

CANADA

SUPERIOR COURT
(Commercial Division)

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

MOTION TO VARY THE ORDER APPROVING THE AMENDED PLAN
OF COMPROMISE AND ARRANGEMENT
(Sections 6 and 11 of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36 ("CCAA"))

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. 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;
7. Following further negotiations with the Major Stakeholders, as well as the settlement 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**");
8. 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;
9. On July 13, 2015, this Honourable Court issued an order approving the Amended Plan (as rectified on August 3, 2015, the "**Canadian Approval Order**");
10. On July 27, 2015, the Canadian Pacific Railway Company ("**CP**"), which had opposed the approval of the Amended Plan, filed a motion for leave to appeal the Canadian Approval Order (the "**CP Motion for Leave**");
11. The CP Motion for Leave was initially scheduled to be heard on September 9, 2015 but that hearing was postponed unilaterally by the Court of Appeal to October 13, 2015 in order to avoid any potential conflict of interest between the presiding judge and the attorneys for the various parties involved in this portion of the debate;
12. On August 20, 2015, the Bankruptcy Court issued an order granting relief under Chapter 15 of the U.S. Bankruptcy Code, thereby recognizing and enforcing the Canadian Approval Order in the United States;
13. At a hearing held on September 24, 2015 in the Bankruptcy Case, the Trustee sought confirmation of his Plan of Liquidation (the "**US Plan**"), which is intended to mirror the effects of the Amended Plan in the United States;
14. In similar fashion to its opposition to the approval of the Amended Plan, CP opposed confirmation of the US Plan;
15. After discussions between the parties, the US Plan confirmation hearing was adjourned and it was announced to the Bankruptcy Court that discussions were underway with respect to judgment reduction language to be negotiated on both sides of the border. It was also announced that an agreement on this language could lead to the withdrawal of all of CP's oppositions and appeals, including the CP Motion for Leave;
16. Note that all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Amended Plan;

II. ORDER SOUGHT

17. MMAC seeks an order varying the Canadian Approval Order in accordance with the conclusions hereof, namely in order to harmonize the judgment reduction provisions applicable in Canada and in the United States, the whole in accordance with the agreement reached with CP;

III. GROUNDS FOR THIS MOTION

18. As alluded to above, should this Honourable Court proceed to enter the order sought, CP shall withdraw any and all opposition to the Amended Plan, including the CP Motion for Leave;
19. The Canadian Approval Order and the US Approval Order shall then no longer be subject to any appeal, thereby allowing for implementation of the Amended Plan within the coming months;
20. More importantly, the granting of this motion may allow distribution of the Settlement Funds to begin before the end of 2015;
21. MMAC respectfully submits that these amendments are administrative in nature and serve to better give effect to the implementation of the Amended Plan and to the Approval Orders. They are not adverse to the financial or economic interests of the Creditors or the Released Parties;
22. Moreover, they do not add to or detract from the releases and injunctions provided for in the Amended Plan and the Canadian Approval Order, nor do they grant MMA or MMAC any release beyond that which is set out in the Amended Plan and the US Plan;
23. The order sought is thus clearly in the best interest of the victims of the Derailment and of stakeholders as a whole;
24. The Monitor supports the conclusions sought herein;
25. 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 to vary the order approving the amended plan of compromise and arrangement* (the "**Motion**");

ISSUE an order amending the Canadian Approval Order dated as of July 13, 2015 (as rectified on August 3, 2015) in order to add the paragraphs attached in Schedule A hereto immediately after paragraph 101;

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

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, October 6, 2015

A handwritten signature in blue ink, appearing to read "Gowling Lafleur Henderson", is written over a horizontal line.

GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

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MONITOR


NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present *Motion to vary the order approving 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 **October 8, 2015**, in **room B-2.23** of the **Granby Courthouse**, located at 77, Rue Principale, Édifice Roger-Paré, Granby, at 9:00 a.m. or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, October 6, 2015



GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

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(MMAC's MOTION TO VARY THE ORDER APPROVING THE AMENDED PLAN
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BARRED PERSONS AND BARRED CLAIMS

