

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Case. No. 1:13-mc-00184-NT
1:14-cv-00113-NT

Chapter 11

**OMNIBUS REPLY OF OFFICIAL
COMMITTEE OF VICTIMS TO (I) OBJECTION OF PLAINTIFFS
ANNICK ROY (O/B/O JEAN-GUY VEILLEUX), MARIE-JOSEE GRIMARD (O/B/O
HENRIETTE LATULIPPE) AND (II) TRUSTEE'S OMNIBUS REPLY TO MOTION
OF OFFICIAL COMMITTEE OF VICTIMS FOR ORDER, PURSUANT TO COURT'S
MARCH 23, 2015 STAY ORDER, TO REIMPOSE STAY AND SCHEDULING HEARING**

The Official Committee of Victims (the "Victims' Committee") appointed in the chapter 11 case¹ of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor" or "MMA"), by and through its undersigned counsel, hereby submits this reply (the "Reply") to (i) the objection (the "Objection") of Plaintiffs Annick Roy (o/b/o Jean-Guy Veilleux), Marie-Josée Grimard (o/b/o Henriette Latulippe) filed on June 1, 2015 [Docket No. 288] and the (ii) response (the "Response") of the Trustee filed on June 1, 2015 [Docket No. 287] to the *Motion of Official Committee of Victims for Order, Pursuant to Court's March 23, 2015 Stay Order, to Reimpose Stay and Scheduling Hearing*, filed on May 18, 2015 [Docket No. 282] (the "Motion").² In support of the Reply, the Victims' Committee respectfully represents as follows:

¹ This matter is before the District Court for the District of Maine pursuant to the chapter 11 case of Montreal Maine & Atlantic Railway, Ltd.

² Capitalized terms used in but not otherwise defined shall have the meanings ascribed to them in the Motion.

REPLY

1. The Victims' Committee files this Reply to clarify certain inaccuracies set forth in the Objection and the Response.

Objection and Response Fail to Respond to Merits of Motion

2. The most telling aspect of the Objection is what Plaintiffs' Counsel is not telling the Court. Specifically, nowhere in the Objection does Plaintiffs' Counsel ever deny that the Retainers are as set forth in the Motion. Nor have they provided any evidence to suggest that the Retainers they have entered into with the Victims say anything different than what was contained in the form Retainer attached to the Motion.³ That rudimentary evidence is solely within their control and easily obtainable. Plaintiffs' Counsel notes that the Victims' Committee is "[r]elying upon an English translation of unknown origin of an unsigned document written in French that allegedly is a template for the retainer agreement." Objection ¶ 13. But Plaintiffs' Counsel has not provided anything to rebut the validity of the Retainer attached to the Motion. One would expect that, if the form Retainer provided by the Victims' Committee were not consistent with the signed Retainers, Plaintiffs' Counsel would have provided such signed Retainers thereby immediately putting this matter to rest. They have not – and their failure to do so speaks volumes and establishes, by negative inference, that the Retainers are consistent with the version provided by the Victims' Committee.

Victims' Committee Is Fiduciary of Victims and Creditors

3. Plaintiffs' Counsel demonstrates a fundamental misunderstanding of the role of statutory official committees in chapter 11 cases when it alleges that it is a "gross distortion" of the Victims' Committee's role to assert that the Victims' Committee represents all Victims.

³ As stated in footnote 3 of the Motion, the Committee understands that the retainer letters entered into by certain Victims with Weller, Green, Toups & Terrell LLP do not contain language conditioning the contingency fee upon the filing of a complaint prior to any settlement (the "Complaint Filing Condition").

Objection ¶ 20. The Victims' Committee is a fiduciary to all claimants regardless of whether those claimants are represented by counsel. It is heresy to suggest that the Victims' Committee does not have a duty to any particular Victims simply because they are otherwise represented by Counsel.⁴ In every large chapter 11 case, numerous creditors are represented by able counsel, but that does not diminish the committee's statutory role of oversight of the chapter 11 case and protection of creditors. Indeed, the very case that Plaintiffs' Counsel cites to support its position that the Victims' Committee has a limited role is instructive on this point. *In re SPM Mfg. Co.*, 984 F.2d 1305, 1315 (1st Cir. 1993). In *SPM*, the court noted that a "committee is a fiduciary for those whom it represents" and "is charged with pursuing whatever lawful course best serves the interest of the class of creditors represented." *Id.* The court goes on to explain the important independent role an official committee has in serving the interest of creditors:

The creditors' committee is not merely a conduit through whom the debtor speaks to and negotiates with creditors generally. On the contrary, it is purposely intended to represent the necessarily different interests and concerns of the creditors it represents. It must necessarily be adversarial in a sense, though its relation with the debtor may be supportive and friendly. **There is simply no other entity established by the Code to guard those interests. The committee as the sum of its members is not intended to be merely an arbiter but a partisan which will aid, assist, and monitor the debtor pursuant to its own self-interest.**

Id. 1316 (quoting *In re Daig Corp.*, 17 B.R. 41, 43 (Bankr.D.Minn.1981) (emphasis added).

4. Despite the Victims' Committees' essential role in protecting creditor interests, allegations are made in both the Objection and the Response that the Victims' Committee is not needed because the Victims are represented by counsel. This argument was rejected by the Bankruptcy Court in connection with the appointment of the Victims' Committee following objections to such appointment by, among others, a group of attorneys – including Plaintiffs'

⁴ Contrary to Plaintiffs' Counsel's contention that the Victims are not members of the class for whom the Victims' Committee was appointed, as clearly evidenced by the language of the Committee Order, the Victims are members of the creditor class represented by the Victims' Committee: "it is apparent to all that the victims of the Lac-Megantic derailment are creditors." Committee Order at. 2.

