

CANADA

SUPERIOR COURT
(Commercial Division)

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

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

TO THE HONOURABLE MR. JUSTICE GAÉTAN DUMAS J.S.C. OF THE SUPERIOR
COURT, SITTING IN COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF SAINT-
FRANÇOIS, THE PETITIONERS 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”) for 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 Mr. Justice Gaétan Dumas J.S.C. 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 and their counsel as representatives (the “Class Representatives”) in these proceedings of Class Members (as defined in the Representation Order) [the “Representation Order”].
3. The Claims Process Order established June 13, 2014 as a claims bar date, but contemplates that this Court maintains jurisdiction over the process as a whole.
4. The Representation Order appointed the Class Representatives as representatives of the Class Members (as defined in Appendix “A” attached to the Representation Order) which, among other things, authorized the Class Representatives to:
 - a) assist Class Members and their representatives with the completion of their individual proof of claim;
 - b) deal, on behalf of the Class Members, with any government ministry, department or agency;
 - c) file such proof of claim (in addition to the representative claim on behalf of wrongful death victims) as may be permitted by further order of the Court; and,
 - d) seek advice and direction of the Court in respect of the discharge of their powers, responsibilities and duties.
5. The Class Representatives now seek an order:
 - a) authorizing the filing of certain additional claims described in **Exhibit R-1** to this motion (the “**June 2014 Claims**”), and
 - b) advice and direction of the Court in respect of the treatment of the claims described in **Exhibit R-2 en liasse** to this Motion (the “**January 2015 Claims**” and the “**April 2015 Claims**”) [collectively with the June 2014 Claims, the “**Additional Claims**”].

B. ORDER SOUGHT

6. The Class Representatives ask this Honourable Court to:
- a) authorize the filing of the June 2014 Claims;
 - (...)
 - b) direct and authorize the Class Representatives to interview Class Members seeking to file additional claims and to prepare an affidavit for them briefly describing the reason for the delay in filing;
 - c) authorize the Monitor to admit the claim without further order if, after reviewing the affidavit and, if the Monitor believes it necessary, interviewing the claimant, the Monitor is satisfied that:
 - i. the claim is made in good faith;
 - ii. the creditor failed to file the claim through inadvertence or, if the claim was not filed intentionally, extraordinary circumstances exist that mitigate that intention;
 - iii. the admission of the claim is not otherwise prejudicial to the process; and,
 - d) direct that where the Monitor is not prepared to admit a claim then the claimant shall be at liberty to bring the claim before the Court for consideration, with the assistance of the Class Representatives, or, alternatively, at the Claimant's own expense or on a self-represented basis.

C. GROUNDS FOR THIS MOTION

7. 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.
8. 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 some creditors not to file claims.
9. Class Representatives undertook extensive efforts to reach the public at large prior to the expiry of the claims bar date. In particular:
 - a. A mailing was sent to 3,000 addresses in the city of Lac-Mégantic and surrounding villages regarding the Claims Process, including advice as to the claims bar date;

- b. In addition to local counsel, four (4) individuals were hired on a full-time basis to provide information and assistance to the local population in filling out 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 were made 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. 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 "zone rouge" between May 8 and 15, 2014;
 - k. The claims process in general received extensive local and regional newspaper coverage.
10. The result of these efforts was extremely positive: approximately 3,800 claims were filed in a town having a population of less than 6,000 residents.
11. However, in spite of the diligent efforts of the Class Representatives to advise of the claims process, a number of claims were not advanced prior to June 13, 2014.
12. The Additional Claims can be divided into three main categories:
- a. **The June 2014 Claims.** Approximately 102 claims as shown in Exhibit R-1 relating to economic loss and moral damages,
 - i. 32 of these claims are dated on or before the claims bar date but, for reasons that are unclear (possibly technical error and/or inadvertence on the part of the Class Representatives or their counsel or agents or mailing

delays), were only received by the Monitor *after* the claims bar date, between June 14, 2014 and June 30, 2014;

- ii. the balance of the claims are dated between June 18, 2014 and June 30, 2014, and, in keeping with the terms of the claims procedure order, the claims have not been filed with the Monitor.

- b. **The January 2015 Claims.** Approximately 81 claims as shown in Exhibit R-2 advanced contemporaneously with MMA's disclosure of the existence of a sizeable settlement fund.
 - c. **The April 2015 Claims.** Approximately 25 claims as shown in Exhibit R-2 in respect of moral damages (including certain evacuation claims) advanced after MMA's presentation of potential distributions under the plan.
13. The creditors having Additional Claims are virtually all unsophisticated individuals without personal legal representation.
14. The Class Representatives have yet to conduct a structured interview of each of the persons seeking to advance the January 2015 Claims and the April 2015 Claims, but the reasons provided for the failure to advance the claim prior to the bar date have included:
- a. a 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. previous denial of the impact of the disaster and/or a desire not to think about it;
 - c. the complexity and sophistication of the claims forms, which total more than 100 pages;
 - d. criticisms of the process leveled by a lawyer involved in the U.S. proceedings, which tended to suggest that persons would be better served by not filing a claim:

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>

- e. 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.
15. The Plan of Arrangement contemplates distinct categories for distribution, such as “Wrongful Death Claims”, “Bodily Injury and Moral Damages Claims”, and “Property and Economic Damages Claims”, among others.
 16. The vast majority of the Additional Claims fall within the category of “Moral Damages Claims”, with a few “Property and Economic Damages Claims”, and the structure of the Plan of Arrangement is such that there is no possibility of dilution of the claims of creditors having claims in the other categories of claimants, although the filing of the Additional Claims may dilute recoveries in the categories in which they are filed.
 17. The Additional Claims appear to be meritorious in the sense that they satisfy the criteria for the receipt of a distribution under the proposed restructuring plan, but they remain subject to disallowance in the event that they do not.
 18. The Plan of Arrangement has not yet been voted on by the creditors or approved by the Court, and so the Additional Claims can be factored into creditors’ decision as to whether or not to support the Plan.
 19. The Additional Claims can be admitted only for the purposes of distribution and not for voting, so that the filing of the Additional Claims will not unduly delay the Plan of Arrangement.

