

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 FOR THE APPOINTMENT OF A CLAIMS OFFICER
(Sections 9 and 11 *et seq.* 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 (the "**Initial Plan**");
7. On April 15, 2015, this Honourable Court issued a Claims Resolution Order in order to establish a procedure for the review and determination of claims (the "**Claims Resolution Order**"). A copy of the Claims Resolution Order is filed in support hereof for ease of reference as **Exhibit R-1**;
8. 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**");
9. 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;
10. On July 13, 2015, this Honourable Court issued an order approving the Amended Plan (as rectified on August 3, 2015, and amended on October 9, 2015, the "**Canadian Approval Order**");
11. On or around October 8, 2015, Trustee's Plan of Liquidation filed in the Bankruptcy Case (the "**US Plan**"), which is intended to mirror the effects of the Amended Plan in the United States, was confirmed (the "**U.S. Approval Order**");
12. The Plan Implementation Date (as defined in the Amended Plan) is expected to occur on or around December 21, 2015, the whole as appears from the Monitor's Twenty-First Report, which will be filed in support hereof;
13. Note that all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Amended Plan;

II. ORDER SOUGHT

14. The Petitioner hereby seeks the appointment of former Court of Appeal Justice André Rochon to act as the Claims Officer as set out in the Claims Resolution Order;

III. GROUNDS FOR THIS MOTION

15. Between these CCAA proceedings and the Bankruptcy Case, in excess of 5,000 claims have been filed;
16. The status of the Monitor's review of those claims is more fully set out in its Twenty-First Report and may be summarized as follows:
 - a) Wrongful Death Claims: these claims are to be valued in accordance with Schedule E to the Amended Plan. The calculation of the amounts to each claimant in this category is substantially complete;
 - b) Bodily Injury and Moral Damage Claims: these claims are to be valued in accordance with Schedule F to the Amended Plan. The calculation of the amounts to each claimant in this category is significantly advanced. The deadline for the submission of forms in respect of claims of post-traumatic stress is November 30, 2015;
 - c) Property and Economic Damages Claims: the Monitor, its counsel and MMAC's counsel have performed a preliminary review of the more significant claims in this category. The Monitor is in contact with the creditors and / or their legal counsel to both provide preliminary feedback and obtain additional information to enable a proper review of the amounts claimed. There remains considerable work to be performed in order to complete the review of these claims;
 - d) Subrogated Insurer Claims: the Monitor has received detailed statements of account in respect of all claims in this category and is determining the nature of additional information that may be required to complete the review of these claims;
 - e) Government Claims: the review of these claims is in process;
17. While the Monitor, its counsel and MMAC's counsel will endeavor to resolve claim disputes consensually, the aid of an independent claims officer may be required in order to deal with disputes in an expedited and efficient manner;
18. The Petitioner respectfully submits that former Court of Appeal Justice André Rochon should be appointed to act as Claims Officer;
19. Me Rochon is most certainly qualified for the role and has confirmed to the Petitioner that he consents to act as Claims Officer, the whole as appears from the letter and curriculum vitae filed *en liasse* in support hereof as **Exhibit R-2**;
20. Moreover, the Monitor fully supports the appointment of former Court of Appeal Justice André Rochon to act as Claims Officer, as appears from its Twenty-First Report;
21. The fees and disbursements of the claims officer would be secured by the current Administration Charge (section 7.1 of the Amended Plan) such that there will be no additional costs to the creditors;

22. Me Rochon has advised the Petitioner that his services would be billed on an hourly basis (plus disbursements) and that his hourly rate will be \$550 as of January 2016;

IV. CONCLUSION

23. For the reasons set out above, the Petitioner respectfully requests that former Court of Appeal Justice André Rochon be appointed to act as Claims Officer pursuant to the Claims Resolution Order, and that the fees and disbursements of the Claims Officer be secured by the Administration Charge;
24. The Petitioner respectfully submits that the notices given of the presentation of the present Motion are proper and sufficient;

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

GRANT the present *Motion for the Appointment of a Claims Officer* (the "**Motion**");

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

ORDER that former Court of Appeal Justice André Rochon be and is hereby appointed to act as Claims Officer pursuant to the Claims Resolution Order dated as of April 15, 2015;

ORDER that the payment of the fees and disbursements owed to the Claims Officer for services rendered in connection with or relating to these proceedings shall be secured by the Administration Charge (as defined in the Amended Plan);

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, November 25, 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)

(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

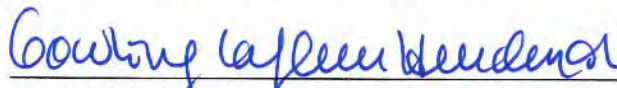
NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present *Motion for the Appointment of a Claims Officer* will be presented for adjudication before the honourable Gaétan Dumas, j.s.c., of the district of Saint-François, on **November 26, 2015**, in **room 1** of the Sherbrooke Courthouse, located at 375 West King Street, at 10:00 a.m. or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, November 25, 2015



GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

EXHIBIT R-1

**SUPERIOR COURT
(Commercial Division)**

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS**

No: 450-11-000167-134

DATE: 15 avril 2015

PRESENT: THE HONOURABLE GAÉTAN DUMAS, J.S.C.