[101.1] **ORDERS** that, without limiting the Injunction and Release and without limiting paragraphs 97 to 101 set forth above, all (i) Third-Party Defendants that are not also Released Parties (collectively, the “**Non-Settling Defendants**” and, individually, a “**Non-Settling Defendant**”); (ii) Released Parties; (iii) Persons who have voted for or against the Plan ; and (iv) any other Persons that hold, have held or may hold a Claim (including a Derailment Claim), including, without limitation, Canadian Pacific Railway Company and any parent, affiliate or subsidiary thereof (collectively, the “**Barred Persons**”), are hereby permanently barred, enjoined and restrained from commencing, continuing, prosecuting, or asserting in this Court, in any federal or provincial court, or in any other court, arbitration proceeding, administrative agency, or other forum in Canada or elsewhere (each such venue, a “**Trial Court**”), any Claim (including a Derailment Claim) against any of the Released Parties, including, without limitation, any personal injury, property damage, wrongful death, indemnity, contribution, reimbursement or subrogation claim, whether based upon a contract or otherwise, against any Released Party (including, without limitation, any claim against the Released Parties, whether or not denominated as for indemnity, contribution, reimbursement, or subrogation, arising out of or related in any way to the Derailment or to the claims released pursuant to the Injunction and Release, whether arising under provincial, federal or foreign law as claims, cross-claims, counterclaims, or third-party claims (collectively, the “**Barred Claims**”). This Order is without prejudice to the position of any party as to the existence, in the absence of this Order, of any Barred Claim.¹

¹ Notwithstanding anything to the contrary in this paragraph or this Order, neither this paragraph nor this Order shall not apply to any claims or Claims that the Irving Parties (as defined in their Settlement Agreement) have or may have against any one or more of their insurers.

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[101.2] **ORDERS** that, in the event that any Person asserts any Claim (including any Derailment Claim), or any other claim, obligation, suit, judgment, damage, debt, right, remedy, cause of action, avoidance power or right, liability of any nature whatsoever, or legal or equitable remedy against any Person arising from or related to the Derailment, regardless of whether such claim, cause of action, right, or legal or equitable remedy may be asserted pursuant to the CCAA or any other applicable law or contract, including, without limitation, any claim for personal injury, property damage, wrongful death, indemnity (including contractual indemnity), contribution, reimbursement or subrogation relating in any way to the Derailment (collectively, the **"Derailment-Related Causes of Action"**) and which results in a a determination by a Trial Court (including, without limitation, by a jury impaneled by such Trial Court) that a Barred Person who is a Non-Settling Defendant is liable in damages (the **"Initial Damages Determination"**) to a Person, including, without limitation, a holder of a Derailment Claim, asserting a Derailment-Related Cause of Action against such Non-Settling Defendant (a **"Plaintiff"**), then, prior to final entry of any judgment, order or arbitration award with respect to such Initial Damages Determination in such Derailment-Related Cause of Action, the Plaintiff shall provide notice and a copy of this Order to the Trial Court. In such case, for purposes of the Contribution/Indemnity Credit described below, such Trial Court (including, without limitation, a jury impaneled by such Trial Court) shall determine whether the Derailment-Related Cause of Action gives rise to Barred Claims on which any Released Party would have been liable to the Barred Persons in the absence of this Order. Notwithstanding any finding referred to in section 10.7 of the U.S. Plan, the Trial Court, prior to final entry or final award of any verdict, judgment, order or arbitration award (the **"Judgment"**), shall determine any such Judgment

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against such Barred Person by reducing the Initial Damages Determination by an amount equal to the "**Judgment Reduction Amount**," which shall equal the greatest of:

- (a) The "**Settlement Credit**," which shall be an available alternative regardless of whether the Trial Court determines that there is any liability on the part of any Released Parties and shall mean the Distribution received or to be received by such Plaintiff pursuant to the Plan or the U.S. Plan, including by way of payment by the WD Trust (as defined in the U.S. Plan) (the "**Distribution**"); provided, however, that the Settlement Credit shall be limited to the amount of the Distribution received or to be received by the Plaintiff with respect to the type of Derailment Claim asserted by Plaintiff against the Barred Person, so that, for example, the Barred Person shall not receive a Settlement Credit for Distributions received by Plaintiff for a personal injury claim if the claim against the Barred Person is for property damage.
- (b) The "**Insurance Credit**," which shall mean the amount of coverage, if any, the Trial Court determines would have been recoverable to such Barred Person under any insurance policies owned by the MMAC or MMA on account of such Plaintiff's Claim but for the operation of the Order; or
- (c) The "**Contribution/Indemnity Credit**," which shall mean, in the event the Trial Court determines that the Barred Person could establish a valid indemnity or contribution claim against a Released Party but for the operation of this Order, an amount equal to the value, as determined by the Trial Court, of all contribution or indemnification claims (whether equitable or contractual), if any, that the Trial Court determines such Barred Person would be entitled to as against one or more Released Parties but for operation of the Order, which shall be equal to the aggregate proportionate shares of liability, if any, of the Released Parties, plus the contractual indemnification for which the Barred Person would, in the absence of this Order, be entitled to recover, as determined by the Trial Court at the time of entry of any judgment against any Barred Person, *provided however*, that any Contribution/Indemnity Credit with respect to MMAC and/or MMA, shall be allocated among the Plaintiff, the Barred Person and/or Released Parties other than MMAC and/or MMA determined to be liable, in whole or in part, by the Trial Court, such allocation (a) to the extent the Trial Court is located in the United States,