Counsel – representing 42 of the Victims. These attorneys objected on the grounds that they should be the sole spokesmen for their clients. The Bankruptcy Court overturned their objection and concluded that it should exercise its discretion and appoint the Victims’ Committee because “[a] victims’ committee will:

(1) provide an extra-judicial forum for victims with claims of different kinds to develop a common approach to case administration, the development of a plan and any issue in the case; (2) allow victims to speak with one voice when appropriate on any issue in the case without hampering the rights of any individual party-in-interest; (3) give official standing and voice to victims who may be without one in these proceedings; and (4) give the trustee and other parties a point of contact and negotiating partner on a plan and any other issues in the case.”

Committee Order p. 3.

5. Thus, the continuing existence of the Victims’ Committee is necessary to give voice to Victims where, as is the case with this particular dispute, they may not have one because the parties speaking for them may very well have an adverse economic interest to the Victims. Thus, the stay dispute itself demonstrates the continuing need for a Victims’ Committee. Indeed, to expect the Victims to be able to monitor and understand all that is going on in the various proceedings related to the Derailment and the implications of the Stay Termination Notice, especially on a matter where their advisors’ interests may conflict with their own is unreasonable. As the Bankruptcy Court noted in the Committee Order regarding the Victims: **“Most are residents of Quebec; most speak French as their primary language; many are unsophisticated in affairs of this type; and many may lack the resources to hire independent counsel.”** Committee Order p. 2-3.

Victims’ Committee Has Requisite Standing

6. The standing issue is a red herring. The Victims’ Committee undeniably has the requisite standing to bring the Motion. Indeed, even Plaintiffs’ Counsel admits that the Victims’

Committee has the right to seek permission from the Court to be heard on the very issue before the Court: “as relevant here [the Amended Committee Order] authorizes the Bankruptcy Committee to seek permission to be heard with respect to any stay pending appeal of this case.” Objection ¶ 22. Contrary to Plaintiffs’ Counsel’s allegation that the Victims’ Committee failed to make such a request, it is part of the relief sought in the Motion. The notion that the Victims’ Committee was being nefarious by “bootstrapping” such request to the Motion is plainly blustering. With only 30 days to act before termination of the stay, no other alternative existed.

7. Thus, the Victims’ Committee is acting upon the authority that it sought and obtained from the Bankruptcy Court over the objection of Plaintiffs’ Counsel to seek permission to be heard on the specific issue that is in dispute – the stay. The Amended Committee Order provides in no uncertain terms that the Victims’ Committee is “authorize[d] . . . to request permission from the Maine District Court to: . . . (ii) be heard on any issue related to the Consent Order or a stay of the Wrongful Death Proceedings.” Amended Committee Order ¶ 3.

8. Furthermore, the Stay Order entered by this Court, which Plaintiffs’ Counsel consented to, and provides authority for the Victims’ Committee to seek to reimpose the stay, was entered into after entry of the Amended Committee Order. Thus, Plaintiffs’ Counsel, who at the time was clearly cognizant of the issue of the Victims’ Committee’s contested standing, expressly consented to entry of the Stay Order which provided that the right to seek termination of the stay was “without prejudice to the rights of any party or the Official Committee of Victims to seek to reimpose the stay and the Court to grant such request.” Stay Order ¶ 6. This language is clear and, contrary to the Amended Committee Order, contains no reservation of rights language on standing issues. Plaintiffs’ Counsel’s consent alone should be dispositive. Indeed, not more than one week ago, the Supreme Court held that parties can consent to the jurisdiction

of an Article I court over a matter that would otherwise require the review of an Article III court. *Wellness Int'l Network, Ltd. v. Sharif*, No. 13-935, 2015 WL 2456619, at *12 (U.S. May 26, 2015) (“Adjudication based on litigant consent has been a consistent feature of the federal court system since its inception. Reaffirming that unremarkable fact, we are confident, poses no great threat to anyone's birthrights, constitutional or otherwise.”). If parties can consent to subject matter jurisdiction then certainly they can consent to mere standing, which is exactly what they did here.⁵

9. Even absent Plaintiffs' Counsel's express consent, the Committee would still have standing to be heard. Contrary to what is asserted in the Objection, the Victims' Committee does not have to show injury in fact to have standing to be heard because a committee may be heard as a party in interest under section 1109(b) of the Bankruptcy Code on any issue related to a chapter 11 case. 11 U.S.C. 1109(b) (“[a] party in interest, including the debtor, the trustee, a **creditors' committee**, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on *any issue* in a case under this chapter”) (emphasis added); *see also* 11 L. King et al. *Collier on Bankruptcy* ¶ 1103.05 (17th ed. 2015) (“Section 1109(b) gives creditors' committees . . . the right to appear and be heard on any issue arising in a chapter 11 case.”). Furthermore, courts have held that the statutory right of an official committee to be heard extends to non-core “related to” proceedings pending before federal district courts.⁶ *Phar-Mor, Inc. v. Coopers & Lybrand*, 22 F.3d 1228, 1241 (3d Cir. 1994) (holding that a “creditors' committee [has] an unconditional right to

⁵ It is noteworthy that the Trustee has previously agreed to waive any argument that the Victims' Committee lacks standing before the Maine District Court with respect to the Stay Order. Amended Committee Order ¶ 5.

⁶ Judge Torresen found in the Transfer Order that the Wrongful Death Proceedings were “related to” the Debtor's chapter 11 case. *See* Transfer Order at 26.

intervene in a non-core, ‘related to’ proceeding before a federal district court”); *Wakefern Food Corp. v. C&S Wholesale Grocers, Inc. (In re Big V Holding Corp.)*, 2002 U.S. Dist. LEXIS 12609, at *6-10 (D. Del. July 11, 2002) (finding that creditors’ committee had unconditional right to intervene in “related to” proceeding which was removed from state court and transferred under 28 U.S.C §157(a)).

