

CANADA

SUPERIOR COURT
(Commercial Division)

PROVINCE OF QUÉBEC
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

and

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

Monitor / Petitioner

and

**YANNICK GAGNÉ, GUY OUELLET,
SERGES JACQUES AND LOUIS-SERGES
PARENT, ès-qualité Class Action
Representatives**

and

PROVINCE OF QUÉBEC

and

CANADIAN PACIFIC RAILWAY COMPANY

Respondents

MOTION FOR DIRECTIONS

(Section 11 of the Companies' Creditors Arrangement Act and paragraph 54 of the Initial Order)

**TO THE HONOURABLE JUSTICE GAETAN DUMAS, J.C.S., THE PETITIONER
RESPECTFULLY SUBMITS:**

1. On October 9, 2015, this Honorable Court issued its “Order varying the order approving the Amended Plan of Compromise and Arrangement” of the Debtor (the “**Sanction Order**”)¹;
2. Under the terms of the Sanction Order, Canadian Pacific Railway Company (“**CPR**”) may be entitled to seek the determination of a “Judgment Reduction Amount” in the context of a claim made against it by a Plaintiff;
3. Under the terms of paragraph 101.2 of the Sanction Order, the Judgment Reduction Amount would be equal to the greatest of the Settlement Credit, the Insurance Credit or the Contribution / Indemnity Credit;
4. The Settlement Credit means the Distribution received or to be received by a Plaintiff pursuant to the Plan;
5. By a letter dated April 28, 2016, CPR’s counsel requested from the Monitor certain documents and information relating to Distributions to Creditors (the “**Requested Documents**”). A copy of CPR counsel’s letter is filed in support hereof as **Exhibit R-1**;
6. Among the Requested Documents are the proofs of claim filed in the CCAA Proceedings by the Class Members (as defined in Appendix “A” to the Order of this Court dated April 4, 2014 entitled “Representation Order” but excluding those who have opted-out under the terms of the Representation Order) and by the Province of Québec (“**Province**”);
7. As appears from CPR’s letter (R-1), CPR asserts that it is entitled to receive the Requested Documents either because it is a creditor of MMAC or because it may be the beneficiary of a Settlement Credit to be applied against the claims made against it by the Class Members and the Province of Quebec and therefore entitled to be informed of the Distribution paid to the Class Members and the Province;
8. CPR’s letter (R-1) was also addressed to counsel for the Class Members and to counsel for the Province;
9. On May 11, 2016, the undersigned counsel for the Monitor requested counsel for the Class Members and counsel for the Province to advise the Monitor if they had any objections to the Monitor providing the Requested Documents to CPR;
10. On May 18, 2016, counsel for the Class Members advised the undersigned as well as counsel for CPR that the Class Members did object to CPR’s request on the basis that CPR is not entitled to a Distribution under the Plan and that CPR’s request is otherwise premature. A copy of Class Members counsel’s letter is filed in support hereof as **Exhibit R-2**;
11. On May 20, 2016, CPR’s counsel, without prejudice to its alleged right to obtain all of the Requested Documents, restricted its request to the name of each Class Member having filed a proof of claim, the amount claimed by each Class Member having filed a

¹ All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Sanction Order.

proof of claim and the amount paid by the Monitor to each such Class Member. A copy of CPR counsel's email of May 20, 2016 is filed in support hereof as **Exhibit R-3**;

12. On May 20, 2016, the undersigned forwarded CPR counsel's modified request to counsel for the Class Members and to counsel for the Province and requested that they inform the Monitor if they have any objections to CPR's modified request;
13. On May 24, 2016, counsel for the Class Members advised the undersigned that CPR's modified request "does not change our position that CPR is not entitled to the requested information at this time", as more fully appears from a copy of Class Members counsel's email of May 24, 2016 filed in support hereof as **Exhibit R-4**;
14. As of the date hereof, counsel to the Province has not advised of any position;
15. Although the Monitor's position is that a creditor is entitled to examine the proofs of claim filed by other creditors and that CPR is technically a creditor, CPR is not entitled to a distribution under the Plan;
16. And although CPR may be entitled to a Settlement Credit equal to the Distribution received by a Plaintiff, the amount of such Distribution appears to be information CPR should request from each particular Plaintiff;
17. Paragraph 54 of the Initial Order allows the Monitor to seek direction from this honorable Court;

