

CANADA

**SUPERIOR COURT**  
(Commercial Division)

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PROVINCE OF QUEBEC  
DISTRICT OF ST-FRANÇOIS

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

N°: 450-11-000167-134

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

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

**Debtor Company**

and

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

**Monitor**

and

**GUY OUELLET, SERGE JACQUES and LOUIS-**  
**SERGES PARENT**

**Court Appointed**  
**Representatives of the**  
**Class Members-**  
**PETITIONERS**

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**MOTION OF THE COURT APPOINTED REPRESENTATIVES OF CLASS MEMBERS**  
**FOR AN ORDER AUTHORIZING THE FILING OF ADDITIONAL CLAIMS**  
**(Sections 10 and 19 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36)**

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**TO THE HONOURABLE JUSTICE GAÉTAN DUMAS OF THE SUPERIOR COURT, SITTING**  
**IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF SAINT-FRANÇOIS, THE**  
**PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:**

## A. OVERVIEW

1. On March 31, 2014, this Court rendered judgment granting a motion by Montreal, Maine & Atlantic Canada Co. ("**MM&A**" or "**Debtor**") an order approving a process to solicit claims and requiring claims to be filed by June 13, 2014, unless otherwise authorized by this Court (the "**Claims Process**").
2. On April 4, 2014, the Honourable Justice Gaetan Dumas made the following orders:
  - a. an order requiring claims to be filed by June 13, 2014, unless otherwise authorized by this Court (the "**Claims Process Order**").
  - b. an order appointing the Petitioners as representatives (the "**Class Representatives**") in these proceedings of Class Members (as defined in the Representation Order) (the "**Representation Order**").
3. The Class Representatives now seek an order authorizing additional claims (the "**Additional Claims**").

## B. ORDER SOUGHT

4. The Class Representatives ask this Honourable Court to authorize the filing of the Additional Claims, as will be filed in the coming days.

## C. GROUNDS FOR THIS MOTION

5. It is well established that a CCAA court is entitled to exercise its discretion to authorize claims filed after the claims bar date, provided it is in the interest of overall fairness and the underlying purpose of the CCAA.
6. It is common in proceedings of this nature, where there are diffuse claims and recovery is perceived to be unlikely because there is little or no money available for claims, for creditors not to file claims.
7. Accordingly, the Class Representatives undertook extensive efforts to reach the public:
  - a. A mailing was sent to 3,000 addresses in the city of Lac-Mégantic and surrounding villages regarding the Claims Process;
  - b. Four individuals were hired on a full-time basis to provide information and assistance to the local population in filling out the claims forms;
  - c. A website was established to provide information and an online version of the claims forms;
  - d. On April 22, 2014, the Court Appointed Representatives' counsel, Me Daniel Larochelle, Me Joel Rochon, and Me Jeff Orenstein conducted a press conference attended by RDI, TVA, La Tribune, Journal MRG, Journal L'Echo de Frontenac, Radio-Canada and CTV Montreal, where they detailed the Claims Process;

- e. The Claims Process was detailed on the Facebook page of the Lac-Mégantic class action;
  - f. Families of known deceased persons were notified;
  - g. Calls offering information and support to businesspersons, property owners, and commercial and residential tenants in the “zone rouge”;
  - h. A meeting was held on May 15, 2014 with local businesspersons and the Monitor;
  - i. A informational advertisement was on local television between April 28 and June 13, 2014;
  - j. A mailing was sent to owners of residential and commercial properties in the “zone rouge” between May 8 and 15, 2014.
8. In spite of the efforts and diligence of the Class Representatives, a number of meritorious claims were not advanced prior to June 13, 2014 for the following reasons:
- a. A general lack of understanding about the Claims Process, the role of the Monitor and the possibility of a Plan of Arrangement with the participation of third parties;
  - b. The complexity and sophistication of the claims forms, which total more than 100 pages;
  - c. Criticisms of the process leveled by a lawyer involved in US proceedings:

Des proches de personnes décédées et leurs avocats ont l'impression qu'on tente de les acheter à rabais.

Hans Mercier, l'avocat qui représente une vingtaine de familles qui ont intenté des poursuites aux États-Unis est en désaccord complet avec la procédure qui oblige les gens à remplir avant le 13 juin un formulaire de réclamation. «On les met devant un choix impossible. Ils ne savent pas ce qu'ils vont avoir d'un côté, ils ne savent pas ce qu'ils vont avoir de l'autre, mais ils doivent choisir. C'est déplorable! Ce qu'ils veulent, d'abord et avant tout, c'est d'avoir justice et que les gens responsables paient. Si les gens vont mettre de l'argent pour s'acheter des quittances, parce qu'on l'a appelé comme cela dans le processus, on dit: "C'est une vente de quittances, on fait une vente de feu, on vend des quittances!" Comment ces gens vont avoir l'impression d'avoir eu justice? C'est là je pense que les tribunaux font erreur: ils pensent que les gens veulent de l'argent rapidement et ce n'est pas vrai»