10. Additionally, Courts have equated proceedings “related to” a debtor’s chapter 11 case to adversary proceedings, which, as discussed below, numerous courts have found official committees’ have an absolute right to intervene in. *See e.g., Phar-Mor, Inc. v. Coopers & Lybrand*, 22 F.3d at 1240 (finding that a state law action removed to federal court because it was “related to” a bankruptcy case is “an adversary proceeding”); *Term Loan Holder Comm. v. Ozer Group, L.L.C. (In re The Caldor Corp.)*, 303 F.3d 161, 170 (2d Cir. 2002) (holding that a creditor’s committee had right to intervene in an adversary proceeding and stating that adversary proceedings are “full blown federal lawsuits within the larger bankruptcy case”). Although the First Circuit has not opined on this issue, both the Second and Third Circuits have held that a creditors’ committee has an absolute right to intervene in an adversary proceeding. *See In re Marin Motor Oil, Inc.*, 689 F.2d 445, 457 (3d Cir. 1982) (holding that a creditors’ committee has an absolute right to intervene in an adversary proceeding in a chapter 11 case); *Iridium India Telecom Ltd. V. Motorola, Inc.*, 165 Fed. Appx. 878, 879 (2d Cir. 2005) (“[A] party in interest under 11 U.S.C. § 1109(b) has an unconditional right to intervene in an adversary proceeding under 24(a)(1) and need not make a separate showing under 24(a)(2)”; *In re The Caldor Corp.* 303 F.3d at 169 (finding that the phrase “any issue in a case” contained in section 1109(b) “plainly grants a right to raise, appear and be heard on any issue regardless whether it arises in a contested matter or an adversary proceeding”).

11. None of the voluminous authority cited by Plaintiffs' Counsel to allege the Victims' Committee lacks standing rebuts the right of the Victims' Committee to be heard pursuant to section 1109(b) of the Bankruptcy Code and none are contrary to the cases cited above holding that the Victims' Committee has the absolute right to intervene in a "related to" proceeding.

Relief Requested Not At Expense of Victims Who Have Filed Complaints

12. Plaintiffs' Counsel asserts that the Victims' Committee is seeking "to benefit one group of Victims – some of the Future Plaintiffs – to the detriment of the Existing Plaintiffs." Objection ¶ 43. Plaintiffs' Counsel provides no basis for this allegation and there can be none because it appears as if all the Victims (other than those represented by Weller, Green, Toups & Terrell LLP) signed identical agreements containing the Complaint Filing Condition, and therefore they all have the same rights and they are treated identically pursuant to their governing Retainers. The fact that the Complaint Filing Condition has been met or not met in individual cases does not mean that some are benefited at the expense of others. Perhaps more to the point, the Plaintiffs' Counsel's argument of detriment to any of the Victims really rings hollow when they are really attempting to protect their fee entitlements.

Committee Is Not Attempting to Interfere With Contractual Rights Of Parties

13. Contrary to what is alleged in the Objection, the Victims' Committee is not trying to interfere with or modify the Retainer agreements between the Plaintiffs' and their counsel. Rather, the Committee is simply seeking to maintain the status quo and ensure the Court is not unwittingly used as an instrument by the Plaintiffs' Counsel to re-write the Retainers to improve Plaintiffs' Counsel's claims against certain of the Victims. Thus, contrary to what is alleged in the Objection, (Objection ¶ 42) the Victims' Committee is not seeking to "deprive counsel of the

Future Plaintiffs of their agreed upon fees,” but to preserve the status quo created by the very agreements the Victims’ Committee is allegedly interfering with.⁷

Stay Issue Not Moot

14. The Trustee’s arguments that the relief sought is not necessary because the Complaint Filing Condition either (i) cannot be met because the settlements have already been agreed to, or (ii) will only be met upon confirmation of the U.S. chapter 11 plan also miss the mark for the simple reason that they express the Trustee’s views on the legal issue presented, not what a court would do if presented with that argument. The Canadian court overseeing the CCAA proceeding has already issued an opinion (*Judgment on the Motion For the Convening of a Creditors’ Meeting*, filed on May 5, 2015 (the “CCAA Opinion”), a copy of which is attached hereto as Exhibit A) stating that it will review and, if appropriate, approve the fees of the Plaintiffs’ Counsel. CCAA Opinion ¶¶ 8-16, 35. Therefore, it is pure speculation as to whether that court would be convinced by the Trustee’s arguments. More importantly however, it defies reasons to think that the approval of the CCAA plan after receiving the affirmative vote of the Victims, would not be viewed as a legally critical step in determining whether the Complaint Filing Condition had or had not been met before June 30, 2015. Indeed, the Plaintiffs’ Counsel’s argument highlights that very point when they argue that, at this stage, no settlement has been approved and therefore the Complaint Filing Condition can still be met because conditions remain before any settlement becomes binding on the Victims. Compare Objection ¶¶ 34, 37 (stating that “[t]he Future Plaintiffs have settled nothing” and that the settlements that do exist are “subject to the occurrence of additional conditions”) to Stay Termination Notice ¶2 (“HOWEVER, the termination of the stay under the Agreed Stay Order and the commencement

⁷ In that context, it should be very easy for Plaintiff’s Counsel to obtain from their clients, the Victims, amendments waiving the Complaint Filing Condition. The fact that this has not been done could lead one to conclude that they are not able to obtain such amendments from the Victims.

of new cases is intended to structure and enhance, rather than undermine, the efficacy of the proposed settlements with the Settling Defendants.”).

Injunction

15. The relief sought must be viewed in the context of the current state of the Wrongful Death Proceedings and related cases. Indeed, this Court should keep in mind that it is the Plaintiffs’ Counsel themselves who sought and obtained a stay of the proceedings in this case. In that context, the burden to obtain the continuation of such stay for a few weeks should not be the same as if the Victims had been initially enjoined pursuant to a stay imposed on such Victims. No opposing party has been able to articulate how any Victim would be prejudiced in the context of the current posture of these cases as the result of the limited and temporary reimposition of the stay –which has already been in place for over a year – for another mere 22 days, especially when such a limited reimposition still allows 7 days for Plaintiffs’ Counsel to file complaints (which can be drafted long in advance of the termination of the stay) before the statute of limitations expires.