IN THE MATTER OF THE PLAN OF COMPROMISE OF:

**MONTREAL, MAINE & ATLANTIC CANADA CO. (MONTREAL, MAINE & ATLANTIQUE
CANADA CIE)**

Debtor/Petitioner

-and-

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

Monitor

CLAIMS RESOLUTION ORDER

[1] **CONSIDERING** the Petitioners' *Motion for an Order Establishing a Procedure for the Review and Determination of Claims* (the "**Motion**");

[2] **CONSIDERING** the representations of the parties;

FOR THESE REASONS, THE COURT:

[3] **GRANTS** the Motion;

[4] **ISSUES** this Order divided under the following headings:

(a) Definitions;

(b) Review and Determination of Claims;

- (c) Distribution for Disputed Claims;
- (d) Notices and Communications;
- (e) Aid and Assistance of Other Courts;
- (f) General Provisions;

Definitions

- [5] **ORDERS** that capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Plan and that the following terms in this Order shall have the following meanings ascribed thereto:
- (a) **"Bankruptcy Case"** means the case styled in re Montreal, Maine & Atlantic Railway Ltd., Bankr. D. Me. No. 13-10670;
 - (b) **"Bankruptcy Court"** means United States Bankruptcy Court for the District of Maine, as presiding over the Bankruptcy Case;
 - (c) **"Business Day"** means a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Montreal, Québec, Canada;
 - (d) **"Claims Bar Date"** means 5:00 p.m. (Montréal time) on July 14, 2014 with respect to Wrongful Death Claims and 5:00 p.m. (Montréal Time) on June 13, 2014 with respect to all the other Creditors;
 - (e) **"Claims Officer(s)"** means the individual(s) appointed as claims officer(s) pursuant to paragraph 7 of the present Order;
 - (f) **"Claims Procedure Order"** means the Amended Claims Procedure Order rendered on June 13, 2014, in the CCAA Proceeding by the CCAA Court, establishing, among other things, a claims procedure in respect of Petitioner, as such Order may be amended, restated or varied from time to time;
 - (g) **"Class Representatives"** has the meaning ascribed to "Class Action Plaintiffs" and to "Class Counsel" by the Court in the Representation Order;
 - (h) **"Court"** means the Superior Court of Quebec;
 - (i) **"Creditors"** means collectively all Persons having filed Proofs of Claim and **"Creditor"** means any one of them;
 - (j) **"Determination Date"** means August 8, 2013;
 - (k) **"Dispute Package"** means, with respect to any disputed Proof of Claim, a copy of the related Proof of Claim, Notice of Revision or Disallowance and Notice of Dispute;

- (l) **"Monitor"** means Richter Advisory Group Inc. (Richter Groupe Conseil Inc.), in its capacity as Monitor in the CCAA Proceeding;
- (m) **"Notice of Dispute"** means the notice that may be delivered by a Creditor who has received a Notice of Revision or Disallowance disputing such Notice of Revision or Disallowance;
- (n) **"Notice of Revision or Disallowance"** means the notice advising a Creditor that the Monitor has revised or rejected all or part of such Creditor's Claim set out in its Proof of Claim and setting out the reasons for such revision or disallowance, which notice shall be substantially in the form attached hereto as **Schedule A**;
- (o) **"Plan"** means the plan(s) of compromise and arrangement filed on March 31, 2015 in these proceedings, as may be amended or supplemented from time to time;
- (p) **"Proofs of Claim"** means the form of proofs of claim filed by Creditors before the Claims Bar Date in accordance with the Claims Procedure Order or otherwise accepted for filing pursuant to further order of this Court. Individually, each is a **"Proof of Claim"**;
- (q) **"Representation Order"** means the Representation Order issued by this Court on April 4, 2014;

Review and Determination of Claims

[6] **ORDERS** that:

- (a) where applicable given the provisions of the Plan, the Monitor, together with the Petitioner, shall review the Proofs of Claim and the terms set out therein;
- (b) where applicable, the Monitor shall send the Creditor a Notice of Revision or Disallowance in accordance with paragraph 14 below;
- (c) the Creditor who receives a Notice of Revision or Disallowance and wishes to dispute it shall, within twenty (20) calendar days of the Notice of Revision or Disallowance, send, in accordance with paragraph 15 below, a Notice of Dispute to the Monitor setting out the basis for its dispute;
- (d) unless otherwise authorized by this Court, if the Creditor does not provide a Notice of Dispute within the time period provided for above, such Creditor shall be deemed to have accepted the determination of its Proof of Claim as set out in the Notice of Revision or Disallowance;
- (e) the Monitor, with the assistance of Petitioner, shall attempt to consensually resolve the disputed Proof of Claim following the receipt by the Monitor of the Notice of Dispute;
- (f) if, after the expiration of such period of time as the Monitor believes appropriate, the disputed Proof of Claim has not been resolved:

- (i) the Monitor, after consultation with Petitioner, shall refer the disputed Proof of Claim to a Claims Officer and the Monitor shall deliver a Dispute Package to the Claims Officer; or
- (ii) the Monitor, after consultation with Petitioner, shall refer the Proof of Claim to the Court, and either the Creditor, the Monitor or Petitioner may bring a motion for the resolution of such Proof of Claim by the Court; and
- (g) the Monitor shall not be required to send any Creditor a confirmation of receipt by the Monitor of any document provided by a Creditor pursuant to this Order and each. Creditor shall be responsible for obtaining proof of delivery, if they so require, through their choice of delivery method;

- [7] **ORDERS** that Petitioner shall have the power and authority to appoint from time to time one or more individuals to act as a Claims Officer for the purposes of this claims procedure, provided however that the Monitor and this Court shall have both approved such appointment;
- [8] **ORDERS** that upon receipt of a Dispute Package, the Claims Officer shall schedule and conduct a hearing to settle the disputed portion of the disputed Proof of Claim and shall, as soon as practicable thereafter, notify Petitioner, the Monitor and the Creditor of his or her determination;
- [9] **ORDERS** that the Claims Officer shall have the authority to determine the procedure for adjudication of disputed Proofs of Claim that are referred to him or her, including the manner of presenting evidence and the conduct of any hearing before him or her, provided that a Creditor may request that such adjudication be conducted in either French or English;
- [10] **ORDERS** that each Claims Officer may, with the consent of the parties, act as a mediator in respect of any Proof of Claim without thereby being disqualified from adjudicating upon such claim;
- [11] **ORDERS** that Petitioner or the Creditor may appeal a Claims Officer's determination to this Court within ten (10) Business Days of notification of the Claims Officer's determination of the disputed portion of such Creditor's Proof of Claim by serving upon Petitioner and the Monitor, and filing with this Court a motion returnable on a date to be fixed by this Court. If an appeal is not filed within such period then the Claims Officer's determination shall, subject to a further order of the Court, be deemed to be final and binding on Petitioner and the Creditor;
- [12] **ORDERS** that any appeal of a Claims Officer's determination before this Court shall be considered for all intents and purposes to be a true appeal such that there will be no *de novo* hearing; and

Distribution for Disputed Claims

- [13] **ORDERS** that no distributions shall be made with respect to a disputed Proof of Claim unless and until it has been finally determined;

Notices and Communications

- [14] **ORDERS** that any document sent by the Monitor or Petitioner pursuant to this Order may be sent by e-mail, ordinary mail, registered mail, courier or facsimile transmission, in either French or English as requested by the Creditor. A Creditor shall be deemed to have received any document sent pursuant to this Order two (2) Business Days after the document is sent by ordinary mail and one (1) Business Day after the document is sent by registered mail, courier, e-mail or facsimile transmission. Documents shall not be sent by ordinary or registered mail during a postal strike or work stoppage of general application.
- [15] **ORDERS** that any notice or other communication to be given under this Order by a Creditor to the Monitor or the Petitioner shall be in writing in substantially the form provided for in this Order and will be sufficiently given only if given by mail, telecopier, courier or email addressed to:

(a) If to the Petitioner

Montreal Maine & Atlantic Canada Co.
 C/o Gowling Lafleur Henderson LLP
 3700 – 1 Place Ville Marie
 Montréal, Québec H3B 3P4

Attention: Me Patrice Benoit (patrice.benoit@gowlings.com)
 Attention : Me Pierre Legault (pierre.legault@gowlings.com)
 Fax : 514-876-9550

(b) If to the Monitor:

Richter Advisory Group
 1981 McGill College Avenue, 11th Floor
 Montréal, Québec H3A 0G6

