

CANADA

**SUPERIOR COURT**  
(Commercial Division)

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PROVINCE OF QUÉBEC  
DISTRICT OF ST-FRANÇOIS  
N°: 450-11-000167-134

(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);**

PETITIONER

and

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

MONITOR

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**PETITIONER'S MOTION FOR ADVICE AND DIRECTIONS**  
**PURSUANT TO THE REPRESENTATION ORDER**  
**(Sections 9 and 11 et seq. of the *Companies' Creditors Arrangement Act*,**  
**R.S.C. 1985, c. C-36 ("CCAA"))**

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

**I. INTRODUCTION**

1. On July 6, 2013, a train operated by Montreal Maine & Atlantic Canada Co. ("**MMAC**") derailed in the city of Lac-Mégantic, Quebec, Canada, causing numerous fatalities, bodily injuries, psychological and moral damages to thousands of people, and extensive property and environmental damages (the "**Derailment**");
2. Numerous claims have been made against MMAC and its parent company, Montreal, Maine & Atlantic Railway Ltd ("**MMA**"), arising out of the Derailment;
3. On August 7, 2013, MMA filed a voluntary petition in the United States Bankruptcy Court, District of Maine for relief under Chapter 11 of the U.S. Bankruptcy Code;
4. On August 8, 2013, the Honourable Justice Castonguay of the Quebec Superior Court granted an initial order in respect of MMAC (the "**Initial Order**") pursuant to the CCAA and Richter Advisory Group Inc. (Richter Groupe Conseil Inc.) was appointed as monitor of MMAC (the "**Monitor**");

5. On April 4, 2014, the Court issued a Claims Procedure Order that was subsequently amended on June 13, 2014 (as amended, the "**Claims Procedure Order**"), whereby a Claims Bar Date was established and creditors were called upon to file their claims;
6. The purpose of the Claims Procedure Order was essentially to allow MMAC and the Monitor to assess the total breadth of claims. Said order provided that the procedure for the review and determination of claims, as well as for the calling, holding and conduct of a creditors' meeting, would be established by further order of the Court;
7. Also on April 4, 2014, the Court issued a Representation Order (the "**Representation Order**") essentially appointing the Class Representatives (defined in the Representation Order as the Class Action Plaintiffs) and their attorneys, the Class Counsel, as representatives of the Class Members (each as defined in the Representation Order);
8. On March 31, 2015, MMAC filed a *Plan of Compromise and Arrangement* (the "**Plan**") with a view to providing compensation for the victims of the Derailment;

## II. ORDER SOUGHT

9. The Representation Order provides, at paragraph 9 thereof, that any party may apply to the Court for advice and directions in the discharge of the powers, responsibilities and duties of the Class Counsel and Class Representatives, or for the variation of such powers, responsibilities and duties;
10. For the reasons more fully set out below, the Petitioner seeks such advice and directions, namely with respect to the power of the Class Representatives to bind the Class Members, whether in respect of the Plan or otherwise;

## III. GROUND FOR THIS MOTION

11. On April 14, 2015, Class Counsel filed a *Motion of the Court Appointed Representatives of Class Members for an Order Authorizing the Filing of Additional Claims* (the "**Original Late Claims Motion**");
12. The Original Late Claims Motion was filed with the Class Representatives, namely Guy Ouellette, Serge Jacques and Louis-Serge Parent, as petitioners;
13. Said motion sought the authorization to file approximately 1,500 new claims and was supported by an affidavit of attorney Daniel E. Larochelle, a member of the Class Counsel;
14. The Original Late Claims Motion was presented on a *pro forma* basis on April 15, 2015, at which time the Court raised certain issues as to whether or not Class Counsel had obtained the appropriate mandate or instructions prior to filing the Original Late Claims Motion;
15. Class Counsel present at the April 15<sup>th</sup> hearing were unable to clearly confirm any such mandate and could not fully address how Class Counsel had even consulted the Class Representatives prior to filing the Original Late Claims Motion;