16. In light of the lack of prejudice to the Victims from the limited and tailored stay sought, the issue of whether a stay should issue should turn on the public interest argument: should a court unwittingly be used as an instrument to modify the Retainer agreements for the benefit of counsel to certain of the Victims of this tragic derailment.

17. The Victims’ Committee’s purpose in filing the Motion was simply to ensure, as was the case when the Victims’ Committee informed the CCAA Court of the 40% contingency fee issue because no other party had seen fit to do so, that the Court is aware of all the facts and circumstances prior to making a determination regarding the termination of the stay. Thus, having stated such facts, the Victims’ Committee leaves the matter to the discretion of the Court.

WHEREFORE, the Victims' Committee respectfully requests that the Court enter an order (i) overruling the Objection, (ii) granting the relief requested in the Motion, and (iii) granting such other relief as this Court deems just and proper.

Dated: June 3, 2015

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Co-counsel to the Official Committee

CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2015, I electronically filed the Omnibus Reply of Official Committee of Victims to (i) Objection of Plaintiffs Annick Roy (o/b/o Jean-Guy Veilleux), Marie-Josée Grimard (o/b/o Henriette Latulippe) and (ii) Trustee's Omnibus Reply to Motion of Official Committee of Victims for Order, Pursuant to Court's March 23, 2015 Stay Order, to Reimpose Stay and Scheduling Hearing, with the Clerk of Court using the CM/ECF system which will send notification of such filing to the parties of record who have registered as CM/ECF participants.

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EXHIBIT A

**SUPERIOR COURT
(Commercial Division)**

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

No: 450-11-000167-134

DATE: May 5, 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

JUDGMENT ON THE MOTION FOR THE CONVENING OF A CREDITORS' MEETING

- [1] The Court is presented with a motion to convene a creditors' meeting following the filing of a plan of arrangement in the present matter.
- [2] It is unnecessary to recite all the facts having led to the filing of the plan of arrangement.
- [3] The judgments previously rendered in this matter by the undersigned fully explain the path that the parties have taken. Suffice to recall that the plan is filed following a rail disaster that occurred in Lac-Mégantic in July 2013.
- [4] The file has always been managed on the basis that a plan of arrangement would be filed whereby third parties that are potentially liable for the derailment, or for the damages caused thereby, would contribute to an indemnity fund in order to obtain releases in exchange for a substantial contribution to the plan of arrangement.

UNOFFICIAL TRANSLATION

- [5] A fund in the amount of over \$300,000,000 has now been created, which has allowed for the filing of a plan that may acceptable to creditors, who will be presented with said plan at a creditors' meeting to be held on June 9, 2015.
- [6] The motion to convene the creditors' meeting was to be a simple formality because all appeared to consent.
- [7] In fact, the orders to be rendered are relatively standard for this type of file.
- [8] However, at the hearing of the motion, Mtre Luc Despins, a U.S. attorney representing the official committee of victims in the Chapter 11 case, drew the court's attention to paragraph 38 of the proposed draft order, which reads as follows:
- [38] 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 distributions, 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;
- [9] Mtre Despins advises the court that certain U.S. attorneys have had mandates executed by the representative of the 47 victims who perished during the derailment.
- [10] These mandates, signed in Lac-Mégantic, Québec, appear to state that the U.S. attorneys would receive an amount representing 40% of any amount collected following actions filed in the United States.
- [11] Mtre Despins was concerned about the fact that paragraph 38 of the draft order could deprive the court of jurisdiction in the event that disputes would arise regarding the payment of fees that may appear disproportionate to the services rendered.
- [12] Since the beginning of this file, the court has very openly expressed to counsel that it believes the best way to resolve this matter is with the contributions of third parties in exchange for releases and by the certification of the Canadian class action for settlement purposes. This was, in the opinion of the court, the most efficient way to settle this matter.
- [13] However, the court consistently stated to counsel that their fees would be subject to court approval.
- [14] In fact, in Québec, the attorneys for the class action must have their fees approved by the judge who certifies the class action and renders a judgment on the distribution of the amounts awarded by judgment.
- [15] That said, we learned today that victims who have been attributed a fund in the amount of \$77,205,000 could see that amount slashed by 40%, which would be

payable to U.S. attorneys. This represents an amount of \$30,882,000 in professional fees.

- [16] Without rendering judgment on the issue and without deciding on the value of the services rendered, the court advised all the parties from the bench that it did not intend to relinquish the inherent power of the Superior Court to ensure that the proposed plan is fair and reasonable.
- [17] At this time, too many questions remain unanswered. Should questions be raised as to the validity of mandates granted in Québec in the days following the rail disaster, which court would have jurisdiction to determine the fees payable?
- [18] Does the percentage payable according to the executed mandate apply to all 48¹ victims or only to a portion of them?
- [19] Are the fees in conformity with the code of ethics applicable in Québec?
- [20] So many questions for which we do not have the answers.
- [21] A cross boarder protocol was approved by the Québec Superior Court and the Bankruptcy Court for the District of Maine. Could this protocol be used to resolve any potential conflicts?
- [22] The court must respect the jurisdiction of the court of Maine. The opposite is true as well. If the court does not have jurisdiction, it does not have the intention to usurp the jurisdiction of another court.
- [23] Moreover, do mandates duly executed with knowledge of the facts deprive the court of its inherent jurisdiction?
- [24] That said, one thing is clear, in order to have full effect, a plan of arrangement that has been duly approved by the creditors must be sanctioned by the court. It is up to the court to grant releases to third parties and only an order of the court can have this effect on those who do not settle the file on an individual basis.
- [25] For the moment, all these questions remain hypothetical. A vote on the plan has yet to be held. If the plan is not approved, the questions will remain unanswered. If the plan is approved and questions are raised, the court will decide.
- [26] Moreover, these questions are not to be answered prior to the meeting. The plan provides for the payment of amounts of money but does not address the payment of fees that may be owing.
- [27] Another question is raised. At the hearing, the attorneys stated that the proceedings filed in the United States have resulted in higher contributions than would have been obtained within the scope of proceedings filed in Québec.
- [28] As such, despite the very high fees, the victims would receive more than if they had simply filed proceedings in Québec. This is possible but the court does not presently

¹ A victim has been added since the onset of the proceedings.

have the information necessary to respond. According to the U.S. plan, the compensation appears to be taxable. Are taxes payable on the gross amount received or on the amount received after payment of professional fees? The victims most certainly already have this information but the court does not.

