

Daniel E. Larochelle, I.I.B. avocat

Lac-Mégantic, ce 30 janvier 2014

Palais de Justice
Juge Gaétan Dumas
375, King Ouest
SHERBROOKE, (Québec)
J1H 6B9

Objet : C.S.: 450-11-000167-134

Mr Justice Dumas, Dear all,

As you know we are counsel to the Class Action Plaintiffs. We are writing to you in your supervisory capacity and in response to the comments that you made when we were last before you on January 23, 2014. At that time, you encouraged counsel to be both practical and creative in formulating a plan for the treatment of MMA's \$25 million insurance fund (the "XL Insurance Fund"), and to conclude the CCAA proceedings. In this regard, we believe that it is important to have a "Made in Lac-Mégantic" solution. Over the last several weeks, the Class Action Plaintiffs have received proxies executed by 1,526 class members, expressly authorizing the Class Action Plaintiffs to represent and speak for them in all aspects of these proceedings and the U.S. Chapter 11 proceedings. We view this as a positive development as it indicates that a significant (and growing) proportion of the derailment victims are able to speak with one voice.

The Class Action Plaintiffs propose the following to move this matter to conclusion:

1. **On February 11, 2014:** at the hearing before you, the Class Action Plaintiffs will be seeking:
 - (a) a Representation Order, which, if granted, will serve to further increase the likelihood of an acceptable plan being passed.
 - (b) approval of a simplified claims process (the motion materials in relation to the claims process will be served and filed with the court by no later than

February 4, 2014). The proposed claims process will permit creditors and the Court to quickly determine the claims pool for the purposes of voting on any plan, and to address the claims in a way that is proportionate to the amounts available for distribution. Based upon this simplified claims process, we propose a Claims Bar date of April 30, 2014.

2. **By February 28, 2014:** the Class Action Plaintiffs will file a restructuring plan (the "Plan") having the following features:

- (a) the XL Insurance Fund will be paid into Court, for distribution in accordance with a plan of distribution to be formulated by the Class Action Plaintiffs having regard to a series of guiding principles clearly articulated in the Plan¹, subject to the receipt of all necessary court approvals.
- (b) no professional fees will be paid out of the XL Insurance Fund, whether to the Class Action Plaintiffs or to any other professional, whether in Canada or the United States—the entire amount will be distributed to the persons entitled thereto in accordance with the provisions of the plan described above²;
- (c) any third parties who, prior to a date to be fixed, enter into a settlement that is (a) acceptable to the Class Action Plaintiffs and the Quebec government, or either of them with the approval of the Court, will receive the benefit of the release provisions of the Plan, and the Court shall have ongoing jurisdiction to implement any such settlement on motion by the Class Action Plaintiffs and/or the Quebec government;
- (d) the proceeds of the sale of the Debtor's business, the Travellers' insurance funds and any other estate funds (collectively, the "Estate Funds", which, for certainty, do not include the XL Insurance Fund) will be distributed in accordance with the scheme of priorities established by the Initial Order and applicable federal and provincial laws.

3. **By May 31, 2014:** A meeting of creditors to vote on the Plan will be convened by no later than May 15, 2014. In the interim, negotiations between stakeholders can take place. The ultimate goal of the proposals presented by the Class Action Plaintiffs and the 1,526 derailment victims whom they represent is to conclude these CCAA proceedings efficiently and fairly, with minimal further expense to creditors, and to start providing compensation to derailment victims prior to the one-year anniversary of the accident on July 6, 2014.

¹ At this time, we anticipate that those principles will include the following: (1) the coverage provisions of the XL insurance policy and any applicable legislative priorities; (2) proportionality (as to proof of damages, recovery and in all other respects); (3) the seriousness of the damages and any demonstrable hardship suffered; and, (4) such other factors as the Court determines to be relevant to the fair and equitable distribution of the funds.

² For certainty, the payment of professional fees incurred in connection with the advancement of class members' interests in the class action and in these proceedings, will be addressed in connection with the recovery, if any, made on behalf of class members from third parties, whether as part of these proceedings or as part of the pending class action.

Yours truly,

A handwritten signature in black ink, appearing to read 'Daniel E. Larochelle', written over a horizontal line.

Mé Daniel E.Larochelle

c.c. Service List