16. The affidavit of Daniel E. Larochelle in support of the Original Late Claims Motion made no reference to any such mandate or consultation and no affidavits of the Class Representatives were filed in support of the motion;
17. On April 20, 2015, Class Counsel filed a *Fresh as Amended Motion of the Court Appointed Representatives of Class Members for an Order Authorizing the Filing of Additional/Late Claims* (the "**Amended Late Claims Motion**"), which Motion is supported by a new affidavit of Daniel E. Larochelle;
18. The Amended Late Claims Motion is, in effect, more an entirely new motion than an amended version of the Original Late Claims Motion;
19. Most strikingly, the number of late claims targeted by the motion is at most 208 (likely less due to duplicate claims) rather than nearly 1,500;
20. Furthermore, the nature of the late claims sought to be filed has been significantly limited, as appears from paragraph 12 of the Amended Late Claims Motion, as well as exhibits R-1 and R-2 filed in support thereof;
21. The explanation for these sweeping changes to the Class Representatives' approach to late claims would appear to be found at paragraph 27 of the affidavit of Daniel E. Larochelle filed in support of the Amended Late Claims Motion;
22. While the affidavit in support of the Original Late Claims Motion made no reference to any form of mandate or consultation with the Class Representatives, Mtre. Larochelle's new affidavit clearly states that he and Mtre Joel Rochon have spoken with the Class Representatives and that said Class Representatives "have advised" Class Counsel to file the Amended Late Claims Motion in respect of the specific categories of late claims referred to therein;
23. On April 14, 2015, Class Counsel also put forth before the Court a Motion of the Court Appointed Representatives of Class Members for an Order accepting the filing of an amended plan and advice;
24. The said Motion was not supported by any affidavit from the petitioners of said Motion; namely, Guy Ouellette, Louis Serge Parent and Serge Jacques;
25. Paragraph 1 of the Representation Order states as follows:

*[1] GRANTS the Class Action Petitioners' motion appointing them and their counsel (Daniel Larochelle, Consumer Law Group inc., Rochon Genova LLP and Paliare Roland Rosenberg Rothstein LLP, together, the "Class Counsel") as representatives in this CCAA Proceeding of the Class Members (as defined in paragraph 2 of this Order) on the terms and conditions set forth in this Order.*

(Emphasis added)

26. Paragraph 5 of the Representation Order states as follows:

*[5] DIRECTS that the Class Action Petitioners, or their counsel on their behalf, are authorized to take all steps and to perform all acts*

*necessary or desirable to carry out the terms of this Order on behalf of the Class Members, including, without limitation, by:*

- (a) *negotiating and approving, on behalf of the Class Members, and binding the Class Members to, any settlements, including the terms of any future court order or Plan, and providing advice to Class Members in respect of same, and for this purpose the Class Action Petitioners shall have access to all individual Proofs of Claims filed by Class Members in the CCAA proceedings;*

(....)

(Emphasis added)

27. The significant shift of position between the two late claims motions, coupled with the representations of Class Counsel at the April 15<sup>th</sup> hearing, would appear to suggest that there may be a certain degree of confusion as to the powers and duties of the Class Counsel and Class Representatives pursuant to the Representation Order;
28. Petitioner respectfully submits that the sections of the Representation Order underlined above should not be construed so as to authorize that Class Counsel act on behalf of, let alone bind, the Class Members without the appropriate mandate or instructions from the Class Representatives;
29. That said, it may have been considered or could be argued (wrongly in the Petitioner's opinion) that the terms "*them and their counsel*" and "*their counsel on their behalf*" would suggest otherwise;
30. For the Representation Order to effectively fulfill its purpose, it is essential that the interests of Class Members be voiced through the Class Representatives, who may then instruct Class Counsel accordingly. It is the Class Representatives who have been chosen as the appropriate representatives of the Class Members;
31. It is essential that any ambiguity in this regard be clarified, and if required, that the Representation Order be amended;
32. Creditors will soon be called upon to vote on the approval or rejection of the Plan; in fact, the Petitioner's *Motion for an order for the convening, holding and conduct of a Creditors' Meeting* (the "**Creditors' Meeting Motion**") is scheduled to be heard on April 30, 2015;
33. In an effort to avoid any ambiguity with respect to that vote, the Petitioner hereby seeks the advice and direction of the Court as to the powers and duties of the Class Representatives and Class Counsel;
34. Petitioner respectfully submits that, pursuant to the Representation Order, it is the Class Representatives themselves, namely Guy Ouellette, Serge Jacques and Louis-Serge Parent, acting as a whole, who are the Class Representatives and that they solely have the right to vote in respect of the Plan, the whole pursuant to the Creditors' Meeting Order that may be rendered following the hearing on the Creditors' Meeting Motion;

35. Petitioner respectfully submits that, if necessary, clarity may be brought to the Representation Order by making the following amendments and additions thereto:

a) To paragraph 1:

[1] GRANTS the Class Action Petitioners' motion appointing them and their counsel (Daniel Larochelle, Consumer Law Group inc., Rochon Genova LLP and Paliare Roland Rosenberg Rothstein LLP, together, the "Class Counsel") as representatives in this CCAA Proceeding of the Class Members (as defined in paragraph 2 of this Order) on the terms and conditions set forth in this Order and appointing Daniel Larochelle, Consumer Law Group inc., Rochon Genova LLP and Paliare Roland Rosenberg Rothstein LLP (together, the "Class Counsel") as counsel to the Class Members and Class Action Petitioners.

b) To paragraph 5:

[5] DIRECTS that the Class Action Petitioners, or their counsel on their behalf and pursuant to their instructions, are authorized to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order on behalf of the Class Members, including, without limitation, by: (...)

c) By adding a new paragraph 5.1, as follows:

[5.1] DIRECTS that, in the absence of a consensus among the Class Representatives, decisions as to which steps shall be taken and which acts shall be performed pursuant paragraph 5 of this Order will be determined by simple majority of the votes of all Class Representatives on any given issue or, as necessary, by an application for advice and directions pursuant to paragraph 9 of this Order.

#### IV. CONCLUSION

36. Petitioner respectfully submits that it is in the interest of all Creditors and other stakeholders that clarity be brought to the Representation Order in order to avoid any risk of ambiguity as to how the Class Members may be bound by the Class Representatives, whether in respect of the Plan or otherwise;

37. The Monitor has confirmed that it supports the present Motion;

38. The present Motion is well founded in fact and in law;

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

**GRANT** the present *Motion for Advice and Directions Pursuant to the Representation Order* (the "**Motion**");

**DECLARE** that the notices given of the presentation of the Motion are adequate and sufficient;

**PROVIDE DIRECTIONS** clarifying the Representation Order issued on April 4, 2015 as it pertains to the Class Representatives' ability to bind the Class Members, the whole as follows or as the Court may otherwise see fit:

**ORDER** that paragraph 1 of the Representation Order be replaced with the following:

[1] **GRANTS** the Class Action Petitioners' motion appointing them as representatives in this CCAA Proceeding of the Class Members (as defined in paragraph 2 of this Order) on the terms and conditions set forth in this Order and appointing Daniel Laroche, Consumer Law Group inc., Rochon Genova LLP and Paliare Roland Rosenberg Rothstein LLP (together, the "**Class Counsel**") as counsel to the Class Members and Class Action Petitioners.

**ORDER** that the first section of paragraph 5 of the Representation Order be replaced with the following:

[5] **DIRECTS** that the Class Action Petitioners, or their counsel on their behalf and pursuant to their instructions, are authorized to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order on behalf of the Class Members, including, without limitation, by:

**ORDER** that the following paragraph be added to the Representation Order:

[5.1] **DIRECTS** that, in the absence of a consensus among the Class Representatives, decisions as to which steps shall be taken and which acts shall be performed pursuant paragraph 5 of this Order will be determined by simple majority of the votes of all Class Representatives on any given issue or, as necessary, by an application for advice and directions pursuant to paragraph 9 of this Order.

**ORDER** the provisional execution of the order notwithstanding any appeal, without the necessity of furnishing any security;

**THE WHOLE** without costs, save and except in the event of contestation.

MONTREAL, April 24, 2015

  
**GOWLING LAFLEUR HENDERSON LLP**  
Attorneys for Petitioner

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF SAINT-FRANÇOIS  
N°: 450-11-000167-134

**SUPERIOR COURT**  
(Commercial Division)

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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)**

PETITIONER

and

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

MONITOR

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**NOTICE OF PRESENTATION**

TO: **SERVICE LIST**

**TAKE NOTICE** that the present *Motion for advice and directions pursuant to the representation order* will be presented for adjudication before the honourable 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 King Street West, Sherbrooke, at 10:00 a.m. or so soon as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

MONTREAL, April 24, 2015



**GOWLING LAFLEUR HENDERSON LLP**  
Attorneys for Petitioner

No. 450-11-000167-134

SUPERIOR COURT  
(COMMERCIAL DIVISION)  
DISTRICT OF ST-FRANÇOIS

(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

BL0052

**PETITIONER'S MOTION FOR ADVICE  
AND DIRECTIONS  
PURSUANT TO THE REPRESENTATION  
ORDER**

ORIGINAL

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