- [29] Mtre Hans Mercier, who acts as counsel to the U.S. attorneys, stated that the court has had the opportunity to appreciate the work done by counsel in Québec but has not had the chance to appreciate the work done by the U.S. attorneys.
- [30] It is quite likely that the possibility of legal action in the U.S. contributed to increasing the offers. What we do not yet know is the work done in the United States.
- [31] If the simple possibility of proceedings in the U.S. caused the offers to increase, it may be less necessary to know the extent of the work actually carried out.
- [32] As previously mentioned, there are many questions that remain unanswered.
- [33] At the hearing, the court allowed counsels to make any additional comments.
- [34] In keeping with the spirit of collaboration that appears to have been present since the onset of the file, the Chapter 11 trustee, Mr. Robert Keach, as well as the attorney for the official committee of victims in the Chapter 11, Mtre Luc Despins, along with the Monitor, the attorneys for the Government of Québec and those representing Class Members have agreed to modify paragraph 38 of the draft order so that it would read as follows:

ORDERS that, notwithstanding anything in this Order to the contrary and subject to the entry of the Canadian Approval Order and U.S. Approval Order and such Approval Orders becoming Final Orders, the valuation of claims for voting purposes with respect to 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. 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, which U.S. Plan shall provide for distribution by the WD Trustee strictly in accordance with Schedule E to the Plan, which is also attached to the U.S. Plan; provided, however, this paragraph shall be subject to the U.S. Plan, or any subsequent U.S. plan, being amended (and the U.S. Approval Order containing an identical provision) to provide :

(i) that no payment or distribution of any kind shall be made to any lawyer or counsel allegedly representing the holder of a Derailment Wrongful Death Claim (as defined in the U.S. Plan) unless such lawyer or counsel presents to the WD Trustee an executed engagement letter or similar document that entitles such lawyer or counsel to such fees or distribution, including any contingent fee (a "Derailment Wrongful Death Client Engagement Letter"); and

(ii) that no such distribution or payment shall be made by the WD Trustee if:

(a) the Derailment Wrongful Death Client Engagement letter has been held to be invalid or inoperative by a final order or ruling

entered in any proceeding (including an administrative proceeding) initiated by a party with standing disputing the rights of such lawyer or counsel to fees before any court, administrative tribunal or other forum with jurisdiction over such agreements, in the United States or Canada, (collectively a "Proceeding"), in which there was a challenge to the validity or operation of the Derailment Wrongful Death Client Engagement Letter; or

(b) any Proceeding is pending in which there is a challenge to the validity or operation of the Derailment Wrongful Death Client Engagement Letter, unless and until such Proceeding has been concluded by a final order or ruling in favor of the lawyer or counsel involved, and then the distribution to the lawyer and counsel shall be limited by the terms of any such final order or ruling issued in such Proceeding, to the extent such order or ruling contains any such limitations.

Holders of Derailment Wrongful Death Claims involved in a Proceeding shall receive the portion of their distributions on account of their Derailment Wrongful Death Claim not in dispute in such Proceeding at the same time and in the same manner as the holders of other Derailment Wrongful Death Claims not involved in a Proceeding.

Nothing in this paragraph 38 is intended to limit or can be interpreted as limiting the exercise by the CCAA Court of its jurisdiction in connection with the CCAA Proceeding, including in connection with the approval of the Plan.²

[35] This new language confirms that the court, without deciding on the merits, retains jurisdiction to decide on the validity and enforceability of the fee agreements.

[36] As such, the court grants the motion for the convening of a creditors' meeting, all while specifying that it retains jurisdiction to decide on the validity and enforceability of the fee agreements that would have been executed in favour of attorneys in the days that followed the rail disaster.

FOR THESE REASONS, THE COURT:

[37] **GRANTS** the motion;

[38] **DECLARES** that the court retains jurisdiction to decide on the validity and enforceability of the fee agreements that would have been executed in favour of attorneys in the days that followed the rail disaster.

Service

[39] **DECLARES** that the notices given for the presentation of the Motion are proper and sufficient;

² Paragraph 38 becomes paragraph 75 of the present order.

Definitions

[40] **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:

“**Chair**” has the meaning ascribed to it in paragraph 19 hereof;

“**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;

“**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;

“**Creditors**” means collectively all Persons having filed a Proof of Claim and “**Creditor**” means any one of them;

“**Creditors’ Meeting**” means the meeting of Creditors to be held on the Meeting Date for the purposes of considering and voting on the Plan;

“**Determination Date**” means August 8, 2013;

“**Designated Newspapers**” means La Presse, L’Écho de Frontenac, La Tribune, The Sherbrooke Record and the Montreal Gazette;

“**Meeting Date**” means June 9, 2015 subject to any adjournment, postponement or other rescheduling or further order of this Court;

“**Meeting Materials**” shall have the meaning ascribed to such term in paragraph 62;

“**Monitor’s Website**” means <http://www.richter.ca/en/insolvency-cases/m/montreal-maine-and-atlantic-canada-co;>

