

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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**MOTION FOR THE APPROVAL OF THE AMENDED PLAN**  
**OF COMPROMISE AND ARRANGEMENT**  
**(Sections 6 and 11.02 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 (the "**Bankruptcy Court**") for relief under Chapter 11 of the U.S. Bankruptcy Code (the "**Bankruptcy Case**");
4. On August 8, 2013, the Honourable Justice Castonguay of the Quebec Superior Court (the "**CCAA 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 August 21, 2013, the United States Trustee appointed Robert J. Keach to serve as trustee in the Bankruptcy Case (the “**Trustee**”);
6. Pursuant to the Initial Order, a stay of proceedings was ordered until and including September 6, 2013 (the “**Stay Period**”). That Stay Period has since been extended by this CCAA Court on twelve (12) previous occasions with the most recent extension having been granted until December 15, 2015 pursuant to an order dated as of April 15, 2015, the whole as appears from the Court record;
7. On January 23, 2014, the CCAA Court authorized the sale of MMAC’s assets. That sale closed on June 30, 2014, as appears from the Monitor’s Certificate filed in the Court record;
8. Following the sale of its assets, MMAC ceased operating and the focus of these CCAA proceedings shifted entirely toward negotiations with potentially liable third parties predicated on constituting an indemnity fund with a view to provide a compensation to the victims of the Derailment in exchange for releases;
9. It is in this context that the Court issued a detailed judgment on February 17, 2014 confirming that such third party releases would be appropriate in the circumstances, insofar as suitable settlements could be reached with those third parties interested in participating in the process;
10. That judgment was not appealed, nor did any party seek to have it withdrawn;
11. On the basis of the determinations made by the Court therein, numerous parties proceeded to invest significant time and resources into the negotiation of third party settlements, as well as in the CCAA process as a whole;
12. The Court itself has invested significant time and resources into this matter since February 2014, namely on the basis that third party settlements would allow for the creation of a compensation fund for victims;
13. On September 19, 2014, MMAC filed its *Motion for a Ninth Extension of the Stay Period*, which included a *Term Sheet in respect of the Plan of Compromise and Arrangement of Montreal, Maine & Atlantic Canada Co.* (the “**Plan Term Sheet**”);
14. The purpose of the Plan Term Sheet was to set out the structure of the Plan that MMAC anticipated being in a position to file. Amongst the key terms of the Plan Term Sheet was the inclusion of settlements that may be reached with potentially liable third parties in exchange for releases barring any litigation against them arising from the Derailment;
15. As stated in the motion, virtually all known potentially liable third parties had been approached regarding possible settlements and intensive, confidential negotiations were underway with numerous parties;
16. At the time, an amount of \$16,500,000 had been amassed in addition to \$25,000,000 from the XL Insurance policy;

17. Under the Plan Term Sheet, MMAC's release was to be limited to the policy with XL Insurance since MMAC's only contribution to the plan was its role as the vehicle through which the XL Insurance indemnity would be paid;
18. On January 9, 2015, MMAC filed its *Motion for an Eleventh Order Extending the Stay Period* and, in support of same, filed a draft Plan of Compromise and Arrangement (the "**Draft Plan**");
19. The Draft Plan confirmed that negotiations had resulted in firm commitments from third parties totaling \$207,800,000.00;
20. Through the concerted and coordinated efforts of MMAC, the Monitor, the Trustee and those creditors that held an overwhelming majority of the votes in respect of any plan, namely the Province of Quebec, the Class Representatives and the Wrongful Death Victims (collectively, the "**Major Stakeholders**"), MMAC officially filed its *Plan of Compromise and Arrangement* on March 31, 2015 (the "**Initial Plan**");
21. Following further negotiations with the Major Stakeholders, as well as the settlement recently reached with World Fuel Services Inc. and its related entities, MMAC filed an *Amended Plan of Compromise and Arrangement* on June 8, 2015 (the "**Amended Plan**");
22. The Amended Plan was submitted to Creditors at the creditors meeting held on June 9, 2015 where it was unanimously approved with 3,879 positive votes representing approximately \$694 million of votes. Not a single creditor voted against the Amended Plan;
23. Note that all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Amended Plan;