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

GRANT the present Motion authorizing the filing of the June 2014 Claims with the Monitor;

(...)

AUTHORIZE the Class Representatives to interview Class Members seeking to file additional claims and to prepare an affidavit for them briefly describing the reason for the delay in filing;

AUTHORIZE the Monitor to admit the claim without further order if, after reviewing the affidavit and, if the Monitor believes it necessary, interviewing the claimant, the Monitor is satisfied that:

- (i) the claim is made in good faith;
- (ii) the creditor failed to file the claim through inadvertence or, if the claim was not filed intentionally, extraordinary circumstances exist that mitigate that intention;
- (iii) the admission of the claim is not otherwise prejudicial to the process; and,

PROVIDE DIRECTION that where the Monitor is not prepared to admit a claim then the claimant shall be at liberty to bring the claim before the court for consideration, with the assistance of the Class Representatives, or, alternatively, at the Claimant's own expense or on a self-represented basis.

THE WHOLE without costs, unless contested.

LAC-MÉGANTIC, April 20, 2015

(S) Daniel E. Larochelle

ME DANIEL E. LAROCHELLE
Attorney for the Court Appointed Representatives

MONTRÉAL, April 20, 2015

(S) Jeff Orenstein

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

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and

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GROUPE CONSEIL INC.)

Monitor

and

GUY OUELLET, SERGE JACQUES and LOUIS-
SERGES PARENT

Court Appointed
Representatives of the
Class Members-
PETITIONERS

NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the present *Further Fresh as Amended 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 Mr. Justice Gaétan Dumas, j.s.c., of the district of Saint-François, on April 27, 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 20, 2015

(S) Daniel E. Larochelle

ME DANIEL E. LAROCHELLE
Attorney for the Court Appointed Representatives

MONTRÉAL, April 20, 2015

(S) Jeff Orenstein

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

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LIST OF EXHIBITS
BY THE COURT APPOINTED REPRESENTATIVES OF THE CLASS MEMBERS

R-1: Copy of the June 2014 Claims;

R-2: Copy of the January 2015 and April 2015 Claims;

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(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***

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

COPY

Me Daniel E. Larochelle

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Email: jorenstein@clg.org

BC 4013

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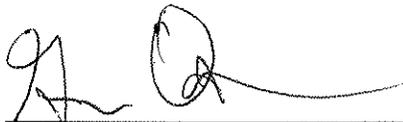
AFFIDAVIT DE GUY OUELLET

Je soussigné, GUY OUELLET, domicilié et résidant au 4282, rue Mauger à
Lac-Mégantic, Québec, G6B 1N7, affirme solennellement ce qui suit :

1. Je suis l'un des représentants des membres du recours collectif et
requérant dans la présente requête;

2. J'ai pris connaissance de la requête intitulée: "*Fresh as amended motion of the Court appointed representatives of Class members for an order authorizing the filing of additional/late claims*" datée du 20 avril 2015;
3. La requête m'a été lue en anglais, traduite en français et expliquée par mon procureur Daniel Larochelle;
4. J'ai également pris connaissance du plan d'argumentation daté du 23 avril 2015;
5. Après ces explications, je suis d'accord avec le contenu de cette requête qui sera entendue le 27 avril 2015;

EN FOI DE QUOI J'AI SIGNÉ :



GUY OUELLET

Déclaré solennellement devant moi à Lac-Mégantic, le 24 avril 2015



Isabelle Nadeau # 201594
Commissaire à l'assermentation pour le Québec



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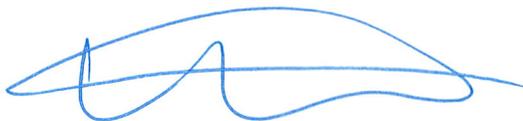
**Court Appointed
Representatives of the
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AFFIDAVIT DE LOUIS-SERGES PARENT

Je soussigné, LOUIS-SERGES PARENT, domicilié et résidant au 309-4929,
Boul. des Vétérans à Lac-Mégantic, Québec, G6B 0C1, affirme solennellement
ce qui suit :

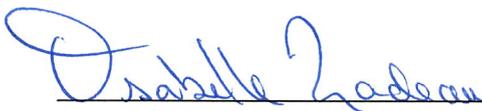
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2. J'ai pris connaissance de la requête intitulée: « Fresh as amended motion of the Court appointed representatives of Class members for an order authorizing the filing of additional/late claims » datée du 20 avril 2015;
3. J'ai également pris connaissance du plan d'argumentation daté du 23 avril 2015;
4. Après ces explications, je suis d'accord avec le contenu de cette requête qui sera entendue le 27 avril 2015;

EN FOI DE QUOI J'AI SIGNÉ :



LOUIS-SERGES PARENT

Déclaré solennellement devant moi à Lac-Mégantic, le 24 avril 2015



Isabelle Nadeau # 201594
Commissaire à l'assermentation pour le Québec