“**Motion**” has the meaning ascribed to it in the preamble of this Creditor’s Meeting Order;

“**Notice to Creditors**” means a notice of this Order and of the Creditors Meetings setting out the Meeting Date, substantially in the form attached hereto as Schedule A;

“**Plan**” means the plan of compromise and arrangement filed on March 31, 2015 pursuant to the provisions of the CCAA, as it may be amended, varied or supplemented from time to time in accordance with its terms;

“**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";

"Protective Proof of Claim" means the Proof of Claim filed by the Class Representatives on behalf of the holders of Wrongful Death Claims in accordance with paragraph 6 of the Claims Procedure Order;

"Proxy" means a proxy substantially in the form of Schedule B hereto;

"Publication Date" means the date on which the publication of the newspaper notice in all of the Designated Newspapers has been completed;

"Representation Order" means the Representation Order issued by this Court on April 4, 2014;

"Sanction Hearing" has the meaning ascribed to it in paragraph 70 hereof;

"Service List" means the service list posted on the Monitor's Website;

"Voting Claim(s)" means the Claims listed in paragraph 44 hereof;

"Voting Claim Categories" are the Wrongful Death Claims, Bodily Injury and Moral Damages Claims, Property and Economic Damages Claims, Subrogated Insurer Claims, Government Claims, and Non-Derailment Claims. Individually, each is a "Voting Claim Category";

"Voting Creditor" means a Creditor that holds a Voting Claim;

Interpretation

[41] **DECLARES** that where the context requires, a word or words importing the singular shall include the plural and vice versa;

CCAA Plan

[42] **ORDERS** that:

the Plan is hereby accepted for filing; and

Petitioner shall seek approval of the Plan in the manner set forth herein;

[43] **ORDERS** that Petitioner, in consultation with the Monitor, is hereby authorized to file any modification of, or amendment, variation or supplement to, the Plan (each a "Plan Modification") prior to the Meeting Date or at or before any Creditors' Meeting, in which case any such Plan Modification shall, for all purposes, be and be deemed to form part of and be incorporated into the Plan. Petitioner shall give notice of any such Plan Modification at the Creditors' Meeting prior to the vote being taken to approve the Plan. Petitioner may give notice of any such Plan Modification at or before the Creditors' Meeting by notice which shall be sufficient if, in the case of notice at the Creditors' Meeting, given to those Voting Creditors present at such meeting in person or by Proxy. The Monitor shall post on the Monitor's Website, as soon as possible,

any such Plan Modification, with notice of such posting forthwith provided to the Service List;

Value of Claims for Voting Purposes

[44] **ORDERS** that each Voting Creditor shall be entitled to vote and, for voting purposes:

Wrongful Death Claims shall, in the aggregate, represent no more than 22.2% (\$200,000,000.00) in value of all votes cast by Creditors;

Bodily Injury and Moral Damages Claims shall, in the aggregate, represent no more than 11.1% (\$100,000,000.00) in value of all votes cast by Creditors;

Property and Economic Damages Claims shall, in the aggregate, represent no more than 8.3% in value of all votes cast by Creditors (\$75,000,000.00);

Subrogated Insurer Claims shall, in the aggregate, represent no more than 3.8% (\$33,701,330.00) in value of all votes cast by Creditors;

Government Claims shall, in the aggregate, represent no more than 48.5% (\$435,626,775.00) in value of all votes cast by Creditors;

Non-Derailment Claims shall, in the aggregate, represent no more than 6.1% (\$55,046,528.00) in value of all votes cast by Creditors;

[45] **ORDERS** that each vote within its given Voting Claim Category, subject to the maximum total value attributed to such Voting Claim Category under the Plan and as set forth in paragraph 44 hereof, will be valued at an amount that is proportional to the face value of the corresponding Proof of Claim versus the face value of all Proofs of Claim filed in a given Voting Claim Category, the whole in accordance with the following formula:

$$\frac{\text{Face value of the Creditor's Proof of Claim}}{\text{Aggregate face value of all Proofs of Claim in the relevant Voting Claim Category}} \times \text{Maximum total value attributed to relevant Voting Claim Category as set forth in paragraph 7 hereof} = \text{Value of the Creditor's Voting Claim}$$

Creditors' Meeting

[46] **DECLARES** that the Monitor is hereby authorized to call, hold and conduct the Creditors' Meeting at the Centre Sportif Mégantic in the City of Lac-Mégantic, Québec, for the purpose of considering and, if appropriate, approving the Plan, unless the Creditors decide by resolution carried by the majority of votes (one vote for every Voting Claim, to be valued in accordance with paragraphs 44 and 45 hereof) to adjourn the Creditors' Meeting to a later date;

[47] **DECLARES** that the only Persons entitled to attend and speak at the Creditors' Meeting are Voting Creditors, their legal representatives and their proxy holders,

representatives of the Petitioner, representatives of the Monitor, the Chair (as defined below) and their respective legal and financial advisors. Any other Person may be admitted to the Creditors' Meeting on invitation of the Chair;

