

Hearing Date: September 13, 2013  
Time: 10:00 A.M.  
Location: USBC-202 Harlow St, Bangor, ME  
Objection Date: September 11, 2013, 5:00 P.M

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE**

*In re:*

**MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.,**

**Debtor.**

**Chapter 11**

**Case No. 13-10670 (LHK)**

**MOTION OF INFORMAL COMMITTEE OF QUÉBEC CLAIMANTS FOR  
APPOINTMENT OF CREDITORS' COMMITTEE  
PURSUANT TO BANKRUPTCY CODE SECTION 1102(a)(2)**

The Informal Committee of Québec Claimants (the “**Québec Committee**”), comprised of (i) the government of the Province of Québec, Canada (the “**Québec Government**”), (ii) the municipality of Lac-Mégantic, Québec (the “**City of Lac-Mégantic**”), and (iii) the representatives of a Canadian class action lawsuit consisting of victims of the July 6, 2013 accident that led to this chapter 11 case (the “**Québec Class Action Representatives**”), hereby submits this motion (the “**Motion**”), pursuant to section 1102(a)(2) of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), for entry of an order directing the Office of the United States Trustee (the “**U.S. Trustee**”) to appoint an official committee of creditors comprised of the types of creditors represented on the Québec Committee. In support of the Motion, the Québec Committee states as follows:

**PRELIMINARY STATEMENT**

1. As the Court is well aware, on July 6, 2013, an unmanned train consisting of 72 tank cars each allegedly carrying petroleum products, derailed at a road crossing in the City of Lac-Mégantic, resulting in several explosions that are presumed to have killed at least 47 people

and destroyed much of the City of Lac-Mégantic (the “**July 6 Accident**”). Montreal Maine & Atlantic Railway, Ltd. (the “**Debtor**” or “**MMA**”) admits that the train was an “unmanned eastbound MMA train.”<sup>1</sup> The chapter 11 trustee also appears to agree that the train was a “Debtor train.”<sup>2</sup> Between the resulting loss of life and personal injury to the people of Lac-Mégantic, and damage to the environment, homes, commercial and governmental buildings and infrastructure, news reports predict that the July 6 Accident could have “more financial consequences than any other land disaster in North American history.”<sup>3</sup>

2. In the face of this tragedy, on August 7, 2013, the Debtor sought relief in this Court pursuant to chapter 11 of the Bankruptcy Code. Simultaneously, its wholly-owned subsidiary, Montreal, Maine & Atlantic Canada Co. (“**MMA Canada**”), commenced a parallel insolvency proceeding in Canada under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the “**CCAA**”). Already, key decisions are being considered in both cases on matters such as whether a sale process for the railway should be commenced, the negotiation of a cross-border protocol, and a request to lift the stay to allow certain insurance matters to proceed in one of the two jurisdictions.<sup>4</sup> A comprehensive class action in Québec and other individual lawsuits are being filed in a variety of jurisdictions, and demands are being

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<sup>1</sup> See *Affidavit of M. Donald Gardner, Jr. In Support of First Day Pleadings* [Docket No. 11] (the “**Gardner Affidavit**”), at ¶ 14.

<sup>2</sup> See *Amended Application For Order, Pursuant To Sections 327 And 328 Of The Bankruptcy Code, Authorizing The Employment Of Kugler Kandestin, LLP As Special Counsel For The Trustee* [Docket No. 108], at ¶ 5 (“As set forth on the record by the Debtor’s counsel during an August 8, 2013 hearing, and as discussed in the [Gardner Affidavit], the Debtor’s bankruptcy case was precipitated by a derailment, on July 6, 2013, of an unmanned eastbound **Debtor train** with 72 carloads of crude oil and 5 locomotive units, in Lac-Mégantic, Quebec.”) (emphasis added).

<sup>3</sup> See [www.ctvnews.ca/canada/railway-says-it-can-t-pay-for-lac-megantic-disaster-cleanup-1.1390881#ixzz2cpqwy1Py](http://www.ctvnews.ca/canada/railway-says-it-can-t-pay-for-lac-megantic-disaster-cleanup-1.1390881#ixzz2cpqwy1Py)

<sup>4</sup> See e.g., *Motion Of Travelers Property Casualty Company Of America For Relief From The Automatic Stay Pursuant To 11 U.S.C. § 362(d)(1)* [Docket No. 105].

asserted against the Debtor's insurance policies. In short, the steps needed to stabilize the Debtor at this early stage have tremendous ramifications for the creditors of the Debtor (and in particular the creditors represented by the Québec Committee), yet those creditors lack the vehicle to appear and be heard in a meaningful way. The case thus cries out for an official committee, to provide a voice to those creditors in ongoing negotiations, to provide information to the many people and institutions with an interest in the chapter 11 case, and to provide the chapter 11 trustee with an effective counterparty with whom to negotiate creditor specific issues.

3. Because this case is governed by Subchapter IV of chapter 11, the U.S. Trustee does not have the statutory authority to form an official committee of unsecured creditors pursuant to section 1102(a)(1). This Court retains its power under section 1102(a)(2), however, to direct the U.S. Trustee to appoint a committee of creditors to ensure that they are adequately represented. Here, the creditors holding the largest claims against the Debtor, in the aggregate, consist of tort victims (asserting personal injury/wrongful death and property damage claims) and entities with subrogation rights and environmental claims. Many of these creditors' claims will enjoy administrative priority, while others will hold general unsecured claims. Accordingly, the Québec Committee respectfully requests that the Court direct the appointment of an official committee of creditors comprised of the types of creditors represented by the Québec Committee.

#### **JURISDICTION AND VENUE**

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 & 1334 and D. ME. LOCAL R. 83.6(a), pursuant to which all cases filed in Maine under chapter 11 of the Bankruptcy Code are referred to bankruptcy judges of this district.

5. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

### **PROCEDURAL BACKGROUND**

6. As a result of the July 6 Accident, on August 7, 2013, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “**Petition Date**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

7. On August 21, 2013, the U.S. Trustee, pursuant to Bankruptcy Code section 1163, appointed Robert J. Keach as the trustee (the “**Trustee**”) in this chapter 11 case.

### **CCAA Proceeding**

8. Concurrently with seeking chapter 11 relief in this Court, on August 7, 2013, MMA Canada, commenced a proceeding (the “**CCAA Proceeding**”) in the Superior Court (Commercial Division) of the Province of Québec, District of Montreal, which case has now been transferred to the court located in Sherbrooke, District of St. Francois, Province of Québec (the “**CCAA Court**”), under the CCAA. Richter Advisory Group Inc. has been appointed as the monitor in the CCAA Proceeding (the “**Monitor**”).

9. MMA Canada is incorporated under the laws of Nova Scotia as an unlimited liability company (“**ULC**”). *See* Amended Petition for the Issuance of an Initial Order (the “**CCAA Amended Petition**”), at ¶ 8.<sup>5</sup> A copy of the corporate organizational chart filed in the CCAA Proceeding is attached as Exhibit B.

10. The CCAA Proceeding was commenced to, among other things, create “a formal and orderly claims process, acceptable to the CCAA Court, to deal efficiently with the claims of

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<sup>5</sup> A copy of the CCAA Amended Petition is attached as Exhibit A.

all stakeholders including the families of the victims.” See First Report of the Monitor on the State of the Petitioner’s Financial Affairs (the “**Monitor Report**”), at ¶ 8.<sup>6</sup>

### The Québec Committee

11. Québec Government and City of Lac-Mégantic. Because of the extensive and significant nature of the damage caused by the July 6 Accident, the Québec Government and the City of Lac-Mégantic have already become heavily involved in the environmental remediation process, as well as in providing financial assistance to the families of the victims and the survivors who have been displaced from their homes. The City of Lac-Mégantic has sent multiple letters to the Debtor, stating that the Debtor must pay for remediation costs (which were already in the approximate amount of \$8 million as of July 30, 2013).<sup>7</sup> On July 10, 2013, the Québec Government announced they were establishing a \$60 million fund to assist the victims of the July 6 Accident (the “**Victims Fund**”). \$25 million of the Victims Fund has been authorized to be disbursed as follows:

- \$8 million has been allocated for emergency aid to individuals who have been affected by the July 6 Accident;
- \$7 million has been allocated to the City of Lac-Mégantic to address urgent needs such as emergency remediation and environmental clean-up; and
- \$10 million has been allocated to local businesses and employees for costs associated with relocation and resuming business operations.

12. Under Canadian law, specifically section 118 of the Civil Protection Act, the Québec Government is subrogated to the claims of individuals remunerated by the Victims

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<sup>6</sup> A copy of the Monitor Report is attached as Exhibit C.

<sup>7</sup> See [www.ctvnews.ca/canada/railway-says-it-can-t-pay-for-lac-megantic-disaster-cleanup-1.1390881#ixzz2cpqwy1Pv](http://www.ctvnews.ca/canada/railway-says-it-can-t-pay-for-lac-megantic-disaster-cleanup-1.1390881#ixzz2cpqwy1Pv)

Fund.<sup>8</sup> For the sake of clarity, the Québec Government and the City of Lac-Mégantic **are not** acting in this case in their capacity as a holder of any governmental tax claim against the Debtor entitled to priority under section 507(a)(8) of the Bankruptcy Code.

13. Québec Class Action Representatives. The Québec Class Action Representatives are Yannick Gagne and Guy Ouellet. They have filed a motion in the Superior Court of Québec, District of St. Francois, seeking authorization to bring a class action (the “**Québec Class Action**”) against, among others, the Debtor and MMA Canada on behalf of all persons and entities “residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic [including their estate, successor, spouse or partner, child, grandchild, parent, grandparent and sibling], who have suffered a loss of any nature of kind relating to or arising directly or indirectly from the train derailment that took place on July 6, 2013 in Lac-Mégantic . . . .” See Amended Motion to Authorize the Bringing of a Class Action & to Ascribe the Status of Representative (the “**Québec Class Action Motion**”), at ¶ 1.<sup>9</sup> The Québec Class Action Representatives seek compensation for the damages suffered by all the victims of the July 6 Accident.

#### **RELIEF REQUESTED**

14. Pursuant to section 1102(a)(2) of the Bankruptcy Code, the Québec Committee respectfully requests that the Court enter an order directing the U.S. Trustee to appoint an official committee of creditors to ensure that creditors are adequately represented in this case.

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<sup>8</sup> Section 118 of the Civil Protection Act provides that: “The Government is subrogated by operation of law in the rights of any person having received benefits under a financial assistance or a compensation program, up to the amounts paid, against any third party responsible for the damage or the event that is the subject of the program.” A copy of the relevant portion of the Civil Protection Act is attached as Exhibit D.

<sup>9</sup> A copy of the Québec Class Action Motion is attached as Exhibit E.

**BASIS FOR RELIEF REQUESTED**

**A. Appointment of Creditors' Committee Pursuant To Section 1102(a)(2) Is Necessary To Ensure "Adequate Representation"**

15. Since this case is governed by Subchapter IV of the Bankruptcy Code, the U.S. Trustee is precluded from appointing an official committee of unsecured creditors pursuant to section 1102(a)(1) because that section "does not apply in a case concerning a railroad." *See* 11 U.S.C. § 1161. Unless this Court acts, creditors will not have a representative to negotiate on their collective behalf and provide vital information to them regarding the progress of this case, even though the Debtor has stated that this case is essentially being run for their benefit. *See e.g.* Gardner Affidavit, at ¶ 18 (stating that Debtor "contemplates using the proceeds from all assets, including insurance policies, to fund one or more trusts for the benefit of claimants."). Moreover, the Debtor fully expects to work with "representatives of various categories of claimants to develop an efficient process for liquidating claims and distributing funds." *Id.* In addition, the Trustee has indicated that he is communicating with the Monitor in the CCAA Proceeding to establish cross-border protocols. *See* CCAA Amended Petition, at ¶ 54 (stating that the Debtor and MMA Canada "will be seeking to devise a process dealing with the claims and potential claims in both jurisdictions . . ."); *see also* Transcript of August 22, 2013 Hearing [Docket No. 85], at 37:45 – 38:40 (noting that Trustee has already drafted form of cross-border protocol and will meet with Monitor to discuss).

16. Creditors need to be at the table to negotiate and vet the terms of any action that may affect creditor recoveries such as any sale of estate assets, and the development of any cross-border protocol or claims reconciliation mechanism. Because the U.S. Trustee is precluded from appointing an official creditors committee pursuant to section 1102(a)(1),

creditors will only gain a place at the table if the Court directs the appointment of a creditors' committee pursuant to section 1102(a)(2).

17. Section 1102(a)(2) provides: "On request of a party in interest, the court may order the appointment of additional committees of creditors or of equity security holders if necessary to assure adequate representation of creditors or of equity security holders. The United States trustee shall appoint any such committee." 11 U.S.C. § 1102(a)(2). In contrast to section 1102(a)(1), nothing in the Bankruptcy Code precludes the application of section 1102(a)(2) in a railroad case. *See* 11 U.S.C. § 1161 (specifically listing section 1102(a)(1) among provisions that do not apply in Subchapter IV cases, but not listing section 1102(a)(2).)

18. Section 1102(a)(2) directs the court to order the appointment of additional committees if necessary to assure adequate representation of creditors. *See* COLLIER ON BANKRUPTCY ¶ 1102.07 (2012). Since no official committee of unsecured creditors has been appointed, it is readily apparent that creditors are not adequately represented in this case.<sup>10</sup> The prejudice to creditors also reaches the members of the Québec Committee, who hold claims in the nature of tort claims and environmental remediation. The lack of an official creditors' committee motivated the court in *In re Lion Capital Group* to appoint a special committee under section 1102(a)(2) consisting of municipal entities and school districts. *See* 44 B.R. 684, 685-87 (Bankr. S.D.N.Y. 1984). The *Lion Capital* court noted that it appointed the special committee because of "the great need for organized official creditor representation in this case, the inability

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<sup>10</sup> In a typical chapter 11 case where an official committee has been appointed under section 1102(a)(1), courts are often reluctant to appoint an "additional" committee because in "the vast majority of chapter 11 cases, a single committee of creditors has been deemed sufficient" and appointment of additional committee is an "extraordinary remedy." *See e.g., In re Dewey & LeBoeuf LLP*, 2012 Bankr. LEXIS 5534, at \*9-11 (Bankr. S.D.N.Y. Nov. 29, 2012) (denying motion to disband committee of former partners appointed pursuant to section 1102(a)(2)). Since no creditors' committee has been appointed in this case under section 1102(a)(1), it cannot be said that granting the relief requested in this Motion would create an "additional" committee; thus this is not one of those cases where granting relief under section 1102(a)(2) would be an extraordinary remedy.



of the United States Trustee to form an official creditors' committee and the heavy preponderance of the claims of municipalities and school districts (over 90%) in the calculus of unsecured debt commanded the appointment of an official special committee." *Id.* at 686.

