Supreme Court of Appeal of South Africa
Parklands

Guidelines
Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administrating authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting

Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an autho-

rized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

(a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

(b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affect-

ed parties in such manner as the Court considers appropriate;

(c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both

Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

(d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official tran-

script prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and

(d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

(a) Each Court should be able to simultaneously hear the proceedings in the other Court.

(b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.

(c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.

(d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.

(e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized

Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as

may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.

EXHIBIT B

CCAA PROPOSAL

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Daniel E. Larochelle, l.l.b. avocat

Lac-Mégantic, ce 30 janvier 2014

Palais de Justice
Juge Gaétan Dumas
375, King Ouest
SHERBROOKE, (Québec)
J1H 6B9

Objet : C.S.: 450-11-000167-134

Mr Justice Dumas, Dear all,

As you know we are counsel to the Class Action Plaintiffs. We are writing to you in your supervisory capacity and in response to the comments that you made when we were last before you on January 23, 2014. At that time, you encouraged counsel to be both practical and creative in formulating a plan for the treatment of MMA's $25 million insurance fund (the "XL Insurance Fund"), and to conclude the CCAA proceedings. In this regard, we believe that it is important to have a "Made in Lac-Mégantic" solution.
Over the last several weeks, the Class Action Plaintiffs have received proxies executed by 1,526 class members, expressly authorizing the Class Action Plaintiffs to represent and speak for them in all aspects of these proceedings and the U.S. Chapter 11 proceedings. We view this as a positive development as it indicates that a significant (and growing) proportion of the derailment victims are able to speak with one voice.

The Class Action Plaintiffs propose the following to move this matter to conclusion:

1. **On February 11, 2014**: at the hearing before you, the Class Action Plaintiffs will be seeking:

   (a) a Representation Order, which, if granted, will serve to further increase the likelihood of an acceptable plan being passed.

   (b) approval of a simplified claims process (the motion materials in relation to the claims process will be served and filed with the court by no later than

February 4, 2014). The proposed claims process will permit creditors and the Court to quickly determine the claims pool for the purposes of voting on any plan, and to address the claims in a way that is proportionate to the amounts available for distribution. Based upon this simplified claims process, we propose a Claims Bar date of April 30, 2014.

2. **By February 28, 2014:** the Class Action Plaintiffs will file a restructuring plan (the "Plan") having the following features:

(a) the XL Insurance Fund will be paid into Court, for distribution in accordance with a plan of distribution to be formulated by the Class Action Plaintiffs having regard to a series of guiding principles clearly articulated in the Plan[1], subject to the receipt of all necessary court approvals.

(b) no professional fees will be paid out of the XL Insurance Fund, whether to the Class Action Plaintiffs or to any other professional, whether in Canada or the United States—the entire amount will distributed to the persons entitled thereto in accordance with the provisions of the plan described above[2];

(c) any third parties who, prior to a date to be fixed, enter into a settlement that is (a) acceptable to the Class Action Plaintiffs and the Quebec government, or either of them with the approval of the Court, will receive the benefit of the release provisions of the Plan, and the Court shall have ongoing jurisdiction to implement any such settlement on motion by the Class Action Plaintiffs and/or the Quebec government;

(d) the proceeds of the sale of the Debtor's business, the Travellers' insurance funds and any other estate funds (collectively, the "Estate Funds", which, for certainty, do not include the XL Insurance Fund) will be distributed in accordance with the scheme of priorities established by the Initial Order and applicable federal and provincial laws.

3. **By May 31, 2014**: A meeting of creditors to vote on the Plan will be convened by no later that May 15, 2014. In the interim, negotiations between stakeholders can take place. The ultimate goal of the proposals presented by the Class Action Plaintiffs and the 1,526 derailment victims whom they represent is to conclude these CCAA proceedings efficiently and fairly, with minimal further expense to creditors, and to start providing compensation to derailment victims prior to the one-year anniversary of the accident on July 6, 2014.

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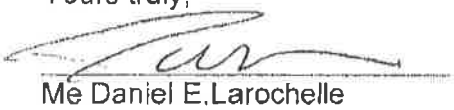
[1] At this time, we anticipate that those principles will include the following: (1) the coverage provisions of the XL insurance policy and any applicable legislative priorities; (2) proportionality (as to proof of damages, recovery and in all other respects); (3) the seriousness of the damages and any demonstrable hardship suffered; and, (4) such other factors as the Court determines to be relevant to the fair and equitable distribution of the funds.

[2] For certainty, the payment professional fees incurred in connection with the advancement of class members' interests in the class action and in these proceedings, will be addressed in connection with the recovery, if any, made on behalf of class members from third parties, whether as part of these proceedings or as part of the pending class action.

Yours truly,



Me Daniel E.Larochelle

c.c. Service List

PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

In re: **MONTREAL MAINE & ATLANTIC RAILWAY, LTD.,** **Debtor.**	**Chapter 11** **Case No. 13-10670 (LHK)**

ORDER GRANTING MOTION OF OFFICIAL COMMITTEE OF VICTIMS PURSUANT TO CROSS-BORDER INSOLVENCY PROTOCOL REQUESTING JOINT STATUS CONFERENCE BEFORE U.S. AND CANADIAN COURT

Upon consideration of the motion (the "Motion")[1] of the Official Committee of Victims (the "Committee") appointed in the chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor") requesting a joint procedural/scheduling conference before this Court and the Canadian Court; all as more fully set forth in the Motion; and it appearing that the relief requested is authorized by the Cross-Border Insolvency Protocol; and it appearing that the Court has jurisdiction to consider the Motion and the relief requested therein; and due notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and after consultation with the Canadian Court as provided for under the Cross-Border Insolvency Protocol; and after due deliberation and sufficient cause appearing therefor; it is hereby **ORDERED** that:

1. The Motion is GRANTED.

2. A joint procedural/scheduling conference (the "Status Conference") shall be held on February 11, 2014, at 10:00 a.m. (ET) before this Court and the Canadian Court.

[1] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

3. The Status Conference shall be governed by the provisions of the Cross-Border Insolvency Protocol.

4. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: February____, 2014

HONORABLE LOUIS H. KORNREICH
CHIEF UNITED STATES BANKRUPTCY JUDGE

No : 450-11-000167-134

SUPERIOR COURT
(Commercial Division)
DISTRICT OF SAINT-FRANÇOIS
PROVINCE OF QUÉBEC

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

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

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

DEBTOR

and

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

MONITOR- PETITIONER

Motion for Directions, Affidavit, List of Exhibit and Exhibit R-1

ORIGINAL

Mtre. Sylvain Vauclair
File no.: 5430-3

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