- [48] **ORDERS** that any proxy which any Creditor wishes to submit in respect of the Creditors' Meeting (or any adjournment thereof) must be substantially in the form attached hereto as Schedule B (or in such other form acceptable to the Monitor or the Chair) and be received by the Monitor before the beginning of the Creditors' Meeting;
- [49] **DECLARES** that the quorum required at the Creditors' Meeting shall be one Creditor present at such meeting in person or by proxy. If the requisite quorum is not present at the Creditors' Meeting, then the Creditors' Meeting shall be adjourned by the Chair to such time and place as the Chair deems necessary or desirable;
- [50] **DECLARES** that the only Persons entitled to vote at the Creditors' Meeting shall be:
- (a) Subject to subparagraph (b), Voting Creditors and their proxy holders;
 - (b) Class Representatives on behalf of Class Members (as defined in the Representation Order) who qualify as Voting Creditors, except for those Class Members having opted out of class representation pursuant to the Representation Order within the prescribed delay;
- [51] **ORDERS** that Creditors eligible to file Bodily Injury and Moral Damages Claims, as well as Property and Economic Damages Claims, in the CCAA Proceeding but that opted to only file their proofs of claim in the Bankruptcy Case shall be deemed, for voting and distribution purposes only, to have filed said proofs of claim in the CCAA Proceeding (the "**Deemed Filing**");
- [52] **ORDERS** that, should any Deemed Filing proof of claim be subject to dispute, such dispute would be resolved within the scope of the Bankruptcy Case, where the holders of such Deemed Filing proofs of claim opted to file same;
- [53] **ORDERS** that the Protective Proof of Claim shall be admitted for voting purposes, subject to paragraphs 44 and 45 hereof, and the votes of Creditors benefiting therefrom shall be cast by the Class Representatives, except for those Creditors having opted out of class representation pursuant to the Representation Order within the prescribed delay. Said creditors may vote individually or by proxy based on the value attributed to their claim in the Protective Proof of Claim, the whole subject to paragraphs 44 and 45 hereof;
- [54] **DECLARES** that a Voting Claim shall not include fractional numbers and Voting Claims shall be rounded down to the nearest whole Canadian dollar amount;
- [55] **ORDERS** that the results of any and all votes conducted at the Creditors' Meeting shall be binding on all Creditors, whether or not any such Creditor is present or voting at the Creditors' Meeting;
- [56] **ORDERS** that the Monitor shall preside as the chair of the Creditors' Meeting (the "Chair") and, subject to any further order of this Court, shall decide all matters relating to the conduct of the Creditors' Meeting. Petitioner and any Creditor may appeal from

any decision of the Chair to the Court, within five (5) Business Days of any such decision;

- [57] **DECLARES** that, at the Creditors' Meeting, the Chair is authorized to direct a vote with respect to the Plan and any amendments, variations or supplements thereto as the Petitioner may consider appropriate;
- [58] **ORDERS** that the Monitor may appoint scrutineers for the supervision and tabulation of the attendance, quorum and votes cast at the Creditors' Meeting. A Person designated by the Monitor shall act as secretary at the Creditors' Meeting;
- [59] **ORDERS** that in the absence of instruction to vote for or against the approval of the Plan in a duly signed and returned Proxy, the Proxy shall be deemed to include instructions to vote for the approval of the Plan;
- [60] **ORDERS** that any resolution to be voted on at the Creditors' Meeting to approve, amend, vary or supplement the Plan, will be decided by the majority of votes representing two-thirds (2/3) in value (one vote for every Voting Claim, to be valued in accordance with paragraphs 44 and 45 hereof) on a vote by ballot, and that any other matter submitted for a vote at the Creditors' Meeting shall be decided by a majority of votes cast on a vote by a show of hands, unless the Chair decides, in his or her sole and absolute discretion, to hold such vote by way of ballot;

Notification Procedure

- [61] **ORDERS** that the Notice to Creditors, which is hereby approved, shall be published twice by the Monitor in the Designated Newspapers as soon as possible following the issuance of this Order, but in any event no later than May 23, 2015;
- [62] **ORDERS** that, on or before 5:00 p.m. Montréal time on May 15, 2015, the Monitor shall publish on the Monitor's Website and send to the Service List the following documents (collectively, the "Meeting Materials"):
- (a) the Notice to Creditors (in English and French);
 - (b) the Plan (in English and French);
 - (c) a copy of the form of voting letter and Proxy (in English and French) for Creditors not represented by the Class Representatives, substantially in the form attached hereto as Schedule B; and
 - (d) the Monitor's report on the Plan (in English and French);
 - (e) the Chapter 11 Plan of Liquidation and Disclosure Statement filed in the Bankruptcy Case (the "U.S. Plan");
 - (f) a copy of the present Order (in French and English);
- [63] **ORDERS** that Petitioner is hereby authorized to make such modifications, amendments or supplements ("Additional Information") to the Meeting Materials (other than the Plan which may be modified, amended or supplemented solely in

accordance with paragraph 43 hereof) as Petitioner may determine, and Petitioner shall distribute or make available such Additional Information by one or more of the following methods determined in its discretion in consultation with the Monitor: (i) posting on the Monitor's Website; (ii) news release; (iii) newspaper advertisement; (iv) pre-paid regular mail, email, fax or delivery (in person or by courier); (v) except for Proxies, distribution at the Creditors' Meetings; or (vi) such other reasonably practicable method in the circumstances.

[64] **ORDERS** that, in addition to the publications referred to in paragraphs 61 and 62 hereof, the Monitor shall send the following to all known Creditors, by prepaid regular mail, courier, fax or email, at the address appearing on a Creditor's Proof of Claim by no later than 5:00 p.m. (Montréal time) on or about May 21, 2015:

- (a) a copy of the Notice to Creditors (in English and French);
- (b) the Plan (in English and French);
- (c) a copy of the form of voting letter and Proxy (in English and French) for Creditors not represented by the Class Representatives, substantially in the form attached hereto as Schedule B;
- (d) the Monitor's report on the Plan (in English and French)
- (e) a copy of the present Order (in English and French);
- (f) a letter advising that a copy of the U.S. Plan may be obtained from the Monitor's Website;

[65] **ORDERS** that publication of a copy of the Notice to Creditors in the manner set out in paragraph 61, and publication of the Meeting Materials in accordance with paragraph 62 hereof, shall constitute good and sufficient service of the Meeting Materials on all Persons who may be entitled to receive notice thereof, or of these proceedings, or who may wish to be present in person or by proxy at the Creditors' Meeting, or who may wish to appear in these proceedings, and no other form of notice or service need be made on such Persons, and no other document or material need be served on such Persons in respect of these proceedings;