19. Other courts have similarly found that the lack of an official committee, combined with the specter that a case is being run primarily for the benefit of the creditors seeking representation, are sufficient grounds to appoint a committee under section 1102(a)(2). In *In re Diversified Capital Corp.*, 89 B.R. 826 (Bankr. C.D. Cal. 1988), the court granted a motion to appoint a committee of secured creditors after the confirmation of the plan of reorganization but before the plan's consummation. Among other things, most of the debt in the case was held by the secured creditors and the plan provided that the debtor would attempt to sell the secured property to pay its creditors. *Id.* at 831. The court found that the appointment of a committee of secured creditors was proper and appropriate to "oversee the performance of the plan by the debtor". *Id.* See also *In re Fidelity America Mortg. Co.*, 1981 Bankr. LEXIS 3272, at \*1-2 (Bankr. E.D. Pa. July 29, 1981) (appointing committee of mortgage secured noteholders pursuant to section 1102(a)(2) to ensure adequate representation of their interests).

20. The cases described above demonstrate that the Court should similarly appoint a committee for this chapter 11 case. As in *Lion Capital*, no official committee can be formed under section 1102(a)(1) and the victims of the July 6 Accident, such as the members of the Québec Committee, will hold a substantial portion of the claims against the Debtor (described further below). Moreover, as in *Diversified Capital* and *Fidelity America Mortgage*, the parties for whom the case is being administered require representation.

21. These cases are entirely consistent with the sole case in this district to consider whether a committee should be appointed under section 1102(a)(2). The court in *In re Eastern*

*Maine Electric Coop., Inc.*, 121 B.R. 917 (Bankr. D. Me. 1990), noted that the “essential question is whether or not the interests of the members are ‘adequately represented’ at this stage of the proceeding” and to answer that question, the Court must inquire into the purposes of the representation. *Id.* at 932. The court described the role of a creditors’ committee as follows:

[T]he role of an official committee should be one that, with the administrative oversight of the United States Trustee, provides representation of an appropriate constituent body of parties-in-interest for the benefit of the reorganization process as it proceeds within the mechanisms of the bankruptcy court. In that regard, the role of the committee should include gathering information from its constituency and channeling that information through the committee and its professional agents so that the concerns and contributions of that constituency can be articulated by a representative entity. That representative entity can and should, on the basis of its authority, participate in the bankruptcy process, including negotiation of a plan of reorganization and recommending its acceptance or rejection. The existence of a committee enables other parties in the reorganization to deal with an entity that it can reasonably rely upon as expressing the concerns of the group it represents. Of course, the committee can, and should, also provide information to its constituency regarding significant developments in the case on a regular basis.

*Id.* at 933.

22. The *Eastern Maine* court denied the appointment of a committee under 1102(a)(2) because, at the time of the motion, the bankruptcy case was already three years old and the “time for meaningful participation by a committee of members has long passed.” *Id.* Here, to the contrary, the Québec Committee has filed this Motion at the outset and has moved to have this Motion heard on an expedited basis. Moreover, both the Trustee and the U.S. Trustee have agreed not to object to having the Motion heard on shortened notice.<sup>11</sup> Forming a committee pursuant to section 1102(a)(2) and imbuing it with the powers enumerated in section 1103 would squarely address the role envisioned by the *Eastern Maine* court.<sup>12</sup> With a committee, creditors

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<sup>11</sup> To be clear, at this time, neither the Trustee nor the U.S. Trustee has taken a position with respect to the relief requested in this Motion.

<sup>12</sup> A creditors’ committee appointed under section 1102(a)(2) would be empowered to exercise all the powers enumerated in section 1103, which includes, among others, (a) consulting with the Trustee regarding the

will have an official representative to participate in the pivotal aspects of this case, including negotiation of a cross-border protocol, a sale of the Debtor's assets, and eventually a plan of reorganization or liquidation, and will be able to express their collective concerns to the Court and other parties. Granting the relief sought herein would also be beneficial to the Trustee since it would provide him with a single constituent with whom he could negotiate matters affecting numerous parties in interest in Québec and the City of Lac-Mégantic.

23. Accordingly, the Québec Committee requests that the Court appoint an official committee of creditors with powers under section 1103 of the Bankruptcy Code to ensure adequate representation of the victims of the July 6 Accident, such as those represented on the Québec Committee.

**B. Court Can Determine Type of Creditors Appointed to Committee Pursuant to Section 1102(a)(2)**

24. Although the U.S. Trustee would make an initial decision regarding whether to appoint a particular creditor to any committee constituted under section 1102(a)(2), the Court has broad discretion to determine the type of creditors' committee that may be appointed under section 1102(a)(2). See e.g., *Diversified Capital*, 89 B.R. 826 (appointing members of committee of secured lenders); *Fidelity America Mortg.*, 1981 Bankr. LEXIS 3272, at \*1-2 (appointing committee of mortgage secured noteholders). The Québec Committee respectfully submits that the Court should direct the appointment of a committee comprised at least of the types of creditors represented on the Québec Committee, who already represent a broad cross-section of victims of the July 6 Accident. In that sense, the Québec Government and the City of

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administration of this case, (b) investigating the acts, conduct, assets, liabilities and financial condition of the Debtor, and (c) participating in the formulation of a plan. See 11 U.S.C. § 1103(c).

Lac-Mégantic are also victims in light of the claims they have arising from the July 6 Accident.

The nature of the unsecured claims against the Debtor can be roughly classified as follows:<sup>13</sup>

- i. Wrongful Death / Personal Injury Claims. The claims of the victims of the July 6 Accident, including the Québec Class Action Representatives, are likely to have administrative priority under section 1171 of the Bankruptcy Code. *See* 11 U.S.C. § 1171(a) (“There shall be paid as an administrative expense any claim of an individual or of the personal representative of a deceased individual against the debtor or the estate, for personal injury to or death of such individual arising out of the operation of the debtor or the estate, whether such claim arose before or after the commencement of the case.”). Attached hereto as Exhibit F is a chart filed in the CCAA Proceeding listing the actions brought by the estates of the deceased victims of the July 6 Accident.
- ii. Property Damage Claims. The July 6 Accident resulted in significant damage to homes, commercial and governmental buildings and rendered such structures unfit for use. Businesses in Lac-Mégantic suffered loss of income and many were forced to relocate. The claims of various property owners will far exceed (i) the amount of property insurance proceeds related to the damaged property and (ii) any financial assistance such property owners may receive from governmental authorities. As noted above, the Québec Class Action Representatives are also seeking to represent holders of property damage claims in the Québec Class Action.

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<sup>13</sup> The Québec Committee notes that in the Gardner Affidavit, the Debtor admits that the train that caused the July 6 Accident was operated by the Debtor, not MMA Canada. *See* Gardner Affidavit, at ¶ 14 (noting that the train was an “unmanned MMA train”). Thus, the Québec Committee’s claims sounding in tort and for environmental remediation are properly asserted against the Debtor. Further, even if the Québec Committee members only had claims against MMA Canada, all such claims are the ultimate liability of the Debtor by virtue of the fact that MMA Canada is a ULC organized under the *Companies Act* (Nova Scotia) (the “**Companies Act**”). Section 135 of the *Companies Act* provides that every present and past member of a ULC shall, subject to the exceptions contained in section 135, “be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up and for the adjustments of the rights of the contributories among themselves . . .” Accordingly, the Debtor, as the sole member of MMA Canada, is liable to contribute funds to MMA Canada in an amount sufficient to pay all of MMA Canada’s debts and liabilities. Such debts and liabilities include tort claims and environmental remediation claims. Moreover, as noted in the Gardner Affidavit, the Debtor and MMA Canada, “while separate entities, have fully integrated business operations and accounting, with [the Debtor] collecting most of the revenue generated . . . and then transferring to MMA Canada the funds it requires to pay its expenses.” *See* Gardner Affidavit, at ¶ 8; *see also* CCAA Amended Petition, at ¶ 17. Because MMA Canada and the Debtor operate as a *de facto* single business enterprise, it is entirely appropriate to treat a claim against MMA Canada as a claim against the Debtor. *See e.g., Pension Ben. Guaranty Corp. v. Ouimet Corp.*, 711 F.2d 1085, 1092-93 (1st Cir. 1983) (“Under its general equitable powers a bankruptcy court may ‘substantially consolidate’ the assets and liabilities of various entities. . . . Some of the facts a court will look for in deciding whether to grant a substantive consolidation include the parent owning a majority of the subsidiary’s stock, the entities having common officers or directors, the subsidiary being grossly undercapitalized, the subsidiary transacting business solely with the parent, and both entities disregarding the legal requirements of the subsidiary as a separate corporation.”) (internal citations omitted).

- iii. Environmental Claims. The July 6 Accident resulted in the release of massive quantities of chemicals into the area surrounding Lac-Mégantic. Environmental remediation efforts are already underway. The full extent of the total damage caused by the July 6 Accident is unknown at this time. The Debtor and MMA Canada have already stated that they are unable to make payments on account of environmental claims and have estimated that the cost to remediate the July 6 Accident **will exceed \$200 million CDN**. See CCAA Amended Petition, at ¶¶ 33-34. The City of Lac-Mégantic has sent a demand to the Debtor and MMA Canada seeking \$7,796,948.67 in costs paid by the City of Lac-Mégantic in connection with the July 6 Accident. The Government of Québec and the City of Lac-Mégantic will have claims against the Debtor as a result of the environmental clean-up occurring at the disaster site, which remediation will include portions of the Debtor's and MMA Canada's property (i.e. the railroad tracks and attendant land). Courts have held that these types of claims (i) arise from the exercise of a government's "police or regulatory" power and are not subject to the automatic stay by virtue of section 362(b)(4), and (ii) are entitled, in whole or in part, to administrative priority.<sup>14</sup>
- iv. Other Governmental Non-Tax Claims. Approximately 6,000 people lived in Lac-Mégantic at the time of the July 6 Accident. Approximately 2,000 of those residents were ordered to evacuate the area where the accident occurred. Many "evacuees to date have still not been able to return to their premises, either because of the destruction of their premises or by order of the authorities due to risks associated with contamination . . . ." See CCAA Amended Petition, at ¶ 23. The Québec Government has established the Victims Fund, which provides financial assistance to the victims of the July 6 Accident. The Government of Quebec has also issued a decree, dated July 29, 2013, directing both the Debtor and MMA Canada to remedy the environmental damages caused by the July 6 Accident. See *id.* at ¶ 25(d). By virtue of section 118 of the Civil Protection Act, RSQ, c S-2.3, the Québec Government is subrogated to the victims who have received financial benefits from the Victims Fund. Thus, the Québec Government, in addition to its claims for environmental remediation, has claims through subrogation to any victims who have received financial assistance from the Victims Fund and such claims, or portions thereof, may be entitled to administrative priority.<sup>15</sup>

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<sup>14</sup> See *City of New York v. Exxon Corp.*, 932 F.2d 1020, 1022, 1027 (2d Cir. 1991) (holding that damages action initiated by municipality to recover remediation costs was not subject to automatic stay); *In re Stevens*, 68 B.R. 774, 781, 784 (D. Maine 1987) (holding that claim of environmental agency to recover remediation costs associated with debtor's personal property should be given administrative expense priority due to trustee's requirement to comply with valid state laws affecting such property pursuant to 28 U.S.C. § 959(b)). In any event, the issue of the relevant priority of claims does not need to be addressed by the Court to decide this Motion.

<sup>15</sup> Many of the recipients of financial assistance from the Victims Fund are personal injury claimants and their claims will enjoy administrative priority under section 507(a)(2) by virtue of section 1171. Accordingly, the claims of the Quebec Government, or portions thereof, which arise under section 118 of the Civil Protection Act through

- v. Trade Claims. The Debtor has stated it has \$3.5 million in trade debt. *See* Gardner Affidavit, at ¶¶ 10, 13. MMA Canada owes approximately \$4.8 million on account of trade debt. *See* CCAA Amended Petition, at ¶ 49.

25. Congress has already determined that in a chapter 11 case involving a railroad, the appointment of a “run-of-the-mill” creditors’ committee consisting of trade creditors is not appropriate. *See* 11 U.S.C. § 1161. Moreover, as shown above, the size of the trade claims in this case is *de minimis* when compared to the size of tort claims, property damage claims and governmental non-tax/environmental remediation claims. Thus, a committee comprised of the types of creditors represented on the Québec Committee will adequately represent the spectrum of victims of the July 6 Accident.