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


GRANT the present Motion;

ORDER the Monitor to deliver to Canadian Pacific Railway Company counsel the names of all Class Members who have filed a proof of claim in the CCAA Proceedings, the amount claimed by such Class Members and the amount paid by the Monitor to such Class Members under the terms of the Plan;

OR ALTERNATIVELY, DECLARE that Canadian Pacific Railway Company is not entitled to obtain from the Monitor the names of the Class Members who have filed a proof of claim in the CCAA Proceedings, the amount claimed by such Class Members and the amount paid by the Monitor to such Class Members under the terms of the Plan;

THE WHOLE WITHOUT COSTS.

MONTREAL, May 27, 2016



Woods LLP
Attorneys for the Monitor / Petitioner

CANADA

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(Commercial Division)

PROVINCE OF QUÉBEC
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PROVINCE OF QUÉBEC

and

CANADIAN PACIFIC RAILWAY COMPANY

Respondents

AFFIDAVIT OF ANDREW ADESSKY

I, the undersigned, Andrew Adessky, partner at Richter Advisory Group Inc., doing business at 1981 McGill College, 11th Floor, Montreal, Québec, H3A 0G6, solemnly declare as follows:

1. I am an authorized representative of the Monitor;

2. All the facts alleged in the *Motion for directions* are true.

AND I HAVE SIGNED:



ANDREW ADESSKY

SWORN TO before me in Montreal, Quebec,
this 27 day of May 2016



Commissioner of oaths for the province of Quebec



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PROVINCE OF QUÉBEC

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CANADIAN PACIFIC RAILWAY COMPANY

Respondents

NOTICE OF PRESENTATION

To: Mtre. Joel Rochon

And: Jeff Oreinstein

Email : jrochon@rochongenova.com

Email: jorenstein@clg.org

Attorneys for Class Action

Attorneys for Class Action

And: Mtre. Daniel Larochelle
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Attorneys for Class Action

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Attorneys for Ministère de la Justice du Québec

And: Mtre. Alain Riendeau
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And: Mtre. Pierre Legault
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alexander.bayus@gowlingwlg.com
Attorneys for Montreal, Maine &
Atlantic Canada Co. (Montreal, Maine
& Atlantique Canada Cie)

And: Mr. Andrew Adessky
E-mail: AAdessky@richter.ca
Monitor

TAKE NOTICE that the present *Motion for directions* will be presented for adjudication before the Honourable Gaetan Dumas, J.S.C., sitting in practice division in and for the district of St-François in **room 1** of the Sherbrooke Courthouse, located at 375 King Street West in Sherbrooke, on **May 30, 2016, at 10:00 a.m.** or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, May 27, 2016

Woods LLP

Woods LLP

Attorneys for the Monitor / Petitioner

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF ST-FRANÇOIS

N°: 450-11-000167-134

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Representatives**

and

PROVINCE OF QUÉBEC

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CANADIAN PACIFIC RAILWAY COMPANY

Respondents

LIST OF EXHIBITS

Exhibit R-1: Letter from CPR's counsel dated April 28, 2016;

Exhibit R-2: Letter from Class Members' counsel dated May 18, 2016;

Exhibit R-3: Email from CPR's counsel dated May 20, 2016;

Exhibit R-4: Letter from Class Members' counsel dated May 24, 2016.

