

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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**SUPPLEMENTARY 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)**

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**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 SUBMIT AS FOLLOWS:**

## **A. OVERVIEW**

1. On September 15, 2015, the Class Representatives brought a motion, seeking authorization to file further claims of class members which had not been submitted prior to the Claims Bar Date (the “**September 15, 2015 Late Claims Motion**”).
2. In the September 15, 2015 Late Claims Motion, it was noted that there remained a further 207 class members to whom questionnaires were previously delivered, but who had not yet contacted counsel for the Class Representatives. The motion indicated that, in the event that such class members did make contact and still wished to advance their individual claims, a motion for directions from this Court would be brought in order to determine how to best address those situations.
3. Since the filing of the September 15, 2015 Late Claims Motion, **56** further class members have sworn affidavits in support of their requests to have their claims (and/or the claims of their minor children) allowed. The Class Representatives therefore now present these claims and request that they be allowed (the “**Post-September 15, 2015 Late Claims**”).
4. Class Counsel, in consultation with the Monitor and Debtor’s Counsel, have as of Thursday November 19, 2015 taken down the web site for the Lac Mégantic Class Action. Further, Class Counsel will not be accepting any further requests to file late claims on the go forward nearly a year and a half following the Claims Bar Date of June 2014. To do otherwise would not be fair, nor in the best interests of the existing Class Members.

## **B. ORDER SOUGHT**

5. The Class Representatives now seek an order:
  - a) authorizing the filing of the Post-September 15, 2015 Late Claims as identified in **EXHIBIT R-1** to this motion.

## **C. GROUNDS FOR THIS MOTION**

6. The Class Representatives rely on the grounds for this motion that were set out in the September 15, 2015 Late Claims Motion.
7. There were 366 affidavits filed on the September 15, 2015 Late Claims Motion relating to 445 class members (including 79 claims of minor class members whose circumstances are addressed in their parents’/guardians’ affidavits) and who seek to have their late claims allowed. This is in addition to the claims of minor children relating to the previous motion and those affidavits received after the previous motion was heard.
8. In addition, there have been a further **56** class members who have contacted counsel for the Class Representatives since the September 15, 2015 Late Claims Motion was filed and who have sworn affidavits in support of a further **68** claims (**14** of which are for

minor class members whose circumstances are addressed in their parents'/guardians' affidavits).

9. As was the case the with the class members whose claims are addressed in the September 15, 2015 Late Claims Motion, the Post-September 15, 2015 Late Claims can be broken down into the same five main categories with respect to why the claims were not filed in a timely fashion prior to the Claims Bar Date, as follows and as is reflected in **Exhibit R-1**:
  - a. **New June 2014 Claims.** There are **11** claimants who have asserted that their claims were filed prior to the Claims Bar Date. These claims relate to economic loss and moral damages and are claimants who registered prior to the Claims Bar Date on the class action websites through either Me. Larochelle or Me. Orenstein, however, on account of a possibly technical error and/or inadvertence on the part of Class Counsel or agents, were not filed with the Monitor prior to the Claims Bar Date, or for claimants who believed they had registered before the deadline, including cases of minor children where it was previously assumed their claims were filed with those of their parents;
  - b. **Claimants who were unaware of the Claims Bar Date or did not Understand the Process.** Despite the Class Representatives' best efforts to publicize the class action, the CCAA proceeding and the Claims Bar Date, **27 claimants did not file claims** prior to the Claims Bar Date because they were unaware of the Claims Bar Date or did not understand how to file a claim;
  - c. **Claimants who Suffered Significant Psychological Trauma.** Due to the nature of the psychological injuries suffered after the derailment, **5 claimants** did not file claims prior to the Claims Bar Date either because they were suffering extreme psychological effects, or because the extent of their psychological losses they did not become aware of the Claims Bar Date;
  - d. **Claimants Who Mistakenly Believed that They were Not Eligible to File a Claim.** Despite the best efforts of all parties to inform the citizens of Lac-Megantic, **16 claimants mistakenly believed that they** were not entitled to file a claim or participate in the recovery under the CCAA procedure;
  - e. **Other Reasons.** An additional **9 claims** were not filed on time because claimants were occupied with other health concerns, or due to other personal commitments most often arising from and being associated with personal and/or economic complications caused by the derailment. As a result these individuals were not able to file their claims prior to the Claims Bar Date.
10. 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.

11. The vast majority of the Post-September 15, 2015 Late Claims fall within the category of “Moral Damages Claims”, with a limited number seeking recovery under “Property and Economic Damages Claims”. 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 Post-September 15, 2015 Late Claims will result in some diluted recoveries in the categories in which they are filed. The extent of this dilution is described in a report to be filed by Richters. We understand that the further dilution caused by these late claims will be approximately 10%.
12. These additional claims appear to be meritorious in the sense that they satisfy the eligibility criteria for the receipt of a distribution under the Amended Plan of Arrangement and Compromise, but they remain subject to rejection under the terms of the Plan by the Monitor in the event that they do not.
13. The affidavits filed in support of this motion have provided good faith evidence on behalf of these class members as to their reasons for not having filed prior to the Claims Bar Date.

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

GRANT the present Motion authorizing the filing of the Post-September 15, 2015 Late Claims with the Monitor;

THE WHOLE without costs, unless contested.

**LAC-MÉGANTIC, November 23, 2015**

(S) Daniel E. Larochelle

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ME DANIEL E. LAROCHELLE  
Attorney for the Court Appointed Representatives

**MONTRÉAL, November 23, 2015**

(S) Jeff Orenstein

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

**Toronto, November 23, 2015**

(S) Joel P. Rochon

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ROCHON GENOVA LLP  
Per: Me Joel P. Rochon  
Attorneys for the Court Appointed Representatives

**SUPERIOR COURT**

(Commercial Division)

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

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**NOTICE OF PRESENTATION**

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TO: SERVICE LIST

TAKE NOTICE that the present *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 a date and time to be set by him, in room 1 of the Sherbrooke Courthouse, located at 375, rue King Ouest, Sherbrooke.

DO GOVERN YOURSELVES ACCORDINGLY.

**LAC-MÉGANTIC, November 23, 2015**

(S) Daniel E. Larochelle

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ME DANIEL E. LAROCHELLE  
Attorney for the Court Appointed Representatives

**MONTRÉAL, November 23, 2015**

(S) Jeff Orenstein

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

**Toronto, November 23, 2015**

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ROCHON GENOVA LLP  
Per: Me Joel P. Rochon  
Attorneys for the Court Appointed Representatives

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**LIST OF EXHIBITS**

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R-1: List of Post-September 15, 2015 Late Claims

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**SUPERIOR COURT  
(Commercial Division)  
DISTRICT OF SAINT-FRANÇOIS**

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**IN THE MATTER OF THE PLAN OF COMPROMISE OR  
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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***

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**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)**

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**Me Daniel E. Larochelle**

5031, boulevard des Vétérans  
Lac-Mégantic, Québec, G6B 2G4  
Téléphone: (819) 583-5683  
Télécopieur: (819) 583-5959  
Email: info@daniellelarochelle.com

**AQ 1602**

**Me Jeff Orenstein**

CONSUMER LAW GROUP INC.  
1030 rue Berri, Suite 102  
Montréal, Québec, H2L 4C3  
Téléphone: (514) 266-7863 ext. 2  
Télécopieur: (514) 868-9690  
Email: jorenstein@clg.org

**BC 4013**

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