26. The Québec Committee is aware that on August 28, 2013, certain representatives of wrongful death claimants filed the *Wrongful Death Claimants’ Motion for Formation of Creditors’ Committee* (the “**Wrongful Death Committee Motion**”) [Docket No. 76] and a joinder thereto [Docket No. 78]. The Wrongful Death Committee Motion is currently set to be heard on October 3, 2013 at 10:00 a.m. and seeks the appointment of a committee comprised solely of wrongful death and personal injury claimants. As shown above, wrongful death and personal injury claimants represent just one subset of a much larger group of creditors with claims against the Debtor. In contrast, the Québec Committee is comprised of individuals asserting wrongful death, personal injury and property damage claims, as well as holders of

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subrogation will be subrogated to the priority of the Victim Funds recipient’s claim as well. Section 507(d) of the Bankruptcy Code, which excludes certain subrogation claims from sharing in the same priority as the claim being subrogated, notably excludes claims under section 507(a)(2). *See* 11 U.S.C. § 507(d) (“An entity that is subrogated to the rights of a holder of a claim of a kind specified in subsection (a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9) of this section is not subrogated to the right of the holder of such claim to priority under such subsection.”). **“The exclusion of a reference to subsections 507(a)(2) and (a)(3) indicate that an entity subrogated to claims of those kinds will also become subrogated to the claimant’s right of priority.”** *See* COLLIER ON BANKRUPTCY ¶ 507.16 (emphasis added).

environmental and governmental non-tax claims. Accordingly, a committee comprised of the types of creditors represented by the Québec Committee would be more representative of the entire spectrum of victims of the July 6 Accident and creditors whose claims arose as a result of such accident.<sup>16</sup>

27. The Court should not be concerned by the appointment of a committee partially comprised of governmental units and administrative claimants. Indeed, the fact that some members of the Québec Committee are governmental units instead of natural persons is no bar to their appointment as committee members. For example, in *Lion Capital*, the court appointed a committee of governmental entities comprised of school districts. See *Lion Capital Group*, 44 B.R. at 685-87. The *Lion Capital* court noted that section 1102(b)(1), which provides that only “persons” could “ordinarily” serve on a committee, was not an absolute bar to a governmental entity serving on a committee and the claims of the schools districts were not tax claims entitled to priority. In addition, courts have found that holding an administrative claim is no bar to being a committee member. See *Official Comm. of Admin. v. Bricker*, 2010 U.S. Dist. LEXIS 99140,

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<sup>16</sup> It appears that the representatives of the probate estates who filed the Wrongful Death Committee Motion and the joinder have filed suits in Illinois state court (the “**Illinois State Court Actions**”) even though all the plaintiffs appear to be Canadian citizens. See CCAA Amended Petition, at ¶ 25. It is expected that some or all of the defendants in the Illinois State Court Actions will seek dismissal of such actions on grounds of *forum non conveniens* in favor of adjudicating the actions in Canada - the situs of the accident. See e.g., *Piper Aircraft Co. v. Reyno*, 454 U.S. 235 (1981) (stating that where airplane accident occurred in Scotland and all decedents were Scottish, lower court was justified in dismissing U.S. proceeding based on *forum non conveniens* because Scotland had strong interest in litigation and plaintiff’s forum choice is less relevant where real parties in interest are foreign); *Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824, 827 (5th Cir. 1993) (affirming district court’s decision to dismiss case on grounds of *forum non conveniens* where suit was brought by German citizens against American plane manufacturer and Germany had subject matter jurisdiction, events took place in Germany, and evidence was in Germany); see also *In re Vioxx Litigation*, 2006 WL 2950622 (N.J. Super. Oct. 2, 2006) *aff’d* 928 A.2d 935 (N.J. Super Ct. App. Div. July 31, 2007) (dismissing action filed in United States by British plaintiffs on grounds of *forum non conveniens*).

The Québec Committee takes no position on the issue of whether the Illinois State Court Actions should be dismissed on *forum non conveniens* grounds and expressly acknowledges that the official committee should be representative of all victims of the July 6 Accident.

at \*19 (N.D. Ohio Sept. 21, 2010) (finding that Official Committee of Administrative Creditors was properly authorized committee because administrative creditors held “claims” as defined under the Bankruptcy Code).<sup>17</sup>

28. Here, and as noted above, the Québec Government and the City of Lac-Mégantic are not asserting priority tax claims. Moreover, the Bankruptcy Code itself supports the ability of a governmental unit or an administrative claimant to serve on a committee constituted under section 1102(a)(2). The language of section 1102(a)(2) provides that the Court may direct the appointment of a committee of “creditors.” Section 101(10) defines “creditor” as an “entity” that has a claim. In turn, section 101(15) defines “entity” as, among other things, a person, estate or governmental unit. Section 101(27) defines governmental unit to include a foreign state or foreign government. Under the plain language of the Bankruptcy Code, then, the Court may direct the appointment of a committee comprised of the victims of the July 6 Accident and of governmental units.

29. For the reasons stated above, the Québec Committee submits that the Court, pursuant to section 1102(a)(2), should enter an order directing the U.S. Trustee to appoint a committee of creditors, comprised of the types of creditors represented on the Québec Committee, in order to ensure that such creditors are adequately represented in this case.

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<sup>17</sup> Attached as Exhibit G is the “Appointment of Committee of Administrative Claimants” filed by the United States Trustee for Region 9 in the chapter 11 case of *In re LTV Steel Company, Inc.* Case No. 00-43866 (Bankr. N. D. Ohio, Feb. 25, 2003) [Docket No. 5365].



**WHEREFORE**, the Québec Committee respectfully requests that the Court enter an order (i) directing the U.S. Trustee, pursuant to section 1102(a)(2), to appoint an official committee of creditors comprised of the types of creditors represented on the Québec Committee and (ii) granting such other relief as this Court may deem just and proper.

Dated: August 30, 2013

Respectfully submitted,

INFORMAL COMMITTEE OF QUÉBEC  
CLAIMANTS

/s/ Richard P. Olson

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**EXHIBIT A**

CANADA

**SUPERIOR COURT**  
(Commercial Division)

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
N°: 500-11-045094-139

(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)**, a legal person incorporated under the laws of  
the province of Nova Scotia, having a place of  
business at 1, Place Ville-Marie, 37<sup>th</sup> Floor,  
Montréal, Québec H3B 3P4 (at the offices of its  
attorney ("*fondé de pouvoir*"));

**PETITIONER**

and

**RICHTER ADVISORY GROUP INC. (RICHTER**  
**GROUPE CONSEIL INC.)**, a legal person, having  
a place of business at 1981, McGill College,  
Montréal, Québec, H3A 0G6;

**PROPOSED MONITOR**

**AMENDED PETITION FOR THE ISSUANCE OF AN INITIAL ORDER**  
**(Sections 4, 5 and 11 of the *Companies' Creditors Arrangement Act*,**  
**R.S.C. 1985, c. C-36 ("*CCAA*"))**

**TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE  
COMMERCIAL DIVISION, IN AND FOR THE DISTRICT OF MONTREAL, THE PETITIONER  
RESPECTFULLY SUBMITS THE FOLLOWING:**

**I. INTRODUCTION**

1. Montreal Maine & Atlantic Canada Co ("**MM&A**" or the "**Petitioner**") is insolvent and is a company to which the CCAA applies, as set forth below;
2. The Petitioner provides services as a shortline freight railway carrier operating various rail lines in the province of Québec. It is a subsidiary of Montreal Maine & Atlantic Railway Ltd. ("**MM&AR**"), a Delaware corporation whose head office is located in the State of Maine and who operates lines *inter alia* in the States of Maine and Vermont;
3. The Petitioner urgently requires a stay of proceedings from its creditors and from the numerous claims made or anticipated to be made against it, including a class action law suit commenced in the province of Québec against it, MM&AR, their joint liability insurer

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(the "**Liability Insurer**") and other defendants (said proceedings not having yet been served upon the Petitioner) and several letters of demand, including from the municipality of Lac-Mégantic with respect to losses or amounts incurred associated with a tragic train derailment which intervened on July 6<sup>th</sup>, 2013 in Lac-Mégantic, Québec, the whole as more fully set forth below. Proceedings have also been instituted against MM&AR and other third parties in the United States of America. MM&AR, together with the Petitioner and other members in its corporate group are collectively referred to herein as the "**Petitioner's Corporate Group**" and are listed in Schedule "A" hereto. The members of Petitioner's Corporate Group, and their respective directors, officers and employees and the Liability Insurer who are defendants to one or more of the proceedings referred to above are listed in Schedule "B" hereto and are collectively referred to herein as the "**Non-Petitioner Defendants**";

4. The claims and potential claims referred to above are related to the potential liability of the Petitioner and/or others (i) towards persons and legal persons having sustained losses as a result of the tragic train derailment that occurred in Lac-Mégantic, Québec (collectively, the "**Personal Claimants**" and the claims and potential claims held by the Personal Claimants collectively, the "**Personal Claims**"); as set forth more fully below, and (ii) towards governmental or environmental authorities and others (collectively, the "**Environmental Claimants**") with respect to environmental claims and potential environmental claims associated with said derailment (collectively, "**Environmental Claims**") and towards other claimants with respect to other claims or potential claims associated with the derailment. The Personal Claimants, the Environmental Claimants and the claimants with respect to other claims and potential claims related to said derailment are referred to herein as, the "**Train Derailment Claimants**" and the Personal Claims, the Environmental Claims and the other claims and potential claims related to said derailment are collectively referred to herein as the "**Train Derailment Claims**";
5. While Petitioner holds insurance covering certain of the Train Derailment Claims and the defense costs of Petitioner and MM&AR, as the amount of said Train Derailment Claims is ever increasing, it has become evident that in the event of a determination that Petitioner and/or MM&AR are liable and that the Train Derailment Claims are valid, the amount of the insurance coverage will not be sufficient to cover all of the Train Derailment Claims;
6. The protection sought by the Petitioner hereunder is for the purpose of implementing a successful plan of compromise or arrangement of the Train Derailment Claims and any other indebtedness of the Petitioner and providing the Petitioner with the necessary forum to:
  - a) Set up a claims process to address and settle the various claims and potential claims against it;
  - b) Negotiate with its Liability Insurer and other insurers payment of the insurance indemnities for the benefit of the Train Derailment Claimants and other claimants who may be entitled to such indemnity;
  - c) Preserve and maximize the value of the business in order to realize the maximum value for its various stakeholders, including potentially the Personal Claimants, the Environmental Claimants and other claimants and creditors;

7. Concurrently with the present proceedings, it is expected that the Petitioner's parent, MM&AR, will be commencing proceedings under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court, pursuant to which recognition in Canada of the automatic statutory stay of proceedings resulting therefrom may be sought. In addition, if the relief requested herein is granted, a petition under Chapter 15 of the U.S. Bankruptcy Code may be filed seeking recognition of these proceedings in the United States and seeking the assistance of the relevant U.S. Courts in enforcing this Court's Order;

II. **THE PETITIONER'S CORPORATE STRUCTURE AND BUSINESS**

i) **Corporate Background**

8. The Petitioner is incorporated under the laws of the province of Nova Scotia, namely the *Companies Act*, R.S., c. 81 ("NSCA") as an unlimited liability company. It was incorporated on May 6, 2002 and has its registered office in said province, located at 1959, Upper Water Street, Suite 800, in the City of Halifax. However, it does not operate in the province of Nova Scotia, nor does it hold any assets in said province;
9. All of the Petitioner's assets and operations are in the province of Québec. It has been registered in the province of Québec pursuant to *An Act respecting the legal publicity of enterprises*, R.S.Q., c. P-44.1 ("LPEA") since November 14, 2002;
10. Since its registration in the province of Québec pursuant to the LPEA, it has had and has a place of business at its *fondé de pouvoir's* office in Montreal (the *fondé de pouvoir* being the undersigned attorneys). It also has a place of business at 191 Victoria Street in Farnham, Québec;
11. As indicated above, the Petitioner operates as a shortline freight railway carrier within the province of Québec and holds a Certificate of fitness under the *Canada Transportation Act*, S.C. 1996, c. 10 ("CTA"). MM&AR operates as a railway carrier in the United States;
12. The Petitioner as stated above is a company to which the CCAA applies. Petitioner is not constituted as a railway by charter or under special legislation (such as under railway acts). It is constituted as an "ordinary" company under the NSCA, as stated above (additionally, the *Railways Act* of Nova Scotia, SNS 1993, c. 11 (the purpose of which is to ensure the safe operation of railways in the province of Nova Scotia) likely only applies to companies which operate or intend to operate, railways within the province of Nova Scotia, thus said statute does not apply to the Petitioner);
13. While the CCAA, as the *Bankruptcy and Insolvency Act* ("BIA") and the *Winding Up and Restructuring Act* ("WURA"), excludes "railway companies" from the definition of "company", historically, these statutes referred to railway companies created and governed by specific railway legislation or by charter. Accordingly, they do not exclude a company incorporated by ordinary corporate legislation that may operate as a freight railway carrier such as in the case of the Petitioner;

ii) **Business and Structure**

14. The Petitioner is a subsidiary of MM&AR, who in turn is a subsidiary of Montreal Maine & Atlantic Corporation, a Delaware corporation having its head office in the State of Maine

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in the United States (the chart illustrating the corporate structure of the Petitioner's Corporate Group being filed in support hereof as Schedule "A");

15. Petitioner operates rail lines in corridors in the province of Québec extending from Saint-Jean to Farnham, from Bedford to Sainte-Rosalie, as well as from Farnham through Lac-Mégantic to the U.S. border, where it joins the lines of MM&AR. The transportation of products via the States of Vermont and Maine is effected via MM&AR;
16. In effect, Petitioner with its parent, MM&AR, operate in an integrated, international shortline freight railroad system (the "MMA System") that has 510 route miles of track in Maine, Vermont and Quebec. The MMA System is a substantial component of the transportation system of Northern Maine, Northern New England, Quebec and New Brunswick. Main-line operations in the MMA System are conducted regularly between Millinocket and Searsport, Maine, and from Brownville Junction, Maine to Montreal, Quebec. Service is also provided between Farnham, Quebec and Newport, Vermont to connect with the northeastern U.S. westbound trains to Montreal. As a whole, the System provides:
  - a) the shortest rail transportation route between Maine and Montreal and a critical rail artery between Saint John, New Brunswick and Montreal;
  - b) strategic links to the Canadian Pacific Railroad, the Canadian National Railroad, and Guilford Rail System and beyond to the North American rail system;
  - c) outlets for major producers of paper, lumber, wood and agricultural products in eastern and northern Maine; and
  - d) in-bound transportation for chemicals and other products used by paper producers and consumers in Maine.
17. The Petitioner and MM&AR while separate companies have fully integrated business operations and accounting. Accordingly, they share part of the expenses and costs related to the management of both companies, including costs related to the head office of MM&AR (where the management personnel shared by both companies is located) in a proportion of 60% being assumed by MM&AR and 40% by the Petitioner;
18. Each company assumes its own particular expenses (specifically incurred by the entity for its own operations). As a result, the Petitioner is responsible for the purely "Canadian" expenses, such as the payment of its employees, its Canadian providers and suppliers, the building in Farnham, its fuel consumption in Canada, etc.;
19. The greater part of the income is collected in the United States by MM&AR and the latter provides to the Petitioner the funding for the Petitioner's expenses;
20. In practice, as MM&AR receives the income, it transfers to a bank account of the Petitioner, held at the Canadian Imperial Bank of Commerce in Toronto, the portion of funds required to pay the expenses of the Petitioner. Additionally, the Petitioner at times collects directly certain payments; however, these amounts are not significant compared to those that are collected by its parent company in the U.S.;