MONTREAL, May 27, 2016

Woods LLP

Woods LLP

Attorneys for the Monitor / Petitioner

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents

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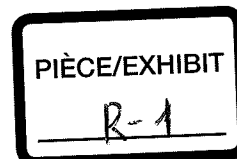
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Canada

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Alain Riendeau
Direct +1 514 397 7678
ariendeau@fasken.com

April 28, 2016
File No.: 111372.00027/10760



By Email

Mtre Sylvain Vaclair
2000, av. McGill Collège
Bureau 1700
Montréal (Québec) H3A 3H3

Dear Sir:

Re: Montreal, Maine & Atlantic Canada Co. (Montreal, Maine & Atlantique Canada Cie) ("MMAC") 450-11-000167-134

As you are aware, we are counsel for Canadian Pacific Railway Company ("CPR"), which has instructed us to send you the present letter further to our telephone conversation of April 19, 2016. This letter is being sent to you in your capacity as counsel to the Monitor, Richter Advisory Group Inc. (the "Monitor") in the above-captioned CCAA proceeding.

The purpose of this letter is to formally request that the Monitor provide the undersigned with copies of all documents pertaining to the claims process in the above-captioned matter, including the entirety of:

- (a) the proof of claims filed in the CCAA proceedings;
- (b) the "*Avis de Calcul de Votre Distribution et ou Avis de Rejet Total ou Partiel de Votre Réclamation*" sent by the Monitor for each of the proof of claims;
- (c) the contestations by creditors of any of the notices sent by the Monitor;
- (d) the final notices of calculation of distribution or disallowance for the contesting creditors;
- (e) the proceedings related to a disputed claim, whether before a claims officer or the Court;

- (f) the decisions rendered by a claims officer or the Court in respect of a disputed claim; and
- (g) the tables, summaries or other compilation of claims/distributions, their nature, their status and/or determination that have been prepared by the Monitor.

(collectively the “**Requested Documents**”)

CPR is entitled to receive copies of and to examine the Requested Documents as it is (i) a creditor of MMAC and (ii) the beneficiary of a “Settlement Credit” in accordance with the *Order Varying the Order Approving the Amended Plan of Compromise and Arrangement* issued on October 9, 2015 (the “**Approval Variance Order**”).

Indeed, in accordance with paragraph 101.2(a) the Approval Variance Order, CPR shall benefit from following Settlement Credit:

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 the Released Parties and shall mean the Distribution received or to be received by such Plaintiff pursuant to the Plan or the US 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.

The transmission by the Monitor of the Requested Documents is therefore imperative to give effect to the Settlement Credit provided to CPR in the Approval Variance Order.

We request that all presently available Requested Documents be transmitted by the Monitor to the undersigned by the latest on May 16, 2016.

Based on the Monitor’s 22nd Report, we understand that the Monitor’s review and adjudication of claims and the distributions to creditors is ongoing. Therefore, we request that the Monitor provide copies of all updated Requested Documents as they become available and all Requested Documents that may exist in the future.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP



Alain Riendeau

AR/bf

cc Patrice Benoit, Gowling WLG (Canada)
Alexandre Bayus, Gowling WLG (Canada)
Andrew Adessky, Richter Advisory Group
Joel Rochon, Rochon Genova LLP
Jeff Orenstein, Consumer Law Group
Louise Comtois, Ministère de la justice du Québec

ROCHON | GENOVA^{LLP}
BARRISTERS • AVOCATS



of Counsel
FRANK G. FELKAI, Q.C. (Retired)
ALLAN C. HUTCHINSON

in association with
LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP
SAN FRANCISCO | NEW YORK | NASHVILLE

DELIVERED VIA EMAIL

May 18, 2016

Alain Riendeau
Fasken Martineau
Stock Exchange Tower
800 Victoria Square, Suite 3700
P.O Box 242
Montréal, Québec H4Z 1E9

Dear Counsel:

Re: MMA CCAA Proceedings – 450-11-000167-134

I am writing further to your letter dated April 28, 2016. We are objecting to your request made to the Monitor for the production of documents related to the claims made in the CCAA proceedings.