## II. **ORDER SOUGHT**

24. MMAC seeks an order approving the Amended Plan, the whole in accordance with the Draft Order set out at Schedule C to the Amended Plan (the "**Draft Order**");

## III. **GROUNDS FOR THIS MOTION**

25. In an effort to proceed with a fair and timely distribution to creditors, MMAC and the Monitor, with the involvement of the Major Stakeholders, has structured the Amended Plan based on a preliminary analysis of claims;
26. Note that the Amended Plan is identical to the Initial Plan as it pertains to the categories of claims, voting rights and the distribution mechanism;
27. In addition to the adjustments made following settlements reached after the filing of the Initial Plan, notable amendments include:
  - a) Changes to section 3.3(k) in order to account for the release of the directors of MMAC to the same extent as the other Released Parties;

- b) Changes to section 4.2 whereby a global amount of “Economic Savings” in the Property and Economic Damages Claims category is sufficient to increase the overall carve-out for parents, siblings, grandparents and grandchildren from 5% to 12.5%;
- c) Changes to section 5.3 in order to clarify the fact that the paramountcy of Settlement Agreements applies only as between the parties thereto. In respect of anyone else, the terms of the Amended Plan prevail;

### **Categories of claims**

- 28. The Amended Plan itself, at Articles 3 and 4, sets out the allocation of voting and distribution rights between the seven (7) different categories of claims. These categories are based on the nature of the claims and are as follows:
  - a) Wrongful Death Claims;
  - b) Bodily Injury and Moral Damages Claims;
  - c) Property and Economic Damages Claims;
  - d) Subrogated Insurer Claims;
  - e) Government Claims;
  - f) Non-Derailment Claims; and
  - g) Indemnity Claims;
- 29. While claims have been divided into categories, the Amended Plan provides that all creditors shall vote as a single class. That said, in light of the unanimous vote, a vote by category would not have altered the outcome;
- 30. With respect to Wrongful Death Claims and Bodily Injury and Moral Damages Claims, the Plan provides for the valuation of claims according to a points system set out in Schedules E and F to the Amended Plan, the whole irrespective of the amounts of the claims filed in said categories. This points system has been the subject of extensive discussions between the various interested parties, including the Major Stakeholders;
- 31. Using this points system, the Amended Plan provides that Wrongful Death Claims, in the aggregate, would represent no more than 22.2% in value of all votes cast by creditors. Wrongful Death Claims have thus been attributed a maximum total value of \$200,000,000.00;
- 32. Also using this points system, the Amended Plan provides that Bodily Injury and Moral Damages Claims, in the aggregate, would represent no more than 11.1% in value of all votes cast by creditors. Bodily Injury and Moral Damages Claims have thus been attributed a maximum total value of \$100,000,000.00;
- 33. The value of Property and Economic Damages Claims has been attributed based on a preliminary estimate that MMAC and the Monitor believe to be sufficiently accurate. In