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III. EVENTS LEADING TO THE PRESENT PETITION

21. The Petitioner and its U.S. parent are currently facing significant challenges as a result of the tragic train derailment that occurred in the early hours of July 6, 2013 in the municipality of Lac-Mégantic, province of Québec, and that involved the derailment of a freight train operated by the Petitioner and consisting mainly of 72 tank cars, each carrying petroleum crude oil and 5 locomotive units (the "Derailment");
22. The transportation of the crude oil had begun in New Town, North Dakota, by Canadian Pacific Railway ("CP") who transported it to the Saint-Luc Interchange Yard, in Greater Montreal, Quebec, from where the transportation was continued by the Petitioner. The crude oil was to have been transported via Petitioner's line and thereafter transported by MM&AR in the State of Maine, with its ultimate destination being Saint John, New Brunswick (the transportation by railway in New Brunswick was to have been handled by another railway line);
23. While investigations are still ongoing, it is known that following the Derailment, fire and explosions ensued and a great number of lives were lost (established by the authorities at 47 people), injuries were suffered and destruction of and damage to property occurred. Other significant and important damages include the closing of or interruption of businesses and environmental damage that is still being assessed. Evacuations (of approximately 2 000 persons) from the area where the Derailment and explosions occurred were ordered and many evacuees to date have still not been able to return to their premises, either because of the destruction of their premises or by order of the authorities due to risks associated with contamination or other;
24. Following the tragic events, claims were made either verbally or through letters of demand or proceedings against *inter alia* the Petitioner and corporate members of its group, including MM&AR and the Liability Insurer and continue to be made against them, in Québec and in the United States or both, as set forth below;
25. To date, the claims include the following:
  - a) A class action ("Class Action") instituted against the Petitioner, MM&AR, the Liability Insurer and others in the Superior Court of Québec, district of St-François, on behalf of victims of the Derailment, seeking, *inter alia*, to have the Petitioner and other defendants declared solidarily liable for the damages suffered by each member of the class and to pay a sum to be determined in compensation of the damages suffered. A copy of the Class Action is attached herewith as Exhibit R-1;
  - b) Several actions instituted by individuals acting as special administrators of the estates of deceased persons against MM&AR and other defendants in the Circuit Court of Cook County (Chicago), in the State of Illinois (U.S.A.), claiming judgment for injuries and losses that are compensable under U.S. legislation (to date 13 separate actions have been filed and served, 11 of which claiming an indemnity in excess of \$1,000,000 each), as appears from a copy of the list of complaints at law (the "List of Complaints") filed in support hereof as Exhibit R-2;

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- c) Letters of demand from the Municipality of Lac-Mégantic, the first letter claiming an amount of \$4,149,187.48 and a second letter increasing the amount claimed to the sum of \$7,796,948.67, claiming payment of costs paid by it, as appears from a copy of the letters filed *en liasse* in support hereof as **Exhibit R-3**;
  - d) Order issued by the Minister of Sustainable Development, Environment, Wildlife and Parks (the "**Minister of Environment**") dated July 29, 2013 issued against the Petitioner MM&AR and other defendants ordering that immediate steps be taken in relation to the environmental damage *inter alia* to proceed with remediation, containment and pollutant cleanup, as appears from the letter from the Ministère de la Justice of same date and order filed *en liasse* in support hereof as **Exhibit R-4**;
  - e) Notice of claim from Tafisa Canada, owner of production facilities in Lac-Mégantic with respect to a lawsuit resulting from the Derailment, inoperability of the MM&A Rail Line and the inability to ship its products to its customers, as appears from a copy of the Notice of claim filed in support hereof as **Exhibit R-5**;
  - f) Notice of intent to file a claim from Western Petroleum Company for loss of rail cars leased by it and that were part of the train operated by the Petitioner that derailed, as appears from a copy of the Notice of intent filed in support hereof as **Exhibit R-6**;
  - g) Letter of demand from Canadian Pacific Railway claiming an amount in excess of \$1,000,000 for, *inter alia*, equipment lease and AAR car repairs and other, as well as advising of its intention to offset an amount of \$660,460 CAD "for traffic that did not make the destination and empties that did not return to Canadian Pacific", the whole as appears from a copy of the letter filed in support hereof as **Exhibit R-7**;
  - h) Numerous letters of demand from various persons or their insurers concerning losses sustained to their properties or businesses, as appears from a copy of the list of letters of demand (the "**List of Letters of Demand**") filed in support hereof as **Exhibit R-8**;
26. The Petitioner and members of Petitioner's Corporate Group are awaiting the results of the investigation being conducted by numerous authorities at several levels, including the Federal Government, through the R.C.M.P., the Transport Safety Board and Transport Canada, and the Québec Provincial Government, through the Sûreté du Québec and search warrants have been issued by certain of these governmental or regulatory authorities or at their request;
27. In the meantime, while the Petitioner is deploying efforts to maintain railway transportation services where possible to its customers in Québec, its railway transportation services have been greatly reduced in Québec, and by MM&AR in the United States, as a result of the unavailability of the Lac-Mégantic segment of the line;
28. Moreover, as appears from the letter and the order from the Minister of Environment (Exhibit R-4), an order ("**Cleanup Order**") was issued on July 29, 2013 pursuant to Section 114.1 of the *Environment Quality Act*, R.S.Q., c. Q-2 ("**EQA**") ordering *inter alia* the Petitioner, MM&AR and others to recover and remove any contaminant emitted,



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deposited or discharged into the water or unto the soil following the Derailment and to dispose of same in an authorized site and as prevent the petroleum and all other contaminants from being propagated into the environment, including in the air, the soil and the water (both surface and underground) and to provide the Minister of Environment or any person designated by the latter with any relevant information requested with respect to the work pursuant to said order as well as execute all necessary cleanup and decontamination work and the required mitigation and monitoring measures with respect to the environment, the whole as more fully detailed in the Cleanup Order;

29. As appears from the foregoing, the contamination in question occurred following the Derailment and thus has already occurred and is not due to any present or ongoing business activities of the Petitioner;
30. Moreover, the contamination affects in great part land that does not belong to, is not in the possession of and is not under the control of the Petitioner, the only portion of land owned by the Petitioner affected by the contaminants being the parcel of land on which are located the railway tracks in Lac-Mégantic;
31. Although Petitioner, since the Derailment, has undertaken and tried to assume and execute its obligations under the various applicable environmental legislation (federal and provincial) to the extent of its capacity and resources, it has become evident that it does not possess the financial capacity to do so, especially in light of the position taken by the Liability Insurer with respect to indemnification under its policy of insurance;
32. The Liability Insurer, while recognizing an obligation to indemnify under the policy, maintains, because of the sheer number of claims being made and the amounts being claimed, that it cannot provide for payment of covered environmental cleanup costs to the detriment of the third party claimants, especially where the amounts of the claims exceed the limit of coverage;
33. Thus, a great part of the Cleanup Order has a definitive monetary implication and it is evident that Petitioner is not and will not be able to perform all of the cleanup nor pay the services of third parties to do so. At present, it is estimated that pollutant cleanup costs will exceed 200 million dollars CDN;
34. While Petitioner and MM&AR have fully cooperated with the environmental authorities, have met with their representatives and have given assistance in connection therewith, and while the Petitioner and MM&AR have submitted the Train Derailment Claims, including the Environmental Claims, to the Liability Insurer, the latter has failed to make any payments under the insurance policy in this regard. In addition, neither the Petitioner nor MM&AR are able to make payment at this stage of sums incurred or to be incurred given their financial situation as described below;
35. It is financially impossible for the Petitioner to continue the operations and the provision of services without the benefit of the protection from its creditors under the CCAA, which is sought by the present Petition, and it is to be feared that the financial situation of the Petitioner will deteriorate and that the assets will not be sufficient to satisfy all of the current and potential liabilities of the Petitioner;

36. As indicated above, while the Petitioner holds insurance covering certain liabilities and defense costs of Petitioner and MM&AR, as will be set forth below, it has become evident that the amount of coverage will not be sufficient to cover all potential liabilities associated with the Train Derailment Claims;
37. Given the current situation, the Petitioner and MM&AR are seeking a solution and are preparing a plan (the "Plan") in the best interests of all of the stakeholders and potential stakeholders, including the Train Derailment Claimants and other creditors or potential creditors that:
- a) Could allow the partial and temporary resumption of the operations and delivery of services to customers who are in need of the services or the delivery of products by train;
  - b) Preserve and maximize the value of the assets for the benefit of all the creditors and potential creditors;
  - c) Allow for the orderly distribution of the funds which will be available to any claimant or a creditor entitled to a claim or a compensation;
  - d) Devise a simpler, less costly, more effective and more rapid process to deal with all of the claims or potential claims than legal proceedings in Canada and the U.S., the multiplicity of which may only contribute to the erosion of the value of the various assets and insurance indemnities;
38. The Petitioner is therefore seeking relief under the CCAA as a vehicle for achieving a global resolution of the claims and potential claims;

**IV. PETITIONER'S FINANCIAL SITUATION**

39. Petitioner files in support hereof as **Exhibit R-9** a copy of its unaudited balance sheet as at July 31, 2013 (the "**Balance Sheet**");
40. As appears from the Balance Sheet, as at July 31, 2013, the Petitioner owned assets having a net book value of \$17,974,000, these include the following principal assets of the Petitioner, most of which are illiquid in nature:

<b>ASSETS</b>	
a) Cash:	\$274,000
b) Accounts receivable, trade:	\$273,000
c) Prepaid expenses:	\$29,000
d) Buildings, land and track structure:	\$17,384,000
e) Security deposits	\$14,000
<b>Total</b>	<b>\$17,974,000</b>

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41. As further described in part V below, it appears from the Balance Sheet, as at July 31, 2013, that the total liabilities of the Petitioner (excluding (i) the Train Derailment Claims; (ii) the guarantee in favor of the United States of America, represented by the secretary of transportation acting through the administrator of the Federal Railroad Administration ("FRA"); and (iii) the joint liability for a line of credit in the amount of \$6,000,000 granted by Wheeling & Lake Erie Railway Company ("WLE")) were in excess of \$48,158,000;
42. As mentioned above, the Petitioner and MM&AR hold insurance policies with respect to civil liability and property insurance. These policies are the following:
  - a) Canadian Railroad liability insurance policy with XL Insurance Company Ltd. under number RLC00308301 for a per occurrence limit of \$25,000,000 (CDNUSD) and covering, amongst others: Evacuation expenses, Fire Suppression expenses, Pollution Cleanup expenses, Bodily injury and Property damages;
  - b) Property and Commercial Inland Marine policy with Traveler's Property and Casualty Company of America under number QT-630-6357L188-TIL-13 subject to various limits and sub-limits and covering, amongst others: property, rolling stock, track bed and repairs and business interruption;
43. Both of the above policies are applicable subject to their terms and conditions to losses sustained either by third parties or by Petitioner or by others;
44. It should be noted that Petitioner has not received any indemnity under either of said policies to date, notwithstanding claims presented;
45. A statement of Petitioner's projected cash flow prepared by Petitioner is attached hereto as Exhibit R-10, for the period beginning July 19, 2013 and ending September 27, 2013;
46. Said cash flow statement was prepared based on the following key assumptions: (1) that the Petitioner will continue to pay ordinary course obligations, including obligations to employees; (2) that all of the Petitioner's suppliers will wish to operate on a "cash-on-delivery" basis going forward and (3) that MM&AR will be allowed, throughout the anticipated Chapter 11 proceedings, to continue to fund Petitioner's expenses;
47. As the operations of the Petitioner are expected to remain cash positive, as appears from the projected cash flow (Exhibit R-10) and provided the Petitioner obtains the Court protection sought hereunder, the Petitioner will be able to meet its day-to-day obligations for the stay period sought in the present Petition;

**V. CREDITORS OF THE PETITIONER**

**i) Secured Creditors**

48. The secured creditors are the following:

Secured creditors currently holding registered security against the assets of the Petitioner:

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- a) The FRA, to whom Petitioner granted a corporate guarantee with respect to amounts owing by its corporate parent MM&AR (the outstanding balance being approximately \$27,500,000 and MM&AR being at present current on its obligations). The FRA holds a security interest in all of the debtors present and future acquired personal property registered in the Personal Property Register of Nova Scotia ("PPRS"); and a conventional hypothec without delivery in the amount of \$81,600,000 registered in the Register of Personal and Movable Real Rights ("RPMRR") in Québec covering the universality of the movable and immovable property, corporeal and incorporeal, present and future, of the Petitioner. It has further registered an immovable hypothec against the immovable property referred to in paragraph 40, with the exception of the rail line segment from Bedford to Sainte-Rosalie; and
- b) Right of ownership of Lessor (under a leasing agreement) held by RoyalNat Inc. with respect to certain equipment;

A copy of extracts of the computerized records of the PPRS and the RPMRR are filed *en liasse* in support hereof as **Exhibit R-11**;

Potential secured creditors

- a) In the event of the issuance of an Initial Order hereunder, apart from any charges that may be created as requested hereunder, Section 11.8(8) provides a charge with respect to any claim, if any, by Her Majesty in Right of Canada or a province against the Petitioner for any costs they may have expended or may in the future expend, for remedying any environmental condition or environmental damage affecting real property of the Petitioner, the charge to apply on said real property and on any other real property of Petitioner that is contiguous thereto and that is related to the activities that caused the environmental condition or environmental damage;

ii) **Unsecured Creditors**

49. The Petitioner has a number of unsecured creditors who are owed in excess of \$48,158,000 in the aggregate, consisting of:

Unsecured Creditors

- a) Accounts payable and accrued liabilities: approximately \$4,758,000;
- b) Due to parent company: \$43,400,000;
- c) Total: \$48,158,000

Other potential unsecured creditors

In addition, the Petitioner may be liable for the following amounts:

- a) The unsecured portion of the debt to FRA (described at 43 a) above) (if any), to be determined;
- b) The line of credit in favour of WLE: \$6,000,000 (USD);

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c) Train Derailment Claims: to be determined;