Excerpted from “Recours canadien ou une poursuite au civil aux États-Unis? Plusieurs victimes déchirées”, April 23, 2014

<http://tvanouvelles.ca/lcn/judiciaire/archives/2014/04/20140423-202107.html>

- d. At the time of this Court's order on April 4, 2014, there were minimal funds available for an eventual Plan of Arrangement, which led many to forego completing the claims forms.
9. The Additional Claims can be divided into three main categories:
    - a. **Evacuation Claims:** these claims consist of 1,136 evacuees who did not file claims and were previously unknown to the Court Appointed Representatives (the "**Additional Evacuation Claims**");
    - b. **Economic Loss Claims:** these claims consist of individuals whose claims were not advanced prior to June 13, 2014, and claims which were advanced prior to June 13, 2014 but were not filed with the Monitor because of a technical error and/or inadvertence (the "**Additional Economic Loss Claims**").
    - c. **Moral Damage Claims:** these claims consist of 150 individuals with legitimate claims whose claims were not advanced prior to June 13, 2014 and were not brought to the attention of the Court Appointed Representatives (the "**Additional Moral Damage Claims**");
  10. The creditors having Additional Claims are virtually all unsophisticated individuals without personal legal representation.
  11. The identities of the individuals with Additional Evacuation Claims are known to the Monitor and the Quebec government.
  12. The Plan of Arrangement has not been voted on by the creditors or approved by the Court.
  13. The granting of leave to file the Additional Claims will enhance the likelihood that an eventual Plan of Arrangement will be approved because of the widely held sentiment in the community that all individuals who suffered damage should be compensated.
  14. Conversely, the rejection of the Plan of Arrangement is more likely if the Additional Claims are not authorized.
  15. The Fifteenth Report of the Monitor on the State of the Petitioner's Financial Affairs and the Plan of Arrangement, filed January 9, 2015, indicates that an eventual Plan of Arrangement will contemplate distinct categories such as "Wrongful Death Claims", "Bodily Injury and Moral Damages Claims", and "Property and Economic Damages Claims", among others.
  16. The Additional Evacuation Claims fall within the category of "Moral Damages Claims" and the Additional Economic Loss Claims fall within the category of "Economic Damages Claims".
  17. The structure of the Plan of Arrangement is such that there is no possibility of prejudice to creditors having claims in the other categories of claimants.

18. Furthermore, although the filing of the Additional Claims will dilute recoveries within certain of the categories of claims contemplated by the Draft Plan, there is no real prejudice because:
- a. The claims are meritorious (or remain subject to disallowance in the event that they are not);
  - b. Creditors have yet to vote on the plan, with the result that the Additional Claims can be factored into their decision as to whether or not to support the Plan;
  - c. There is no dilution of recovery outside of the specific categories to which the claims pertain, and any potential dilution within the categories to which the claims pertain will be nominal;
  - d. The authorization of the Additional Claims will not unduly delay the Plan of Arrangement.
19. In contrast, the creditors having the Additional Claims will suffer prejudice in virtue of losing any recourse against the third parties participating in the Plan of Arrangement.

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

GRANT the present Motion;

AUTHORIZE the filing of the Additional Claims with the Monitor;

THE WHOLE, without costs, unless contested.

**LAC-MÉGANTIC, April 14, 2015**

(S) Daniel E. Larochelle

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ME DANIEL E. LAROCHELLE  
Attorney for the Court Appointed Representatives

**MONTRÉAL, April 14, 2015**

(S) Jeff Orenstein

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CONSUMER LAW GROUP  
Me Jeff Orenstein  
Attorneys for the Court Appointed Representatives

CANADA

**SUPERIOR COURT**  
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**NOTICE OF PRESENTATION**

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TO: SERVICE LIST

TAKE NOTICE that the present *Motion of the Court Appointed Representatives of Class Members for an Order Authorizing the Filing of Additional Claims* will be presented pro forma before the honourable Gaétan Dumas, j.s.c., of the district of Saint-François, on April 15, 2015, in room 1 of the Sherbrooke Courthouse, located at 375, rue King Ouest, Sherbrooke, at 10:00 a.m. or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

**LAC-MÉGANTIC, April 14, 2015**

(S) Daniel E. Larochelle

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ME DANIEL E. LAROCHELLE  
Attorney for the Court Appointed Representatives

**MONTRÉAL, April 14, 2015**

(S) Jeff Orenstein

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CONSUMER LAW GROUP INC.  
Me Jeff Orenstein  
Attorneys for the Court Appointed Representatives



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Representatives of the  
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**AFFIDAVIT**