- the aggregate, Property and Economic Damages Claims would represent no more than 8.3% in value of all votes cast by creditors for a maximum total value of \$75,000,000.00;
34. Following the preliminary analysis conducted by MMAC and the Monitor, the value of the Subrogated Insurer Claims represents the aggregate of all such claims filed by the Claims Bar Date (as defined in the Claims Procedure Order), namely \$33,701,330.00. Subrogated Insurer Claims would thus represent no more than 3.8% in value of all votes cast by creditors for a maximum total value of \$33,701,330.00;
  35. Also following the preliminary analysis conducted by MMAC and the Monitor, the value of Government Claims represents the aggregate of all such claims filed by the Claims Bar Date (as defined in the Claims Procedure Order) after adjustment for duplication and for the amendments to the claims of the City of Lac-Mégantic, which was increased from \$5,000,000 to \$20,000,000, and the CSST, which increased from \$313,775 to \$4,915,257 (see 4.2(e) of the Amended Plan);
  36. Government Claims would thus represent no more than 48.5% in value of all votes cast by creditors for a maximum total value of \$435,626,775.00;
  37. As set forth in the Amended Plan, Non-Derailment Claims are not entitled to distribution thereunder. For voting purposes, the value of Non-Derailment Claims represents the aggregate face value of all such claims filed by the Claims Bar Date (as defined in the Claims Procedure Order). Non-Derailment Claims would thus represent no more than 6.1% in value of all votes cast by creditors;
  38. Also according to the Amended Plan, creditors having filed Indemnity Claims shall have no right to vote on the Amended Plan and will not be eligible for distribution;

#### **Value of claims for voting purposes**

39. The Meeting Order provides that the value of each vote within its given category, subject to the maximum total value attributed to such category under the Initial Plan and as set forth above, will be proportional to the face value of a given proof of claim versus the face value of all proofs of claim filed in a given category. For example:
  - a) The total face value of all Wrongful Death Claims is \$369,375,000.00. A claim with a face value of \$1,000,000.00 would thus represent 0.27% of the face value of all Wrongful Death Claims. As stated above, Wrongful Death Claims have been attributed a maximum total value of \$200,000,000.00. As such, a \$1,000,000.00 claim would be valued at \$540,000.00 for voting purposes, or 0.27% of \$200,000,000.00;
  - b) The total face value of all Bodily Injury and Moral Damages Claims is \$740,389,978.00. A claim with a face value of \$1,000,000.00 would thus represent 0.13% of the face value of all Bodily Injury and Moral Damages Claims. As stated above, Bodily Injury and Moral Damages Claims have been attributed a maximum total value of \$100,000,000.00. As such, a \$1,000,000.00 claim would be valued at \$130,000.00 for voting purposes, or 0.13% of \$100,000,000.00;

- c) The total face value of all Property and Economic Damages Claims is \$219,316,021.00. A claim with a face value of \$1,000,000.00 would thus represent 0.46% of the face value of all Property and Economic Damages Claims. As stated above, Property and Economic Damages Claims have been attributed a maximum total value of \$75,000,000.00. As such, a \$1,000,000.00 claim would be valued at \$345,000.00 for voting purposes, or 0.46% of \$75,000,000.00;
40. According to the Amended Plan, Subrogated Insurer Claims, Government Claims and Non-Derailment Claims are valued for voting purposes at 100% of their face value, after adjustment for duplication with respect to Government Claims;

#### **Voting by Class Members through Class Representatives**

41. Pursuant to the Representation Order of April 4, 2014, the Class Action Petitioners, or the Class Counsel on their behalf, have the power to bind Class Members (each as defined in the Representation Order) in respect of the Plan. As such, pursuant to the Meeting Order, the Class Representatives voted on behalf of such creditors;
42. Those having opted out of class representation pursuant to the Representation Order were permitted to vote individually or by proxy;

#### **Creditors having filed claims only in the Bankruptcy Case**

43. As disclosed to the CCAA Court on previous occasions, numerous creditors having Bodily Injury and Moral Damages Claims, as well as Property and Economic Damages Claims, opted to only file their claims in the Bankruptcy Case and did not file claims in these CCAA proceedings. This decision appears to be motivated by a fear of the possible effect that their voluntary and direct involvement in these CCAA proceedings could have on their U.S. lawsuits against potentially liable third parties;
44. Pursuant to the Meeting Order, their claims filed in the Bankruptcy Case are deemed filed in the CCAA proceedings as well (the “**Deemed Filing**”); however, such Deemed Filing is limited to voting and distribution purposes;
45. As such, should any Deemed Filing claim be subject to dispute, such dispute would be resolved within the scope of the Bankruptcy Case, where such creditors opted to file their claims;
46. The majority of creditors with Wrongful Death Claims also opted to only file their claims in the Bankruptcy Case for what appears to be a fear of the possible effect that their voluntary and direct involvement in these CCAA proceedings could have on their U.S. lawsuits against potentially liable third parties;
47. Upon the hearing of the motion for the Claims Procedure Order, it was known that many Wrongful Death Victims (as defined in the Representation Order) would not file in the CCAA proceedings for the reasons set out above. Because these creditors are the primary victims of the Derailment, MMAC requested and obtained, as part of the Claims Procedure Order, an order permitting the Class Representatives to file a protective proof of claim (the “**Protective Claim**”) on behalf of the Wrongful Death Victims (see paragraph 6 of the Claims Procedure Order). The Claims Procedure Order further