**VI. RELIEF SOUGHT**

50. In light of the insolvent situation of the Petitioner resulting from its secured claims and its current liabilities as well as its potential liability related to the various claims or potential claims, including the Train Derailment Claims and other claims described above, the Petitioner urgently requires a stay of proceedings and the opportunity to attempt to resolve, compromise or otherwise address in a single forum the various claims and potential claims;
51. Given further that the potential liability of the Non-Petitioner Defendants, other members of the Petitioner's Corporate Group, their respective directors, officers and employees, with respect to the various claims or potential claims are derivative of and directly linked to the various claims made or potential claims to be made against the Petitioner, a stay of proceedings in respect of Non-Petitioner Defendants, the other members of the Petitioner's Corporate Group, their respective directors, officers and employees, is also necessary in order to provide the Petitioner with the opportunity to fully consider and implement a successful Plan and resolution of the current situation for the benefit of all its stakeholders;
52. The successful Plan of the Petitioner and the resolution of the various claims and the potential claims will require multi-party negotiations and discussions. The CCAA proceedings will provide a reasonable and effective forum within which these negotiations and discussions may take place. In addition, the CCAA proceedings will avoid a multiplicity of proceedings against the Petitioner and will provide one forum for dealing with all the liabilities of the Petitioner. This stability is necessary to preserve the status of the Petitioner and the continuation of the operations, the whole in order to allow a maximization of the value of the assets and indemnities for the numerous stakeholders;
53. As indicated above, concurrently with the present proceedings, it is anticipated that the Petitioner's parent MM&AR, will be commencing proceedings under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court, pursuant to which recognition in Canada of the automatic statutory stay of proceedings resulting therefrom may be sought. In addition, if the relief requested herein is granted, a petition under Chapter 15 of the U.S. Bankruptcy Code may be filed seeking recognition of these proceedings in the United States and seeking the assistance of the relevant U.S. Courts in enforcing this Court's Order;
54. The Petitioner and MM&AR will be seeking to devise a process dealing with the claims and potential claims in both jurisdictions in order to facilitate the process;

**VII. MONITOR AND ADMINISTRATION CHARGE AND DIRECTORS' CHARGE**

55. The Petitioner proposes that Richter Advisory Group Inc. ("Richter") (Gilles Robillard, C.A., C.I.R.P.) be appointed Monitor, the whole pursuant to the CCAA;
56. Richter has accepted its appointment as Monitor of the Petitioner, the whole as appears from the letter of consent from the Monitor filed in support hereof as Exhibit R-12;

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57. Petitioner respectfully submits that it is appropriate that the Monitor be vested with the authority and protection required herein in order to allow it to fulfill its duties pursuant to the CCAA, the whole in accordance with the order to be rendered pursuant to the present Petition;
58. As security for the payment of the Monitor's fees and disbursements, including legal fees, as well as for the payment of the fees and the disbursements of Petitioner's counsel and other professionals as set forth in paragraph 38 of the conclusions of the present Petition, it is necessary that a prior charge be granted on the whole of Petitioner's assets in favor of said professionals (the "Administration Charge");
59. Moreover, in light of the circumstances, in order to be able to maintain temporarily the operations and seek a successful plan, the continued participation of the Petitioner's directors and officers is required. It is therefore appropriate that Initial Order to be granted pursuant hereto include the protections sought in the conclusions of the present Petition, namely, the orders related to the indemnification and charge in favour of its directors and officers (the "Directors' Charge");
60. The Petitioner seeks a \$150,000 Directors' Charge, the whole as set forth more fully at paragraph 22 and following of the conclusions of this Petition. The amount of the Directors' Charge was established by the Petitioner and reviewed by the Monitor, taking into account direct and indirect payroll obligations, commissions, vacation pay, deductions at source and sales taxes remittances;
61. Therefore, the Petitioner respectfully submits that the Administration Charge and the Directors' Charge, as defined in the conclusions hereof, must be granted pursuant to the conclusions of the present Petition;

#### **VIII. EXTRA-PROVINCIAL APPLICATION**

62. In light of the fact that the Petitioner is a Nova Scotia company with security registered also in Nova Scotia, given the anticipated concurrent proceedings being taken by MM&AR under Chapter 11 of the U.S. Bankruptcy Code in the U.S. and that the Petitioner and/or the Monitor may also seek to make an application under Chapter 15 of the U.S. Bankruptcy Code and given that claims have also been instituted in the United States in relation to the derailment, Petitioner requests that this Honourable Court seek the assistance of all Canadian and foreign courts in the execution of the order to be rendered hereon and of any other order to be rendered in this matter;
63. The Petitioner requests that this Honourable Court render any and all orders that it may deem necessary in light of the circumstances;

#### **IX. CONCLUSION**

64. The Petitioner believes that a better result for all stakeholders of the Petitioner will be achieved through the Plan than would be the case under any other available alternative. The order sought by the Petitioner will provide it with the necessary opportunity to address the claims and potential claims on a global basis and to assess and implement a successful restructuring strategy with all of its stakeholders, the whole with the goal of maximizing value for all of the stakeholders;

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65. The initial order being sought by the Petitioner is based on the standard CCAA Initial Order issued by the Superior Court of Québec, Commercial Division (without however the standard provisions relating to interim financing as the Petitioner is not requesting any interim financing at this time but is reserving its rights to do so), and any changes thereto are underlined in the Draft Initial Order filed in support hereof as **Exhibit R-13**;
66. Considering the urgency of the situation, the Petitioner respectfully submits that the notices given for the presentation of this Petition are proper and sufficient;
67. Again, given the urgency of the situation, the Petitioner submits that it is essential that the execution of the order requested herein be granted notwithstanding appeal;
68. The present Petition is well founded in fact and in law;

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

1. **GRANT** the Petition.
2. **ISSUE** an order pursuant to the CCAA (the "Order"), divided under the following headings:
  - a) Service;
  - b) Application of the CCAA;
  - c) Effective Time;
  - d) Plan of Arrangement;
  - e) Stay of Proceedings against the Petitioner and the Property and against Non-Petitioner Defendants;
  - f) Stay of Proceedings against the Directors and Officers;
  - g) Possession of Property and Operations;
  - h) No Exercise of Rights or Remedies;
  - i) No Interference with Rights;
  - j) Continuation of Services;
  - k) Non-Derogation of Rights;
  - l) Directors' and Officers' Indemnification and Charge;
  - m) Restructuring;
  - n) Powers of the Monitor;
  - o) Priorities and General Provisions Relating to CCAA Charges;

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p) General.

#### Service

3. **DECLARE** that sufficient prior notice of the presentation of this Petition has been given by the Petitioner to interested parties, including the secured creditors who are likely to be affected by the charges created herein.

#### Application of the CCAA

4. **DECLARE** that the Petitioner is a debtor company to which the CCAA applies.

#### Effective time

5. **DECLARE** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard / Daylight Time on the date of this Order (the "Effective Time").

#### Plan of Arrangement

6. **DECLARE** that the Petitioner shall have the authority to file with this Court and to submit to its creditors one or more plans of compromise or arrangement (collectively, the "Plan") in accordance with the CCAA.

#### Stay of Proceedings against the Petitioner and the Property

7. **ORDER** that, until and including September 6, 2013, or such later date as the Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the Petitioner, or affecting the Petitioner's business operations and activities (the "Business") or the Property (as defined herein below), including as provided in paragraph 15 herein below except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Petitioner or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court, the whole subject to subsection 11.1 CCAA. Without limiting the generality of the foregoing, Proceedings include all proceedings in Canada and in the United States of America or elsewhere taken or that may be taken against, *inter alia*, the Petitioner and/or Montreal Maine & Atlantic Railway Ltd. ("MM&AR"), and/or their liability insurer ("Liability Insurer") and/or other members of the Petitioner's corporate group (the "Petitioner's Corporate Group") and/or against any of the respective directors, officers or employees of any of the members of the Petitioner's Corporate Group, in connection with the derailment that occurred on July 6, 2013 in Lac-Mégantic, province of Québec, that involved the derailment of the freight train operated by the Petitioner (the "Derailment") and include, without limitation, proceedings with respect to the claims set forth at paragraph 25 of the Petition, including the Order issued by the Minister of Environment on July 29, 2013, pursuant to Section 114.1 of the *Environment Quality Act*, R.S.Q., c. Q-2 ("EQA") (Exhibit R-4) (the "Cleanup Order") with respect to its financial or monetary implications only and any other claim made or that may be made in anyway related to the Derailment (collectively, the "Train Derailment Claims"). The members of Petitioner's Corporate Group are listed in Schedule "A" hereto and the members of Petitioner's Corporate Group, and their respective directors, officers or employees and



the Liability Insurer, who are defendants to such proceedings are listed in Schedule "B" hereto and are collectively referred to herein as the "Non-Petitioner Defendants".

#### **Stay of Proceedings against the Directors and Officers**

8. **ORDER** that during the Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Petitioner nor against any person deemed to be a director or an officer of the Petitioner under subsection 11.03(3)CCAA (each, a "Director", and collectively the "Directors") in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Petitioner where it is alleged that any of the Directors is under any law liable in such capacity for the payment or performance of such obligation or which relate to the Derailment.

#### **Possession of Property and Operations**

9. **ORDER** that the Petitioner shall remain in possession and control of its present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the "Property"), the whole in accordance with the terms and conditions of this Order including, but not limited, to paragraph 29 hereof.
10. **AUTHORIZE** the Petitioner to continue to carry on its business and financial affairs in a manner consistent with past periods and the commercially reasonable preservation thereof;
11. **ORDER** that the Petitioner shall be authorized and empowered to continue to retain and employ the employees, consultants, individuals self-employed contractors, agents, experts, accountants, counsels, and such other persons (collectively, "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.
12. **ORDER** that the Petitioner shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:
- a) all outstanding and future wages, salaries, commissions, vacation pay, current pension contributions and other benefits, reimbursement of expenses (including, without limitation, amounts charged by employees to credit cards) and other amounts payable to former, current or future employees on or after the date of this Order and reimbursements of expenses payable to officers or directors on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
  - b) the fees and disbursements of any Assistants retained or employed by Petitioner in respect of these proceedings, at their standard rates and charges; and
  - c) subject to the prior written approval of the Monitor, outstanding amounts that became due prior to this Order to creditors who have liens or rights of retention on assets held by them for Petitioner or for Petitioner on behalf of its clients;

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13. ORDER that, except as otherwise provided to the contrary herein, the Petitioner shall be entitled but not required to pay all reasonable expenses incurred by it in carrying on the business in the ordinary course from and after the date of this Order, and in carrying out the provisions of this Order;
14. ORDER that, except as otherwise provided to the contrary herein, the Petitioner shall remit, in accordance with legal requirements, or pay:
- a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension plan, and (iv) income taxes;
  - b) amounts accruing and payable by the Petitioner in respect of employment insurance, Canada Pension Plan, workers compensation, employer health taxes and similar obligations of any jurisdiction with respect to employees;
  - c) all goods and services or other applicable sales taxes (collectively "Sales Taxes") required to be remitted by the Petitioner in connection with the sale of goods and services by the Petitioner but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
  - d) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the business by the Petitioner.

#### **No Exercise of Rights or Remedies**

15. **ORDER** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Petitioner, or affecting the Business, the Property or any part thereof, including the Cleanup Order, with respect to its financial or monetary implications only are hereby stayed and suspended except with leave of this Court.
16. **DECLARES** that the present order rendered by this Court shall not have the effect of staying or otherwise preventing the execution of the work described in the Cleanup Order or any other work that the Minister of Sustainable Development, Environment, Wildlife and Parks or the City of Lac-Mégantic may consider appropriate to undertake in the public interest;
17. **DECLARES** that the present order rendered by this Court shall not have the effect of preventing the Minister of Sustainable Development, Environment, Wildlife and Parks

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from proceeding with the execution of the work described in the Cleanup Order or to have it executed on its behalf by third parties;

18. DECLARES that proceedings arising from the obligation of the Petitioner to fund or otherwise pay for or reimburse the costs, interests and administrative charges associated with the execution of any work under the Cleanup Order whether by the Minister or third parties are stayed;
19. TAKES ACT of the undertaking of the Petitioner to continue providing its ongoing collaboration and cooperation with the Quebec Ministry of Sustainable Development, Environment, Wildlife and Parks, the city of Lac-Mégantic or other governmental authorities to the extent of its present capacity and resources in an effort to permit remediation, including granting the access to its property necessary for the execution of the work described in the Cleanup Order or any other work that the Minister of Sustainable Development, Environment, Wildlife and Parks or the City of Lac-Mégantic may consider appropriate to undertake in the public interest;
20. DECLARE that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Petitioner or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Petitioner becomes bankrupt or a receiver as defined in subsection 243(2) of the Bankruptcy and Insolvency Act (Canada) (the "BIA") is appointed in respect of the Petitioner, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Petitioner in determining the 30 day periods referred to in Sections 81.1 and 81.2 of the BIA.

#### **No Interference with Rights**

21. ORDER that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Petitioner, except with the written consent of the Petitioner and the Monitor, or with leave of this Court.

#### **Continuation of Services**

22. ORDER that during the Stay Period and subject to paragraph 24 hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Petitioner or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility or other goods or services made available to the Petitioner, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating such agreements or the supply of such goods or services as may be required by the Petitioner, and that the Petitioner shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Petitioner, without having to provide any security deposit or any other security, in accordance with normal

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payment practices of the Petitioner or such other practices as may be agreed upon by the supplier or service provider and the Petitioner, with the consent of the Monitor, or as may be ordered by this Court.

23. **ORDER** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided to the Petitioner on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Petitioner.
24. **ORDER** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by the Petitioner with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing to such Person as of the date of the Order or due on or before the expiry of the Stay Period or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by Petitioner and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into the Petitioner's account until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

#### **Non-Derogation of Rights**

25. **ORDER** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "Issuing Party") at the request of the Petitioner shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading, or shipping or other documents relating thereto until paid.

#### **Directors' and Officers' Indemnification and Charge**

26. **ORDER** that the Petitioner shall indemnify its Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason of or in relation to their respective capacities as directors or officers of the Petitioner after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, willful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA.
27. **ORDER** that the Directors of the Petitioner shall be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$150,000.00 (the "Directors' Charge"), as security for the indemnity provided in paragraph 26 of this Order as it relates to obligations and liabilities that the Directors may incur in such capacity after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs 43 and 44 of this Order.

28. **ORDER** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph 26 of this Order.