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shall be in accordance with the holding in, and methodology adopted by, Austin v. Raymark Indus., 841 F.2d 1184 (1st Cir. 1988)(*Austin*); or (b) to the extent the Trial Court is in Canada, shall be in accordance with applicable provincial law (*provided, however*, that such reference to *Austin* and/or such provincial law shall govern only with respect to the allocation of the proportionate liability of MMAC and/or MMA, and shall have no effect on the scope of the Contribution/Indemnity Credit (including, without limitation, that it extends to claims for contractual indemnity, if any.) Without limiting the foregoing, if a Barred Person holds both contribution and indemnity claims against the same Released Party, the value of such claims shall not be combined to determine the amount of the Contribution/ Indemnity Credit unless such Barred Person could simultaneously recover, in the absence of this Order, under both such contribution and indemnity claims as a matter of law. Notwithstanding the foregoing, nothing in this provision is intended to dictate the procedure in the Trial Court for determination of the Judgment Reduction Amount pursuant to and consistent with this provision, provided, however, in cases tried in the United States, the trial judge (or equivalent arbitrator, tribunal or panel) shall in the first instance determine the allocation of the proportionate liability of MMAC and/or MMA in accordance with *Austin*.”

[101.3] ORDERS that, for the avoidance of doubt, and notwithstanding anything to the contrary, nothing in paragraphs 101.1 and 101.2 shall in any way modify or affect the releases and/or injunctions in favor the Released Parties as set forth in paragraphs 97 through 101, inclusive, of this Order, and nothing set forth herein shall be interpreted as providing that any Released Parties have any liability to any Person for any Claims (including Derailment Claims). Furthermore, after this Order becomes a Final Order, the Trustee is ordered to use his best efforts to ensure that any Claims (including Derailment Claims) against any Released Parties are promptly dismissed with prejudice.

[101.4] ORDERS that nothing herein shall prejudice or operate to preclude the right of any Non-Settling Defendant to (a) provide notice of this Order to any Trial Court hearing a Derailment-

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Related Cause of Action at any point, (b) raise any issues, claims or defenses regarding the Judgment Reduction Amount, including, without limitation, the contractual liability and/or relative or comparative fault of any Person, including any Released Party, in any court or tribunal hearing any Derailment-Related Cause of Action in accordance with applicable law or procedure; or (c) take discovery of Released Parties *provided, however*, that nothing herein shall in any way modify or affect the releases or injunctions in favor of the Released Parties as set forth in paragraphs 97 through 101, inclusive, of this Order. For the avoidance of doubt, nothing herein shall (x) be deemed to entitle a Plaintiff to more than a single satisfaction with respect to any Derailment-Related Cause of Action or (y) prejudice or operate to preclude the rights of any Barred Person to assert any claims or causes of action against any Released Party as set forth above that are unrelated to the Derailment and do not constitute Claims (including Derailment Claims).

[101.5] ORDERS that the judgment reduction and related provision in paragraphs 101.1 and 101.2 are the bases upon which CP has agreed to withdraw, with prejudice, its objections to the U.S. Plan and its appeal of the Chapter 15 Recognition and Enforcement Order entered by the Bankruptcy Court on August 26, 2015, as well as to withdraw, with prejudice, its pleading seeking leave to appeal the Canadian Approval Order. Accordingly, to the extent there is any inconsistency between the judgment reduction and related provisions of paragraphs 101.1 and 101.2, on the one hand, and the Plan or other provisions of this Order, on the other, paragraphs 101.1 and 101.2 shall govern as to judgment reduction provided, further, that nothing in this paragraph – shall be deemed or construed to limit, modify or affect the Injunction and Release.

[101.6] ORDERS that if any Plaintiff enters into a settlement with any Person with respect to one or more causes of action based upon, arising from, or related to the Barred Claims or any

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transaction underlying any Barred Claim, then such Plaintiff shall cause to be included, and in all events, the settlement shall be deemed to include, a dismissal, release and waiver of any Barred Claims with respect to such settlement.

[101.7] ORDERS that each Plaintiff is hereby enjoined and restrained from seeking relief or collecting judgments against any Non-Settling Defendant in any manner that fails to conform to the terms of this Order, including, without limitation, the Judgment Reduction Amount provision set forth at paragraph 101.2 herein.

[101.8] ORDERS that this Court shall retain jurisdiction with respect to all matters concerning this Order, including, without limitation, hearing a petition for relief by a Barred Person or any other party in interest in the event that a court or tribunal hearing the Derailment-Related Cause of Action fails to apply the judgment reduction provisions of this Order. However, to the extent that any of the Released Parties have made or make any oral or written submissions in support of this Order, those Released Parties shall not be considered to have submitted to personal jurisdiction in this Court based upon such submissions.