[66] **ORDERS** that if the holder of a Claim or any subsequent holder of the whole of a Claim who has been acknowledged by the Monitor as the Creditor in respect of such Claim, transfers or assigns the whole of such Claim to more than one Person or part of such Claim to another Person or Persons, such transfer or assignment shall not create a separate Claim or Claims and such Claim shall continue to constitute and be dealt with as a single Claim notwithstanding such transfer or assignment, and the Monitor and the Petitioner shall in each such case not be bound to recognize or acknowledge any such transfer or assignment and shall be entitled to give notices to and to otherwise deal with such Claim only as a whole and then only to and with the Person last holding such Claim in whole as the Creditor in respect of such Claim, provided such Creditor may by notice in writing to the Monitor direct that subsequent dealings in respect of such Claim, but only as a whole, shall be with a specified Person and in such event, such Creditor, such transferee or assignee of the Claim as

a whole shall be bound by any notices given or steps taken in respect of such Claim with such Person in accordance with this Order;

Notices and Communications

[67] **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:

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

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

[68] **ORDERS** that any document sent by the Monitor pursuant to this Order may be sent by e-mail, ordinary mail, registered mail, courier or facsimile transmission. 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 mail and one (1) Business Day after the document is sent by 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;

Sanction Hearing

[69] **ORDERS** that the Monitor shall report to this Court no later than two (2) Business Days after the Creditors' Meeting with respect to:

- (a) the results of the voting to approve the Plan;
- (b) any other matter which the Monitor considers relevant in view of the Sanction Hearing;

- [70] **ORDERS** that, subject to further order of this Court, if the Plan has been accepted in accordance with the terms of this Order, the Petitioner shall bring a motion presentable before this Court on June 17, 2015 (the "Sanction Hearing"), seeking an order approving and sanctioning the Plan (the "Canadian Approval Order");
- [71] **ORDERS** that a copy of the motion seeking the Canadian Approval Order be published on the Monitor's Website as soon as it is filed with this Court;
- [72] **ORDERS** that the Petitioner shall serve the motion seeking the Canadian Approval Order on the Service List no later than two (2) Business Days after the Creditors' Meeting and that such service should constitute good and sufficient service for the purpose of the Sanction Hearing upon all Persons entitled to receive such service;
- [73] **ORDERS** that any Person intending to object to the motion seeking the Canadian Approval Order shall file with this Court a written notice containing a description of its proposed grounds of contestation and shall effect service of same upon counsel to the Petitioner and the Monitor, and upon those Persons listed on the Service List, the whole no later than 4:30 p.m. (Montréal Time) two (2) Business Days after the service of the motion seeking the Canadian Approval Order;
- [74] **ORDERS** that in the event that the Sanction Hearing is adjourned, postponed or otherwise rescheduled, only those Persons listed on the Service List are required to be served with notice of the adjourned, postponed or otherwise rescheduled date;
- [75] **ORDERS** that, notwithstanding anything in this Order to the contrary and subject to the entry of the Canadian Approval Order and U.S. Approval Order and such Approval Orders becoming Final Orders, the valuation of claims for voting purposes with respect to 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. 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, which U.S. Plan provides for distribution by the WD Trustee strictly in accordance with Schedule E to the Plan, which is also attached to the U.S. Plan; provided, however, this paragraph shall be subject to the U.S. Plan, or any subsequent U.S. plan, being amended (and the U.S. Approval Order containing an identical provision) to provide :
- (i) that no payment or distribution of any kind shall be made to any lawyer or counsel allegedly representing the holder of a Derailment Wrongful Death Claim (as defined in the U.S. Plan) unless such lawyer or counsel presents to the WD Trustee an executed engagement letter or similar document that entitles such lawyer or counsel to such fees or distribution, including any contingent fee (a "Derailment Wrongful Death Client Engagement Letter"); and
 - (ii) that no such distribution or payment shall be made by the WD Trustee if:
 - (a) the Derailment Wrongful Death Client Engagement letter has been held to be invalid or inoperative by a final order or ruling entered in any proceeding (including an administrative proceeding) initiated by a party with standing disputing the rights of such lawyer or counsel to fees before any court, administrative tribunal or other

forum with jurisdiction over such agreements, in the United States or Canada, (collectively a "Proceeding"), in which there was a challenge to the validity or operation of the Derailment Wrongful Death Client Engagement Letter; or

(b) any Proceeding is pending in which there is a challenge to the validity or operation of the Derailment Wrongful Death Client Engagement Letter, unless and until such Proceeding has been concluded by a final order or ruling in favor of the lawyer or counsel involved, and then the distribution to the lawyer and counsel shall be limited by the terms of any such final order or ruling issued in such Proceeding, to the extent such order or ruling contains any such limitations.

Holders of Derailment Wrongful Death Claims involved in a Proceeding shall receive the portion of their distributions on account of their Derailment Wrongful Death Claim not in dispute in such Proceeding at the same time and in the same manner as the holders of other Derailment Wrongful Death Claims not involved in a Proceeding.

Nothing in this paragraph 75 is intended to limit or can be interpreted as limiting the exercise by the CCAA Court of its jurisdiction in connection with the CCAA Proceeding, including in connection with the approval of the Plan.

Aid and Assistance of Other Courts

[76] **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;

General Provisions

[77] **ORDERS** that for the purposes of this Order, all Claims that are denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging currency to Canadian dollars on the Determination Date;

[78] **ORDERS** that the Monitor shall use reasonable discretion as to the adequacy of completion and execution of any document completed and executed pursuant to this Order and, where the Monitor is satisfied that any matter to be proven under this Order has been adequately proven, the Monitor may waive strict compliance with the requirements of this Order as to the completion and execution of documents;

[79] **DECLARES** 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;

[80] **ORDERS** the provisional execution of this Order notwithstanding appeal;

[81] **THE WHOLE** without costs.

Sherbrooke, _____

Honourable Gaétan Dumas, J.S.C.

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