Attention: Mr. Gilles Robillard (grobillard@richter.ca)
 Attention: Mr. Andrew Adessky (aadessky@richter.ca)
 Fax: 514-934-3504

with a copy by email or fax (which shall not be deemed notice) to:

Attention: Me Sylvain Vauclair (svauclair@woods.qc.ca)
 Fax: 514-284-2046

Aid and Assistance of Other Courts

- [16] **REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to, act in aid of and to be complementary to this Court in carrying out the terms of this Order;

U.S. Plan and Derailment Wrongful Death Claims

- [17] **ORDERS** that, notwithstanding anything in this Order to the contrary, the allowance and valuation of claims for voting purposes with respect to the plan of liquidation filed in the Bankruptcy Case (the "U.S. Plan") shall be determined solely in accordance with the U.S. Plan and any orders entered in such case with respect to the U.S. Plan, and the allowance of (including any objections to) for all purposes, and distributions with respect to, Derailment Wrongful Death Claims (as defined in the U.S. Plan) shall be solely in accordance with the terms of the U.S. Plan;

General Provisions

- [18] **ORDERS** that references in this Order to the singular include the plural, to the plural include the singular and to any gender include the other gender.
- [19] **ORDERS** that the Monitor may apply to this Court for advice and direction in connection with the discharge or variation of its powers and duties under this Order.
- [20] **ORDERS** the provisional execution of this Order notwithstanding appeal
- [21] **THE WHOLE** without costs.

Sherbrooke, 15 avril 2015

GAÉTAN DUMAS

Honourable Gaétan Dumas, J.S.C.

EXHIBIT R-2

Saint-Jérôme, le 9 novembre 2015

Me Patrice Benoit

GOWLING LAFLEUR HENDERSON S.E.N.C.R.L.
3700 - 1, Place Ville-Marie
Montréal (Québec) H3B 3P4

PAR COURRIEL
SEULEMENT
(Patrice.Benoit@Gowlings.com)

**OBJET: Montreal, Maine & Atlantic Canada Co.
et Richter Groupe Conseil inc.**

Cher maître,

Je fais suite à notre conversation téléphonique du 6 novembre 2015. Tel que convenu, vous trouverez, sous pli, mon c.v.

Si d'autres informations vous paraissent utiles, n'hésitez pas à me contacter.

Salutations distinguées,

PRÉVOST FORTIN D'AOUST



André Rochon, avocat

AR/lp
P. J.

HONORABLE ANDRÉ ROCHON

C.V. abrégé

Coordonnées :

Adresse : 55, rue Castonguay, bureau 400
Saint-Jérôme (Québec)
J7Y 2H9

Téléphone : 450-436-8244 poste 139

Cellulaire : 514-913-1091

Télécopieur : 450-436-9735

Courriel : a.rochon@pfdavocats.com

Expérience professionnelle :

- 1972 : Licence en droit, Université d'Ottawa
Médaille du gouverneur général du Canada
- 1974 : Admission au Barreau du Québec
- 1974-1994 : Pratique privée à Saint-Jérôme, notamment
Forget, Rochon, Prévost, Auclair
- 1994 : D.E.S.S. droit civil, Université de Montréal
- 04-07-1994 : Nomination à la Cour supérieure
- 14-02-2002 : Nomination à la Cour d'appel
- 30-08-2014 : Retraite de la Cour d'appel
- Septembre 2014 : Réadmission au Barreau du Québec
Avocat conseil au cabinet Prévost, Fortin
D'Aoust
agissant principalement à titre d'arbitre et de
médiateur

Me André Rochon a reçu une formation spécialisée en matière de médiation à L'Université de Pepperdine de Malibu, en Californie.

Conférencier-invité au Canada sur le thème de la médiation
Conférencier invité devant les tribunaux du Québec pour donner de la formation en matière de médiation.

Alors juge à la Cour d'appel, Me André Rochon a fait partie de l'équipe de médiation de la Cour pendant 12 années et, à ce titre, a agi de façon régulière dans le cadre du programme de règlement des conflits de la Cour d'appel du Québec.

Depuis sa retraite à la Cour d'appel du Québec, Me Rochon œuvre principalement dans le domaine de l'arbitrage et de la médiation dans différents domaines, tant de nature commerciale que civile.

Me André Rochon est l'auteur du « Guide des requêtes devant le juge unique de la Cour d'appel : procédure et pratique ». Il est également l'un des auteurs de « Le Grand Collectif » sur le nouveau Code de Procédure civile, commentaires et annotations, aux Éditions Yvon Blais.