It is our view, as counsel for the Class Action Representatives in the CCAA proceeding, and for the representative plaintiffs in the class action against CP, that this request is inappropriate.

The creditors represented by our clients object to any needless disclosure of their personal information, including their claim information. We are advised by the Monitor that CP is not entitled to a distribution under the CCAA plan. Assuming that is correct, it is not apparent to us that CP has a *bona fide* interest nor right to receive the requested information in the context of the CCAA proceeding.

The “Settlement Credit” to which CP refers may be relevant for the purpose of determining the individual damages to be paid to class members by CP in the event that a judgment is ultimately entered against CP in the class action, or to facilitate the conclusion of meaningful settlement discussions in that proceeding. In that event, however, CP’s request ought to be made as a request for production in the context of the class action, following the determination of the common issues at trial. We would then respond having regard to the merits of the request in that context, at that time, and any dispute would be resolved by the judge supervising the class action and individual damage determinations.

We note, as well, that it is imperative that the Monitor focus its efforts on the implementation of the Plan and the processing of payments to creditors. CP’s proposed make-work project can only

distract the Monitor from this very important near term objective, and serves to demonstrate, once again, CP's indifference to the safety and security of class members.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Joel P. Rochon', with a large initial 'J' and a series of loops and flourishes.

Joel P. Rochon

Encl.

cc: Sylvain Vaclair (Woods LLP)
Andrew Adessky (Richters)
Patrice Benoit (Gowling WLG Canada)
Alexander Bayus (Gowling WLG Canada)
Louise Comtois (Government of Quebec)
Max Starnino (Paliare Roland LLP)
Jeff Orenstein (Consumer Law Group)
Daniel Larochelle

Paula Mateus

De: Enrico Forlini <eforlini@fasken.com>
Envoyé: 20 mai 2016 15:42
À: Sylvain Vauclair
Cc: Alain Riendeau; Brandon Farber; Bayus, Alexander (Alexander.Bayus@gowlingwlg.com); Benoit, Patrice
Objet: Montreal, Maine & Atlantique Canada Cie 450-11-000167-134

Cher Sylvain,

Pour donner suite à notre conversation téléphonique de ce matin, voici l'information que nous souhaiterions obtenir du Contrôleur :

- 1- Le nom de chaque créancier qui a produit une preuve de réclamation;
- 2- Le montant réclamé par chaque créancier qui a produit une preuve de réclamation;
- 3- Le montant de la distribution versé (à ce jour) à chaque créancier par le Contrôleur en vertu du Plan.

Bien entendu, puisque le processus d'examen des réclamations est toujours en cours (voir paragraphes 14 et suivant de la « Motion for Fourteenth Order Extending the Stay Period... » et le 22^e Rapport du Contrôleur), nous souhaitons que le Contrôleur nous transmette également l'information demandée ci-dessus lorsque le processus d'examen des réclamations et la distribution sera complétée. Vraisemblablement, cette information existe déjà dans un fichier électronique (fichier Excel par exemple) et pourra être facilement transmise par le Contrôleur.

Enfin, cette demande est formulée sous réserve du droit de notre cliente de demander à un stade ultérieur ou devant un autre forum l'intégralité des documents visés par la lettre du 28 avril de mon collègue Alain Riendeau.

Salutations,

.....
Enrico Forlini | Associé | Partner

T. +1 514 397 4328 | C. +1 514 944 4328 | F. +1 514 397 7600
eforlini@fasken.com | <http://www.fasken.com/en/enrico-forlini>

Fasken Martineau DuMoulin S.E.N.C.R.L., s.r.l.
800 Place Victoria, Bureau 3700, Montréal, Québec H4Z 1E9