provides that the Protective Claim shall be deemed null and void without further order of the Court with respect to any Wrongful Death Victim who will have filed a proof of claim on an individual basis before the Claims Bar Date (as defined in the Claims Procedure Order);

48. According to the Meeting Order, the Protective Claim is counted for voting purposes and the votes of creditors benefiting therefrom was cast by the Class Representatives, except for those creditors having opted out of class representation pursuant to the Representation Order within the prescribed delay. Said creditors were permitted to vote individually or by proxy based on the value attributed to their claim in the Protective Claim, the whole subject to the valuation mechanism referred to above;

### **Creditors' Meeting and Notices**

49. As appears from the Monitor's Sixteenth Report in keeping with the Meeting Order, the following measures were taken in order to inform the creditors about the Plan :
- a) Placement of newspaper notices in the following newspapers: La Presse, L'Echo de Frontenac, La Tribune, The Sherbrooke Record and the Montreal Gazette. All notices were published twice in each publication and the Trustee also published notices in the U.S.;
  - b) Mailing to all known creditors and parties on the service list, including:
    - i) A copy of the Initial Plan in English and French;
    - ii) Voting letter and proxy letter in English and French (to be completed only by those who have opted out or otherwise do not meet the definition of Class Member under the terms of the Representation Order);
    - iii) Notification of the various information session / meeting dates;
    - iv) The Monitor's report on the Initial Plan in English and French;
    - v) Post-traumatic stress form to be filed, where applicable, with the Monitor by August 31, 2015;
    - vi) A copy of the Creditors' Meeting Order in English and French;
  - c) Publication of all documents on the Monitor's website including the Chapter 11 Plan of Liquidation and Disclosure Statement.
50. At the information sessions held in Lac Mégantic on May 27, 2015 and June 3, 2015, all creditors in attendance were remitted copies of a power point presentation. Copies of those presentations will be filed in support of the Monitor's Twentieth Report;
51. At the creditors' meeting held on June 9, 2015, another power point presentation was shown to all creditors in attendance. A copy of that presentation will be filed in support of the Monitor's Twentieth Report as well. This new presentation accounted for the impact of the settlements reached on June 8<sup>th</sup>, as well as the amendments to the Initial Plan;

52. At the information sessions and creditors' meeting, the Monitor and MMAC's counsel explained the Initial Plan and Amended Plan, including the estimated distributions to the different categories of creditors according to the points system;
53. It was made clear that the amounts presented were net of the Administration Charge (\$20 million plus taxes);
54. It was also clearly stated that the estimated distributions did not account for any fees payable to the attorneys for the creditors, with specific reference being made to Class Counsel and the Wrongful Death Victims having signed mandates with U.S. counsel:

**IV. THE AMENDED PLAN SHOULD BE SANCTIONED**

55. MMAC has acted in good faith throughout these proceedings and all statutory conditions for the approval of the Amended Plan are met;
56. MMAC respectfully submits that the Amended Plan is fair and reasonable. This is all the more clear following the unanimous vote;
57. In fact, the only party having raised any issue with respect to the Amended Plan is also the only potentially liable third party that has not settled. That contestation appears to be raised for purely strategic reasons;
58. The Amended Plan, including the settlements and third party releases provided for therein, are exactly in keeping with what MMAC, the Monitor, the Major Stakeholders, the Trustee and this Honourable Court hoped to achieve when MMAC was permitted to remain under the protection of the CCAA after its assets were sold and its operations ceased;
59. The third party releases and injunctions provided for in the Amended Plan should be granted because:
  - a) They are absolutely essential to the Amended Plan, especially insofar as MMAC will not (and cannot) contribute. There is no question: without the releases and injunctions provided in favour of the Released Parties, there would be no contributions to the Settlement Funds and there would be no plan;
  - b) The monetary contributions are very significant and thus fully warrant the releases and injunctions sought;
  - c) The Amended Plan benefits virtually all parties involved:
    - i) the victims of the Derailment will receive significant, timely compensation that could otherwise take years to arrive;
    - ii) MMAC will receive releases that are in line with its contribution to the Amended Plan, which is essentially limited to acting as the vehicle allowing for a timely and structured settlement of the XL Insurance indemnity and the other settlements reached;



- iii) The general public interest will be served in that the Province and City of Lac Mégantic will receive timely compensation for taxpayer money spent in the wake of the Derailment;
  - iv) Moreover, a significant amount of complex and costly litigation will be avoided in that only one party will remain subject to proceedings relating to the Derailment. That party loses absolutely no rights under the Amended Plan and is free to defend itself in the same manner as though MMAC were bankrupt;
60. The orders sought pursuant to the Draft Order are in the best interest of the victims of the Derailment and of the public as a whole;
61. The Monitor supports the conclusions sought pursuant to the Draft Order, as appears from the Monitor's Twentieth Report;

**V. SETTLEMENT AGREEMENTS TO BE FILED UNDER SEAL**

62. It is a condition of the various Settlement Agreements, save and except for the XL Settlement Agreement, that Schedule B to the Amended Plan be filed under seal in order to preserve the confidentiality of the settlements;
63. This is provided for at section 1.6 of the Amended Plan as well;
64. It is all the more appropriate to maintain the confidentiality of the Settlement Agreements in light of that fact that:
- a) The Settlement Funds (amounting to over \$431 million according to current exchange rates) have been publicly disclosed, thereby allowing creditors to assess the fairness and reasonableness of the contributions;
  - b) The Major Stakeholders, subject to undertakings of confidentiality and with the agreement of the Released Parties, were made aware of the terms of settlement and agreed with same;
  - c) Confidentiality was required by the Released Parties in order to secure their participation in negotiations;
  - d) The confidentiality of the Settlement Agreements does not cause any prejudice to any party;
65. 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 the approval of the amended plan of compromise and arrangement* (the "**Motion**");

**ISSUE** an order substantially in the form of the Draft Order filed in support of the Amended Plan of Compromise and Arrangement as Schedule C;

**ORDER** that Schedule B to the Amended Plan and the Settlement Agreements included therein, save and except for the XL Settlement Agreement, be filed under seal, the whole subject to further order of this Court;

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

MONTREAL, June 11, 2015

(S) GOWLING LAFLEUR HENDERSON

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**GOWLING LAFLEUR HENDERSON LLP**  
Attorneys for Petitioner

CANADA

**SUPERIOR COURT**  
(Commercial Division)

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**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 the Approval of the Amended Plan of Compromise and Arrangement* will be presented for adjudication before the honourable Gaétan Dumas, j.s.c., of the district of Saint-François, on **June 17 2015**, in **room 1** of the Sherbrooke Courthouse, located at 375, rue King Ouest, Sherbrooke, at 9 :30 a.m. or so soon as counsel may be heard.

**DO GOVERN YOURSELVES ACCORDINGLY.**

MONTREAL, June 11, 2015

(S) GOWLING LAFLEUR HENDERSON

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**GOWLING LAFLEUR HENDERSON LLP**  
Attorneys for Petitioner