#### **Restructuring**

29. **DECLARE** that, to facilitate the orderly restructuring of its business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Petitioner shall have the right, subject to approval of the Monitor or further order of the Court, to:
- a) permanently or temporarily cease, downsize or shut down any of its operations or locations as it deems appropriate and make provision for the consequences thereof in the Plan;
  - b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);
  - c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$10,000 or \$50,000 in the aggregate;
  - d) terminate the employment of such of its employees or temporarily or permanently lay off such of its employees as it deems appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Petitioner and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Petitioner may determine;
  - e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of its agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Petitioner and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and
  - f) subject to section 11.3 CCAA, assign any rights and obligations of Petitioner.
30. **DECLARE** that, if a notice of disclaimer or resiliation is given to a landlord of the Petitioner pursuant to section 32 of the CCAA and subsection 29.e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants during normal business hours by giving the Petitioner and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to

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third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Petitioner, provided nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

31. **ORDER** that the Petitioner shall provide to any relevant landlord notice of the Petitioner's intention to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If the Petitioner has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between the Petitioner and the landlord.
32. **DECLARE** that, in order to facilitate the Restructuring, the Petitioner may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute and may pursue, with the assistance of the Monitor, the Restructuring, including, subject to Court approval, the settlement or other resolution of the claims related to the Derailment.
33. **DECLARE** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, the Petitioner is permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in its possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to its advisers (individually, a "Third Party"), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for that purpose, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Petitioner binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Petitioner or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction in furtherance thereof, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioner.

#### **Powers of the Monitor**

34. **ORDER** that Richter Advisory Group Inc. is hereby appointed to monitor the business and financial affairs of the Petitioner as an officer of this Court (the "Monitor") and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:
  - a) shall, without delay, (i) publish once a week for two (2) consecutive weeks, or as otherwise directed by the Court, in *La Presse* and the *Globe & Mail* newspapers and (ii) within five (5) business days after the date of this Order (A) post on the Monitor's website (the "Website") a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Petitioner of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the estimated amounts of their

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- respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;
- b) shall monitor the Petitioner's receipts and disbursements;
  - c) shall assist the Petitioner, to the extent required by the Petitioner, in dealing with its creditors and other interested Persons during the Stay Period;
  - d) shall assist the Petitioner, to the extent required by the Petitioner, with the preparation of its cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
  - e) shall advise and assist the Petitioner, to the extent required by the Petitioner, to review the Petitioner's business and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
  - f) shall assist the Petitioner, to the extent required by the Petitioner, with the Restructuring and in its negotiations with its creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan, including, without limitation, participating as the Petitioner considers appropriate in any discussion and negotiation with creditors, claimants or others and assisting and facilitating the settlement or other resolution of the claims related to the Derailment.
  - g) shall report to the Court on the state of the business and financial affairs of the Petitioner or developments in these proceedings or any related proceedings or the settlement or other resolution of the claims related to the Derailment, and any other matter deemed by the Monitor to be relevant to this proceeding, within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order;
  - h) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;
  - i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of the Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
  - j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
  - k) may assist the Petitioner with respect to any insolvency proceedings commenced by or with respect to any other member of its corporate group (including MM&AR) in any foreign jurisdiction (collectively, "Foreign Proceedings") and report to this Court, as it deems appropriate, on the Foreign Proceedings with respect to matters relating to the Petitioner;

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- l) may act as a "foreign representative" of the Petitioner or in any other similar capacity in any insolvency, bankruptcy or reorganization or other proceedings outside of Canada;
  - m) may give any consent or approval as may be contemplated by the Order or the CCAA; and
  - n) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time.
35. **ORDER** that, unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Petitioner, and that the Monitor is not empowered to take possession of the Property nor to manage or control any of the business and financial affairs of the Petitioner and nothing in this Order shall vest in the Monitor the care, ownership, control, charge, occupation, possession or management (separately and collectively, the "Possession"), or require or obligate the Monitor to occupy, to take Possession of any Property or any source of contaminant which may be environmentally contaminated or contain a dangerous or designated substance, or (b) contain a pollutant or contaminant or cause or contribute to a spill, discharge, release or deposit of a substance in respect of which obligations of any sort may be imposed under any legislation enacted for the protection, conservation, enhancement, remediation or rehabilitation of the indoor or outdoor environment, or relating to the disposal of waste or other contamination including, without limitation, the Canadian Environmental Protection Act, the Transportation of Dangerous Goods Act, the Environment Quality Act (Québec), the Act Respecting Occupational Health and Safety (Québec) or the regulations thereunder, or under any other federal or provincial legislation or rule of law or equity, in any jurisdiction affecting the indoor or outdoor environment or the transportation of dangerous goods (collectively, "Environmental Laws"). For greater certainty, the Monitor shall not be deemed, as a result of this Order, to be in Possession within the meaning of any Environmental Laws of any Property or source of contaminant.
36. **ORDER** that the Petitioner and its Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Petitioner in connection with the Monitor's duties and responsibilities hereunder.
37. **DECLARE** that the Monitor may provide creditors and other relevant stakeholders of the Petitioner with information in response to requests made by them in writing addressed to the Monitor and copied to the Petitioner's counsel. In the case of information that the Monitor has been advised by the Petitioner is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Petitioner unless otherwise directed by this Court.
38. **DECLARE** that if the Monitor, in its capacity as Monitor, carries on the business of the Petitioner or continues the employment of the Petitioner's employees, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.



39. DECLARE that, if the Monitor acts in good faith and takes reasonable care in preparing the reports referred to herein, the Monitor is not liable for loss or damage to any Person resulting from that person's reliance on any such report.
40. **DECLARE** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days notice to the Monitor and its counsel. The entities related to or affiliated with the Monitor referred to in subparagraph 30 (i) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.
41. **ORDER** that Petitioner shall pay the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, the Petitioner's legal counsel and other advisers, directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
42. **DECLARE** that the Monitor, the Monitor's legal counsel (Woods LLP), the Petitioner's legal counsel (Gowling Lafleur Henderson LLP) and the Monitor and the Petitioner's respective advisers, as security for the professional fees and disbursements incurred both before and after the making of the Order and directly related to these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property to the extent of the aggregate amount of \$1,500,000 (the "**Administration Charge**"), having the priority established by paragraphs 43 and 44 hereof.

#### **Priorities and General Provisions Relating to CCAA Charges**

43. **DECLARE** that the priorities of the Administration Charge and any possible charge in favor of the Directors (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows:
- a) first, the Administration Charge;
  - b) second, the Directors' Charge;
44. **DECLARE** that each of the CCAA Charges shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind or deemed trusts (collectively, the "**Encumbrances**") affecting the Property charged by such Encumbrances.
45. **ORDER** that, except as otherwise expressly provided for herein, the Petitioner shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Petitioner obtains the prior written consent of the Monitor and the prior approval of the Court.
46. **DECLARE** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Petitioner, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

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47. **DECLARE** that the CCAA Charges and the rights and remedies of the beneficiaries of such Charges, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declaration of insolvency made herein; (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner or any receiving order made pursuant to any such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Petitioner (a "Third Party Agreement"), and notwithstanding any provision to the contrary in any Third Party Agreement:
- c) the creation of any of the CCAA Charges shall not create or be deemed to constitute a breach by the Petitioner of any Third Party Agreement to which it is a party; and
  - d) any of the beneficiaries of the CCAA Charges shall not have liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges.
48. **DECLARE** that notwithstanding: (i) these proceedings and any declaration of insolvency made herein, (ii) any petition for a receiving order filed pursuant to the BIA in respect of the Petitioner and any receiving order allowing such petition or any assignment in bankruptcy made or deemed to be made in respect of the Petitioner, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Petitioner pursuant to the Order and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.
49. **DECLARE** that the CCAA Charges shall be valid and enforceable as against all Property of the Petitioner and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioner, for all purposes.

#### General

50. **ORDER** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the Petitioner or of the Monitor in relation to the Business or Property of the Petitioner, without first obtaining leave of this Court, upon five (5) days written notice to the Petitioner's counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
51. **DECLARE** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Petitioner under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
52. **DECLARE** that, except as otherwise specified herein, the Petitioner and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or other document in

- 25 -

connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Petitioner and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.


53. **DECLARE** that the Petitioner and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Petitioner shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
54. **DECLARE** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Petitioner and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings.
55. **DECLARE** that the Petitioner or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the order on notice only to each other and any other Person directly affected thereby, if any.
56. **DECLARE** that any interested Person may apply to this Court to vary or rescind the Order or seek other relief upon five (5) days notice to the Petitioner, to the Petitioner's counsel (Gowling Lafleur Henderson LLP c/o Denis St-Onge, phone: 514-392-9519, fax: 514-876-9519, denis.st-onge@gowlings.com, 3700-1 Place Ville Marie, Montreal, Quebec, H3B 3P4), to the Monitor (Richter Advisory Group Inc., c/o Gilles Robillard, phone: 514-934-3484, fax: 514-934-3504, 1981, McGill College, Montreal, Québec, H3A 0G6), to the Monitor's counsel (Woods LLP c/o Sylvain Vaclair, phone: 514-982-4528, fax: 514-284-2046, svaclair@woods.qc.ca, 2000, avenue McGill College, suite 1700, Montreal, Québec, H3A 3H3) and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order, such application or motion shall be filed during the Stay Period ordered by this Order, unless otherwise ordered by this Court.
57. **DECLARE** that the Order and all other orders in these proceedings shall have full force and effect in all provinces and territories in Canada.
58. **DECLARE** that the Monitor, with the prior consent of the Petitioner, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement the Order and any subsequent orders of this Court, for which the Monitor shall be the foreign representative of the Petitioner, including, but without limitation, in respect of proceedings that may be commenced, the Chapter 15 of the U.S. Bankruptcy Code and any ancillary relief in respect thereto. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

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59. **REQUEST** the aid and recognition of any Court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of the Order.
60. **ORDER** the provisional execution of the Order notwithstanding any appeal and without the necessity of furnishing any security.

THE WHOLE WITHOUT COSTS, save and except in case of contestation.

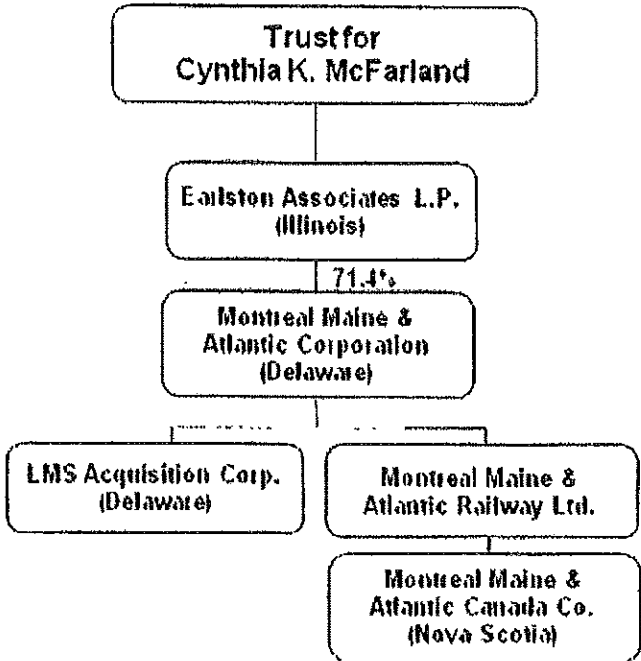
MONTREAL, August 8, 2013

  
GOWLING LAFLEUR HENDERSON LLP  
Attorneys for Petitioner

**EXHIBIT B**

**SCHEDULE « A »**

**MONTREAL, MAINE & ATLANTIC CORPORATE GROUP**



**EXHIBIT C**

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL  
No.: 500-11-045094-139

SUPERIOR COURT  
(Commercial Division)  
*The Companies' Creditors Arrangement Act*

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IN THE MATTER OF THE PLAN OF  
COMPROMISE OR ARRANGEMENT OF:

MONTREAL, MAINE & ATLANTIC CANADA CO.  
(MONTREAL, MAINE & ATLANTIQUE CANADA  
CIE), a legal person duly incorporated under the  
laws of the province of Nova Scotia, having a place  
of business at 1, Place Ville Marie, 37<sup>th</sup> Floor,  
Montreal, Quebec H3B 3P4 (at the offices of its  
attorney ("fondé de pouvoir"))

**Petitioner**

-and-

RICHTER ADVISORY GROUP INC. (RICHTER  
GROUPE CONSEIL INC.) a duly incorporated legal  
person having its principal place of business at  
1981 McGill College, 12<sup>th</sup> Floor, in the city and  
district of Montreal, Quebec, H3A 0G6

**Monitor**

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FIRST REPORT OF THE MONITOR  
ON THE STATE OF THE PETITIONER'S FINANCIAL AFFAIRS  
August 21, 2013

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**INTRODUCTION**

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. ("MM&A" or the "Petitioner") filed with the Quebec Superior Court a Motion for the Issuance of an Initial Order pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "CCAA"). On August 8, 2013, the Honourable Martin Castonguay, J.S.C., issued an initial order (the "Initial Order"), which *inter alia* appointed Richter Advisory Group Inc. ("Richter") as Monitor (the "Monitor").



2. On August 21, 2013, MM&A filed with the Court a Motion to amend the initial order and seek a charge and security on the property of the Petitioner to secure funds for self-insured obligations ("Charge and Security Motion"). The Charge and Security Motion requests a charge of \$250,000 in favor of any person having a valid claim under the XL Insurance Company Ltd policy (RCL 0003808301) ("Policy") in connection with an Accident, as defined in the Policy, occurring after the date of the issuance of the Initial Order, as a condition to maintain its Certificate of Fitness from the Canada Transportation Agency ("CTA") as more fully explained below. The effect of not providing this priority charge would be to require the Petitioner to cease operations in Canada effective 5:00 pm, August 23, 2013.
3. All amounts reflected in this report are stated in Canadian currency unless otherwise noted.
4. The purpose of this First Report of the Monitor is to inform the Court of the following:
  - Purpose of CCAA Filing;
  - CTA Requirement;
  - Impact of Immediate Cessation of Operations;
  - Impact on Realization Value;
  - Monitor's Recommendation.
5. We inform the Court that the Monitor has not conducted an audit or investigation of the information provided to it by the Petitioner and that accordingly, no opinion is expressed regarding the accuracy, reliability or completeness of the information contained within this Report. The information contained herein is based on a review of unaudited financial information provided to the Monitor by the Petitioner's management as well as discussions with the Petitioner's management and employees.