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I, the undersigned, **Daniel E. Laroche**, attorney, practicing my profession at 5031,  
boul. Des Vétérans, Lac-Mégantic, Québec, district de Mégantic, solemnly affirm:

1. I am the attorney for the Petitioners in this matter, and a resident of the Town of Lac-Mégantic. I am swearing this affidavit in support of a motion for an order authorizing the filing of certain addition claims by or on behalf of persons represented by the Petitioners (the "**Additional Claims**")
2. On March 31, 2014, this Court rendered judgment granting a motion by Montreal, Maine & Atlantic Canada Co. ("**MM&A**" or "**Debtor**") for an order approving a process to solicit claims and establishing a claims bar date of June 13, 2014 (the "**Claims Process**").
3. On April 4, 2014, the Honourable Justice Gaétan Dumas made the following orders:
  - a. an order requiring claims to be filed by June 13, 2014, unless otherwise authorized by this Court (the "**Claims Process Order**").
  - b. an order appointing the Petitioners as representatives (the "**Class Representatives**") in these proceedings of Class Members (as defined in the Representation Order) (the "**Representation Order**").
4. Accordingly, I undertook, along with the Class Representatives, extensive efforts to ensure that the public was aware of the Claims Process:
  - a. A mailing was sent to 3,000 addresses in the city of Lac-Mégantic and surrounding villages regarding the Claims Process;
  - b. Four individuals were hired on a full-time basis to provide information and assistance to the local population in filling out the forms related to the Claims Process (the "**Claims Forms**");
  - c. A website was established to provide information and an online version of the Claims Forms;
  - d. On April 22, 2014, I conducted a press conference alongside co-counsel to the Class Representatives, Me Joel Rochon, and Me Jeff Orenstein attended by RDI, TVA, La Tribune, Journal MRG, Journal L'Echo de Frontenac, Radio-Canada and CTV Montreal, where we detailed the Claims Process;
  - e. The Claims Process was detailed on the Facebook page of the Lac-Mégantic class action;
  - f. Families of known deceased persons were notified;
  - g. Calls were made offering information and support to businesspersons, property owners, and commercial and residential tenants in the "red zone";

- h. A meeting was held on May 15, 2014 with local businesspersons and the Monitor;
  - i. An informational advertisement was on local television between April 28 and June 13, 2014;
  - j. A mailing was sent to owners of residential and commercial properties in the "red zone" between May 8 and 15, 2014.
5. Despite the extensive efforts of the Class Representatives and myself, a number of creditors did not file claims prior to June 3, 2014.
6. I understand the following factors to have negatively impacted the claims process:
- a. a general lack of understanding about the Claims Process, the role of the Monitor and the possibility of a Plan of Arrangement with the participation of third parties;
  - b. the complexity and sophistication of the Claims Forms, which total more than 100 pages;
  - c. press reports of criticisms of the claims process leveled by a lawyer involved in proceedings in the United States;
  - d. at the time of this Court's order on April 4, 2014, there were no funds available for an eventual Plan of Arrangement, which led many to forego completing the Claims Forms;
7. The Additional Claims can be divided into three main categories:
- a. **Evacuation Claims:** these claims consist of 1,136 evacuees who did not file claims and were previously unknown to the Court Appointed Representatives;
  - b. **Economic Loss Claims:** these claims consist of individuals whose claims were not advanced prior to June 13, 2014, and claims which were advanced prior to June 13, 2014 but were not filed with the Monitor because of a technical error and/or inadvertence;
  - c. **Moral Damage Claims:** these claims consist of 150 individuals with legitimate claims whose claims were not advanced prior to June 13, 2014 and were not brought to the attention of the Court Appointed Representatives;

8. I determined the number of the Evacuation Claims by comparing the list of evacuees who had filed claims with a list provided by the Government of Quebec of total evacuees.
9. The identities of the individuals with Evacuation Claims are known to the Monitor and the Quebec government.
10. The creditors having Additional Claims are virtually all unsophisticated individuals without personal legal representation.
11. Furthermore, a technical error led to a number of claims not being filed prior to June 3, 2014 despite being submitted prior to the date. The Monitor was immediately informed of this issue and kept apprised.
12. That I have taken cognizance of the attached *Motion of the Class Representatives for an Order Authorizing Additional Claims* (the "Motion") and the facts alleged therein are true.
13. The Motion is made in good faith.

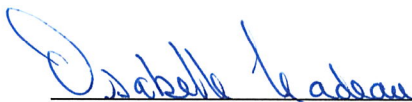
AND I HAVE SIGNED



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Daniel E. Larochelle

Solemnly affirmed before me at Lac-Mégantic  
this 14<sup>th</sup> day of April, 2015



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Isabelle Nadeau, Commissioner for oaths  
for the province of Quebec