**FASKEN
MARTINEAU** 

VANCOUVER CALGARY TORONTO OTTAWA MONTRÉAL QUÉBEC
CITY LONDON JOHANNESBURG

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Paula Mateus

De: Joel Rochon <jrochon@rochongenova.com>
Envoyé: 24 mai 2016 17:55
À: Sylvain Vauclair; Louise Comtois (louise.comtois@justice.gouv.qc.ca); jorenstein@clg.org; daniellarochelle@axion.ca
Cc: AAdessky@richter.ca; Bayus, Alexander (Alexander.Bayus@gowlingwlg.com); Benoit, Patrice (Patrice.Benoit@gowlingwlg.com); Remissa Hirji
Objet: RE: Montreal, Maine & Atlantique Canada Cie 450-11-000167-134

Hello Sylvain,

In our view, CP's modified request set out by Enrico below, does not change our position that they are not entitled to this confidential information relating to our clients at this stage of the litigation in the context of the CCAA proceedings or otherwise. We stand by our position described in more detail in our letter of May 18, 2016.

Regards,

Joel

JOEL ROCHON
PARTNER

ROCHON|GENOVA LLP
900 - 121 Richmond St W, Toronto, ON M5H 2K1
D 416.363.1867 x 222 T 1.866.881.2292 F 416.363.0263 E jrochon@rochongenova.com

IN ASSOCIATION WITH:
LIEFF CABRASER HEIMANN & BERNSTEIN LLP | SAN FRANCISCO | NEW YORK | NASHVILLE

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NOTE: This communication is privileged and intended only for the addressee. Please advise us immediately of receipt in error.

 PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING THIS EMAIL.

From: Sylvain Vauclair [<mailto:svauclair@woods.qc.ca>]
Sent: Friday, May 20, 2016 4:11 PM
To: Louise Comtois (louise.comtois@justice.gouv.qc.ca); Joel Rochon; jorenstein@clg.org; daniellarochelle@axion.ca
Cc: AAdessky@richter.ca; Bayus, Alexander (Alexander.Bayus@gowlingwlg.com); Benoit, Patrice (Patrice.Benoit@gowlingwlg.com)
Subject: TR: Montreal, Maine & Atlantique Canada Cie 450-11-000167-134

Dear all, further to CP's initial request and my email of May 11 (copy attached), please see CP's modified request below and advise the Monitor if you have or still have objections to the Monitor providing the requested information. Thank you and enjoy the weekend.



Sylvain Vauclair
Associé/Partner
T 514.982.4528 | svauclair@woods.qc.ca

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www.litigationboutique.com
2000, McGill College, Suite 1700, Montréal, Qc, Canada H3A 3H3
T 514.982.4545 | F 514.284.2046

De : Enrico Forlini [<mailto:eforlini@fasken.com>]

Envoyé : 20 mai 2016 15:42

À : Sylvain Vauclair

Cc : Alain Riendeau; Brandon Farber; Bayus, Alexander (Alexander.Bayus@gowlingwlg.com); Benoit, Patrice

Objet : Montreal, Maine & Atlantique Canada Cie 450-11-000167-134

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Salutations,

Enrico Forlini | Associé | Partner

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eforlini@fasken.com | <http://www.fasken.com/en/enrico-forlini>

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**FASKEN
MARTINEAU** 

VANCOUVER CALGARY TORONTO OTTAWA MONTRÉAL QUÉBEC
CITY LONDON JOHANNESBURG

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No : 450-11-000167-134

SUPERIOR COURT
(Commercial Division)
DISTRICT OF SAINT-FRANÇOIS
PROVINCE OF QUÉBEC

(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:

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JACQUES AND LOUIS-SERGES PARENT, ès-qualité
Class Action Representatives

and
PROVINCE OF QUÉBEC

and
CANADIAN PACIFIC RAILWAY COMPANY

Respondents

**MOTION FOR DIRECTIONS, NOTICE OF
PRESENTATION, AFFIDAVIT, LIST OF
EXHIBIT AND EXHIBITS R-1 TO R-4**

ORIGINAL

Mtre. Sylvain Vaclair
File no.: 5430-3

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