#### **PURPOSE OF CCAA FILING**

6. The Petitioner operates a shortline freight railroad company in the Province of Quebec. It is a wholly-owned subsidiary of Montreal, Maine & Atlantic Railway Ltd. ("MM&AR") which operates in the States of Vermont and Maine. Together, these companies operate 510 route miles and service customers in Canada and the United States.
7. Following the tragic train derailment in the town of Lac-Mégantic, Quebec on July 6, 2013 and the ensuing financial and other operational challenges, as well as the legal chaos resulting from the said tragedy, MM&A was obliged to seek protection under the CCAA for the numerous reasons

enumerated below. At the same time, MM&AR filed for protection under Chapter 11 of the U.S. Bankruptcy Code on August 7, 2013.

8. The Petitioner commenced CCAA proceedings in order to accomplish the following:
- Enable continued operations of the railway in order to service the many customers and municipalities located along its route who are dependent on the railway for the operations of their business;
  - Commence efforts, with the assistance of the Monitor, to seek a purchaser for the assets of MM&A as well as MM&AR as a going concern, which should enhance the market value of the assets;
  - Provide continued employment for its experienced work force, which will also serve to enhance the going-concern value of the Petitioner and possibly offer them continued employment under a new owner;
  - Create a formal and orderly claims process, acceptable to the Court, to deal efficiently with the claims of all stakeholders including the families of the victims;
  - Intervene as required with the various insurers in order to maximize the proceeds from available policies and ensure the proper distribution thereof pursuant to the claims process.

#### **CTA REQUIREMENT**

9. On July 13, 2013, the CTA issued Order No. 2013-R-266 dated August 13, 2013, suspending MM&A's Certificate of Fitness No. 02-004-3, effective August 20, 2013, unless it was able to provide proof of adequate third party liability insurance including the ability of MM&A to pay the \$250,000 self-insured portion of said liability policy.
10. Following further submissions by MM&A, the CTA varied its Order No. 2013-R-266 on August 16, 2013, by amending the date of effect of the suspension of MM&A and MM&AR's Certificate of Fitness to October 1, 2013. However, the CTA made this variance conditional on MM&A/MM&AR confirming that it has secured funds for the self-insured retention portion of the policy by filing a confirmation with the Agency no later than 5:00 p.m. Eastern Time August 23, 2013, failing which the suspension shall take effect as of that time. It is the Monitor's understanding that the charge referred to in the Charge and Security Motion will satisfy the CTA's requirements.

#### **IMPACT OF IMMEDIATE CESSATION OF OPERATIONS**

##### **A) Employees**

11. In the event that MM&A is compelled to cease its operations effective 5:00 p.m., August 23, 2013, the loss of ongoing revenues will leave it no alternative but to lay off all of its Canadian employees.
12. At the present time, the Petitioner has 62 employees, of which 34 are currently active with the balance being on temporary lay-off (14), on CSST (12) and on disability (2).
13. Effective August 23, 2013, it is estimated the active employees will be owed approximately \$97K in accrued payroll, which is due to be paid in the week ending September 6, 2013, in accordance with the Petitioner's payroll cycle.
14. Accrued vacation pay to all employees is estimated by the Petitioner to be \$440K (which includes \$40K for recently laid off employees). The cash flow will not permit the payment of these amounts in the event of an immediate cessation of operations.

##### **B) Customers**

15. For the twelve months ended June 30, 2013, MM&A originated or delivered in excess of 10,000 rail cars from/to approximately 60 customers in the Province of Quebec. The immediate cessation of operations will impact the Petitioner's numerous direct and indirect customers by forcing them to find alternate means of transportation, be it for the acquisition of raw materials or the shipment of finished goods, at higher costs and longer delivery times as alternate means of transportation are not readily available.
16. The Petitioner's customers and the regions they service may be forced to lay off employees and/or postpone expansion projects.
17. This is more fully detailed in the supporting affidavits of the Centre local de développement (CLD) de Brome-Missisquoi and the Conseil économique du Haut-Richelieu (Exhibit R-5 and Exhibit R-6 to the Charge and Security Motion).
18. Further, customers who are unable to continue relying upon MM&A for transportation may claim damages which would also negatively affect the collection of existing accounts receivable balances.
19. The potential disruption of deliveries currently in process by MM&A would cause direct and indirect damages to certain customers, which might continue for an undetermined period of time.

#### **IMPACT ON REALIZATION VALUE**

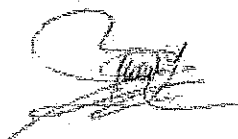
20. The realization value of MM&A's assets is dependent on numerous factors, including its tangible assets, its experienced workforce, its integrated operations with MM&AR as well as its established customer base. All of these attributes will be negatively impacted by a shutdown of operations and will result in a lower realization available to all of the claimants.

#### **MONITOR'S RECOMMENDATION**

21. The Monitor supports the Petitioner's Charge and Security Motion for the following reasons:
- Preservation and maximization of the realization value of the Petitioner's assets, for the benefit of all claimants;
  - Continued employment for active employees;
  - Ongoing service to MM&A's and MM&AR's customers, who may otherwise suffer serious economic losses and operational problems;
  - The Petitioner itself is not the true beneficiary of this charge; rather, it is the claimants who benefit from the continued operations of MM&A and MM&AR;
  - Absent a continuation of its operations, MM&A may determine that the ultimate goal sought by the filing under the CCAA is no longer achievable and may decide to file for bankruptcy. This would negatively affect the claims process that would otherwise be available in a CCAA and might diminish the insurance proceeds available to all claimants as the insurer will no longer benefit from a stay and might, under the terms of the policy, be obligated to pay claims on a "first come, first served basis", as well as assume significant defense costs in the process.

Respectfully submitted at Montreal, this 21<sup>st</sup> day of August 2013.

**Richter Advisory Group Inc.**  
Monitor



Gilles Robillard, CPA, CA, CIRP

**EXHIBIT D**



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**Updated to 1 August 2013**  
This document has official status.

## chapter S-2.3

# CIVIL PROTECTION ACT

## CHAPTER I PURPOSE AND SCOPE

**1.** The purpose of this Act is the protection of persons and property against disasters, through mitigation measures, emergency response planning, response operations in actual or imminent disaster situations and recovery operations.

2001, c. 76, s. 1.

**2.** For the purposes of this Act,

(1) "major disaster" means an event caused by a natural phenomenon, a technological failure or an accident, whether or not resulting from human intervention, that causes serious harm to persons or substantial damage to property and requires unusual action on the part of the affected community, such as a flood, earthquake, ground movement, explosion, toxic emission or pandemic;

(2) "minor disaster" means an exceptional event of a nature similar to a major disaster, but which only affects the safety of one or of a few persons;

(3) "civil protection authorities" means local municipalities, authorities to which local municipalities have delegated their responsibility for civil protection and authorities which by law are responsible for civil protection in all or part of their territory ; and

(4) "government bodies" means bodies a majority of whose members are appointed by the Government or a minister, whose personnel is by law appointed in accordance with the Public Service Act (chapter F-3.1.1) or whose capital forms part of the domain of the State.

2001, c. 76, s. 2.

**3.** This Act shall not operate to limit obligations imposed or powers granted by or under other Acts as regards civil protection.

2001, c. 76, s. 3.

**4.** This Act is binding on the Government, government departments and bodies that are mandataries of the State.

2001, c. 76, s. 4.

## CHAPTER II PERSONS

**5.** All persons must exercise prudence and foresight with regard to major or minor disaster risks they know to be present in their environment.

program is entitled to the benefits determined by the Minister.

2001, c. 76, s. 113.

**114.** Financial assistance granted under this division must be used exclusively for the purposes for which it is granted.

2001, c. 76, s. 114.

**115.** Entitlement to financial assistance under this division is a personal right, subject to the following.

The right to financial assistance relating to a principal residence or to the essential belongings in a principal residence may, if the person entitled to the assistance dies or, because of physical disability, is unable to maintain the domicile, be exercised by the persons who were living with that person at the time of the event that is the subject of the program and who inherit the property or maintain the domicile.

The right to financial assistance relating to the property essential to a family business which is the livelihood of a person or that person's family may, if the person dies or is unable to carry on his or her activities, be exercised by a member of the family who carries on the business after the event that is the subject of the program.

2001, c. 76, s. 115.

**116.** Entitlement to financial assistance or to compensation may not be assigned.

2001, c. 76, s. 116.

**117.** Financial assistance granted to a recipient may not be seized.

2001, c. 76, s. 117.

**118.** The Government is subrogated by operation of law in the rights of any person having received benefits under a financial assistance or a compensation program, up to the amounts paid, against any third party responsible for the damage or the event that is the subject of the program.

2001, c. 76, s. 118.

**119.** The recipient of financial assistance or compensation must repay to the Minister any amount received without due cause, unless it was paid as a result of an administrative error which the recipient could not reasonably have discovered.

The amount may be recovered within three years of the payment or, in case of bad faith, within three years of the discovery of the fact, but in no case more than 15 years after the payment.

2001, c. 76, s. 119.

**120.** Any amount due under a subrogation or a claim for overpayment is secured by a legal hypothec on the property of the debtor.

2001, c. 76, s. 120.

**121.** The person directly concerned by a decision regarding eligibility or the amount of assistance or compensation granted under a program, a condition imposed under section 106 or a claim for overpayment may, within two months of the date on which the person is notified of the decision, apply in writing for a

**EXHIBIT E**



CANADA

PROVINCE OF QUEBEC  
DISTRICT OF SAINT-FRANÇOIS

NO: 450-06-000001-135

(Class Action)  
SUPERIOR COURT

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**YANNICK GAGNÉ**

and

**GUY OUELLET**

*Petitioners*

-vs.-

**RAIL WORLD, INC.**, legal person duly constituted, having its head office at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

**RAIL WORLD HOLDINGS, LLC**, legal person duly constituted, having its head office at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

**MONTREAL MAINE & ATLANTIC RAILWAY LTD.**, legal person duly constituted, having its head office at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

**EARLSTON ASSOCIATES L.P.**, legal person duly constituted, having its head office at 8600 W Bryn Mawr Ave 500N, City of Chicago, State of Illinois, 60631, USA

and

**PEA VINE CORPORATION**, legal person duly constituted, having its head office at 2899 Sherman Ave, City of Monte Vista, State of Colorado, 81144, USA

and

**MONTREAL, MAINE & ATLANTIC CORPORATION**, legal person duly constituted, having its head office at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

**MONTREAL, MAINE & ATLANTIC CANADA COMPANY**, legal person duly constituted, having its head office at 1959 Upper Water Street, Suite 800, City of Halifax, Province of Nova Scotia, B3J 2X2

and

**EDWARD BURKHARDT**, service at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

**ROBERT GRINDROD**, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

**GAINOR RYAN**, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

**DONALD GARDNER, JR.**, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

**JOE MCGONIGLE**, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

**CATHY ALDANA**, service at 6400 Shafer Court, Suite 275, City of Rosemont, State of Illinois, 60018, USA

and

**THOMAS HARDING**, service at 15 Iron Road, City of Hermon, State of Maine, 04401, USA

and

**IRVING OIL LIMITED**, legal person duly constituted, having its head office at 10 Sydney Street, City of St. John, Province of New Brunswick, E2L 4K1

and

**IRVING OIL COMPANY, LIMITED**, legal person duly constituted, having its head office at 10 Sydney Street, City of St. John, Province of New Brunswick, E2L 4K1

and

**IRVING OIL OPERATIONS GENERAL PARTNER LIMITED**, legal person duly constituted, having its head office at 1 Germain Street, Suite 1700, City of St. John, Province of New Brunswick, E2L 4V1

and

IRVING OIL OPERATIONS LIMITED,  
legal person duly constituted, having its  
head office at 1 Germain Street, Suite  
1700, City of St. John, Province of New  
Brunswick, E2L 4V1

and

WORLD FUEL SERVICES CORP., legal  
person duly constituted, having its head  
office at 9800 NW 41<sup>st</sup> Street, Suite 400,  
City of Miami, State of Florida, 33178,  
USA

and

WORLD FUEL SERVICES, INC., legal  
person duly constituted, having its head  
office at 9800 NW 41<sup>st</sup> Street, Suite 400,  
City of Miami, State of Florida, 33178,  
USA

and

WORLD FUEL SERVICES CANADA,  
INC., legal person duly constituted,  
having its head office at 9800 NW 41<sup>st</sup>  
Street, Suite 400, City of Miami, State of  
Florida, 33178, USA

and

DAKOTA PLAINS HOLDINGS, INC.,  
legal person duly constituted, having its  
head office at 294 Grove Lane East, City  
of Wayzata, State of Minnesota, 55391,  
USA

*Respondents*

and

XL INSURANCE COMPANY LIMITED,  
legal person duly constituted, having its  
principal establishment at 8 Street  
Stephen's Green, City of Dublin, 2,  
Ireland  
and

**XL GROUP PLC**, legal person duly  
constituted, having its principal  
establishment at One Bermudiana Road,  
City of Hamilton, HM, 08, Bermuda

*Mises-en-cause*

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**AMENDED MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION**  
&  
**TO ASCRIBE THE STATUS OF REPRESENTATIVE**  
**(Art. 1002 C.C.P. and following)**

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TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT,  
SITTING IN AND FOR THE DISTRICT OF SAINT-FRANÇOIS, YOUR  
PETITIONERS STATE AS FOLLOWS:

**I. GENERAL PRESENTATION**

A) The Action

1. Petitioners wish to institute a class action on behalf of the following group, of which they are members, namely:
  - all persons and entities (natural persons, legal persons established for a private interest, partnerships or associations as defined in article 999 of the Code of Civil Procedure of Quebec) residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic [including their estate, successor, spouse or partner, child, grandchild, parent, grandparent and sibling], who have suffered a loss of any nature or kind relating to or arising directly or indirectly from the train derailment that took place on July 6, 2013 in Lac-Mégantic (the "Train Derailment"), or any other group to be determined by the Court;

B) The Respondents

2. Please note that the Respondents presented herein are as known currently. As new facts emerge throughout the various investigations of the governmental bodies, the Petitioners reserve their right to amend so as to update this section;

The Corporate Rail World Respondents

3. Respondent Rail World, Inc. ("Rail World") is an American rail transport holding corporation with its head office in Rosemont, Illinois. It is a railroad management and consulting company. It is the parent company of Montreal, Maine and Atlantic Railway Ltd. ("MMAR") and its president and Chief Executive Officer is Respondent Edward Burkhardt;
4. Respondent Rail World Holdings, LLC ("Rail World Holdings") is an American corporation with its head office in Rosemont, Illinois. The company holds railway investments around the world. Respondent Edward Burkhardt serves as the president of the company. Rail World Holdings is not a distinct corporate entity performing autonomous business activities, but is instead an entity created to serve as a holding company for other corporate entities and is dominated and controlled by its parent company, Rail World;
5. Respondent MMAR is an American corporation with its head office in Hermon, Maine. It operates a Class II freight railroad in the U.S. states of Maine and Vermont and in the province of Quebec. MMAR owns the 1200 kilometer regional railway crossing Maine, Vermont, Quebec and New Brunswick and it also owns and leases locomotives and train cars travelling between Montreal, Quebec and Lac-Mégantic, Quebec. It is a wholly-owned subsidiary of Rail World and Respondent Edward Burkhardt serves as the Chairman of the Board. It is a wholly-owned subsidiary of Montreal, Maine and Atlantic Corporation ("MMAC"), the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as Exhibit R-1A. MMAR is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Rail World;
6. Respondent Earlston Associates L.P. ("Earlston") is an American corporation with its head office in Chicago, Illinois. Its majority shareholder is Respondent Edward Burkhardt, who owns 72.78% of the corporate stock. It is the parent company of MMAC (...);
7. Respondent Pea Vine Corporation ("Pea Vine") is an American corporation with its head office in Vista, Colorado. It operates in the rail transportation industry as a railroad line-haul operator. Respondent Edward Burkhardt is the President of the company;
8. Respondent MMAC is an American corporation with its head office in Hermon, Maine. It is a wholly-owned subsidiary of Respondent Earlston. MMAC is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its parent company, Earlston;
9. Respondent Montreal, Maine & Atlantic Canada Company ("MMA Canada") is a wholly-owned subsidiary of MMAR (...), the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as

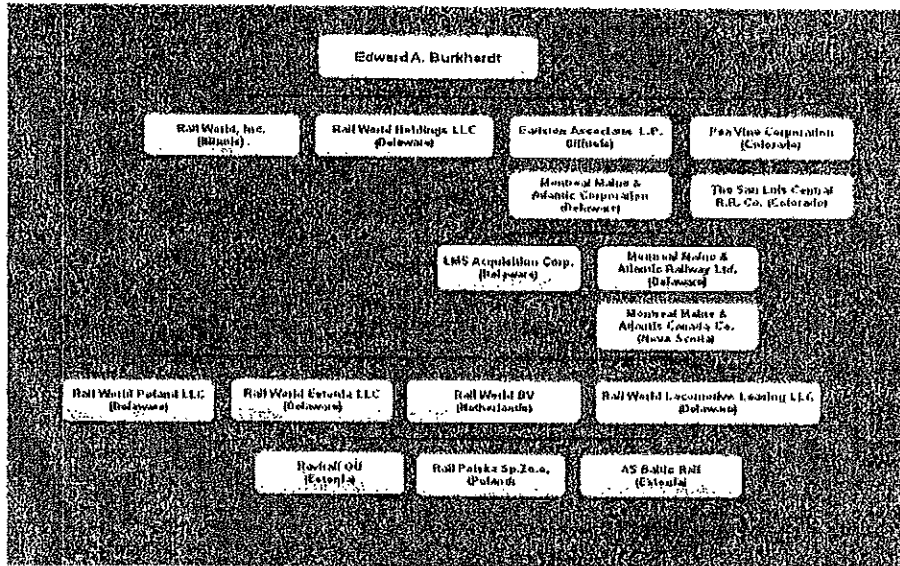
Exhibit R-1B. MMA Canada is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Rail World;

9.1 Rail World controlled and dominated its subsidiaries directly and/or through its operating and subsidiary companies, including Rail World Holdings, and MMAC, and MMAR. Respondents were operated as one economic unit or a single group enterprise as follows;

- a) Each of the seven companies is a parent or subsidiary of the others or is an affiliate of the others;
- b) Each of the seven companies is the agent of the others;
- c) All seven companies have officers and directors in common, including most importantly, the Respondent Edward Burkhardt as explained below; and
- d) The acts and omissions set out herein were done by the Rail World Respondents in pursuit of their common enterprise;
- e) All of the Rail World Respondents were under the control and direction, including all aspects of their business and operations, of the Respondent Rail World and its officers and directors and its subsidiaries as described herein;

#### The Individual Rail World Respondents

10. Respondent Edward Burkhardt ("Burkhardt") is the President of Respondents Rail World, Rail World Holdings and Pea Vine Corporation. Mr. Burkhardt is the majority shareholder of Respondent Earlston and he serves as the Chairman of the Board of Directors at Respondent MMAR. Respondent Edward Burkhardt is responsible for the implementation and enforcement of policies and/or for the failure to implement and to enforce proper policies and procedure;
11. As is plainly illustrated below, Respondent Edward Burkhardt is the principal director of and exercises real and effective control of the other Respondents, in effect functioning as the alter ego of the entire operation. The other officers and management of the Rail World Respondents and its affiliates effectively controlled all aspects of the business and operations of all of the Rail World Respondents as described herein;



12. Respondents Edward Burkhardt, Robert Grinrod (President and Chief Executive Officer of MMAR), Gainor Ryan (Vice-President of Human Resources of MMAR), Donald Gardner, Jr. (Vice-President Finance and Administration and Chief Financial Officer at MMAR), Joe McGonigle (Vice-President of MMAC) and Cathy Aldana (Vice-President of Research and Administration at Rail World) are the collectively, the controlling minds of the Corporate Rail World Respondents;
13. Respondent Thomas Harding was the conductor of the Train;
14. Mis-en-cause XL Insurance Company Limited is a global insurance company with its head office in Ireland. It is the liability insurer of Respondent MMAR;
15. Mis-en-cause XL Group PLC is a global insurance company with its head office in Bermuda. It is the liability insurer of Respondent MMAR;
16. (...)
17. Given the close ties between the Corporate Rail World Respondents and the Individual Rail World Respondents and considering the preceding, all Corporate Rail World Respondents and Individual Rail World Respondents are solidarily liable for the acts and omissions of the other. Unless the context indicates otherwise, all Corporate Rail World Respondents will be referred to as the "Rail World Companies" and the Individual Rail World Respondents will be referred to as the "Senior Executive Team" for the purposes hereof. Collectively, they will be referred to as the "Rail World Respondents";



The Irving Oil Respondents

- 17.1 Respondent, Irving Oil Limited ("Irving Oil") is a corporation incorporated pursuant to the laws of New Brunswick with its head office located in St. John, New Brunswick. At all material times, Irving Oil either directly or indirectly through an agent or subsidiary purchased and had a proprietary or equitable interest in and control of the shale liquids, sometimes referred to as "shale oil" or "crude oil" (the "Shale Liquids") that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013;
- 17.2 Respondent, Irving Oil Company, Limited ("Irving Oil Co.") is a corporation incorporated pursuant to the laws of New Brunswick with its head office located in St. John, New Brunswick. At all material times, Irving Oil GPL either directly or indirectly through an agent or subsidiary purchased and/or owned the Shale Liquids that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013. Irving Oil GPL directly or indirectly, through an agent or subsidiary, contracted with MMAR for the shipment of the Shale Liquids and was responsible for the decision to use and/or was aware of the use of DOT-111 tankers to ship the Shale Liquids. Irving Oil GPL is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Irving Oil, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as **Exhibit R-1C**;
- 17.3 Respondent, Irving Oil Operations General Partner Limited ("Irving Oil GPL") is a corporation incorporated pursuant to the laws of New Brunswick with its head office located in St. John, New Brunswick. At all material times, Irving Oil GPL either directly or indirectly through an agent or subsidiary purchased and/or owned the Shale Liquids that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013. Irving Oil GPL directly or indirectly, through an agent or subsidiary, contracted with MMAR for the shipment of the Shale Liquids and was responsible for the decision to use and/or was aware of the use of DOT-111 tankers to ship the Shale Liquids. Irving Oil GPL is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Irving Oil;
- 17.4 Respondent, Irving Oil Operations Limited ("Irving Oil Operations") is a corporation incorporated pursuant to the laws of New Brunswick with its head office in St. John, New Brunswick. At all material times, Irving Oil Operations either directly or indirectly through an agent or subsidiary purchased and/or owned the Shale Liquids that were in the process of being shipped by MMAR from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick on July 6, 2013. Irving Oil Operations directly or indirectly, through an agent or

subsidiary, contracted with MMAR for the shipment of the Shale Liquids, and was responsible for the decision to use and/or was aware of the use of DOT 111 tankers to ship the Shale Liquids. It is a wholly-owned subsidiary of Irving Oil, the whole as appears more fully from a copy of an extract from the *Registraire des enterprise*, produced herein as Exhibit R-1D. Irving Oil Operations is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, Irving Oil;

17.5 At all relevant times, the Respondents, Irving Oil, Irving Oil Co., Irving Oil GPL and Irving Oil Operations (hereinafter collectively "Irving Oil") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions directly or through their subsidiaries. As such, each Irving Oil Respondent is individually as well as solidarily liable to the Petitioners and to the members of Class for their injuries, losses and damages;

#### The World Fuel Respondents

17.5 Respondent, World Fuel Services Corp. is a corporation incorporated pursuant to the laws of Florida with its head office located in Miami, Florida. At all material times World Fuel Services Corp. or one of its subsidiaries was the seller and/or owner of the Shale Liquids that were being shipped by MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick and leased the DOT-111 tankers used to carry the oil. World Fuel Services Corp. exercised control over its subsidiaries and corporate divisions and was responsible for the decision to use and/or was aware of the use of DOT 111 tankers to ship the Shale Liquids;

17.6 Respondent, World Fuel Services, Inc. is a corporation incorporated pursuant to the laws of Florida with its head office located in Miami, Florida. At all material times World Fuel Services, Inc. either directly or indirectly through one of its subsidiaries, was the seller and/or owner of the Shale Liquids that were being shipped by MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick and leased the DOT-111 tankers used to carry the Shale Liquids. World Fuel Services, Inc. is not a distinct corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, World Fuel Services Corp;

17.7 Respondent, World Fuel Services Canada, Inc. is a corporation incorporated pursuant to the laws of British Columbia with its head office located in Miami, Florida. At all material times World Fuel Services Canada, Inc. either directly or indirectly through one of its subsidiaries was the seller and/or owner of the Shale Liquids that were being shipped by MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick, and leased the DOT-111 tankers used to carry the Shale Liquids. World Fuel Services Canada, Inc. is not a distinct

corporate entity performing autonomous business activities, but is instead an entity wholly dominated and controlled by its ultimate parent company, World Fuel Services Inc., the whole as appears more fully from a copy of an extract from the *Registraire des entreprises*, produced herein as Exhibit R-1E;

17.8 Respondent Dakota Plains Holdings, Inc. is a corporation incorporated pursuant to the laws of Nevada with its head office located in Wayzata, Minnesota. At all material times, Dakota Plains Holdings, Inc. was a subsidiary of and/or affiliate and/or joint venture of World Fuel Services Corp. and/or World Fuel Services, Inc., and/or World Fuel Services Canada, Inc. Dakota Plains Holdings, Inc. was the seller, owner and shipper of the Shale Liquids that were being shipped by MMAR from North Dakota to Irving Oil's refinery in St. John, New Brunswick and leased the DOT-111 tankers used to carry the Shale Liquids;

17.9 At all relevant times, the Respondents, World Fuel Services Corp., World Fuel Services, Inc., World Fuel Services Canada, Inc. and Dakota Plains Holdings, Inc. (hereinafter collectively "World Fuel") acted on behalf of each other and exercised control over their collective subsidiaries and corporate divisions either directly or through their subsidiaries. As such, each World Fuel Respondent is individually as well as solidarily liable to the Petitioners and to the members of Class for their injuries, losses and damages;

17.10 Unless the context indicates otherwise, all Irving Oil Respondents and World Fuel Respondents will be referred to collectively as the "Oil Respondents" for the purposes hereof;

17.11 All of the Respondents, whether directly or indirectly, are significantly involved in the train derailment that took place on July 6, 2013 in Lac-Mégantic, Quebec;

### C) The Situation

18. Please note that the facts presented herein are as known currently. As new facts emerge throughout the various investigations of the governmental bodies, the Petitioners reserve their right to amend so as to update this section;

### The Oil

18.1 Prior to July 5, 2013, Irving Oil contracted with World Fuel for the purchase of Shale Liquids obtained from the Bakken formation in North Dakota. These Shale Liquids were a highly flammable and therefore hazardous substance;

18.2 In order to deliver the Shale Liquids to their purchaser, World Fuel arranged for MMAR to transport the Shale Liquids from New Town, North Dakota to Irving Oil's refinery in St. John, New Brunswick and leased 72 DOT-111 tankers for this purpose;

### The Train Derailment

19. On July 5, 2013, at approximately 11:25 pm, Respondent Harding, the one (1) engineer employed by Respondent MMAR to operate the Train, parked and tied down a freight train in the town of Nantes, Québec, for a stopover en route to the province of New Brunswick, the whole as appears more fully from a copy of the Montreal, Maine and Atlantic Railway (MMA) Press Release entitled "Derailment in Lac-Mégantic, Quebec" dated July 6, 2013, produced herein as **Exhibit R-2**;
20. The (...) Train was comprised of the 72 DOT-111 tank cars, each carrying 113,000 litres of (...) the Shale Liquids and of 5 locomotive units (hereinafter collectively referred to as the "Train"), the whole as appears more fully from a copy of the National Post graphic article entitled "The Night a Train Destroyed a Town", produced herein as **Exhibit R-3**;
21. The estimated 9,975 ton Train was parked approximately 11 kilometers west of Lac-Mégantic, Québec, on the main rail line at an elevation point of 515 meters on an incline of approximately 1.2%;
22. Respondent Harding claims to have tied down the Train and turned off four of the five engines, leaving on the lead engine #5017 to ensure that the air brake system continued to operate, the whole as appears more fully from a copy of the Wall Street Journal article entitled "Brakes Cited in Quebec Wreck" dated July 10, 2013, produced herein as **Exhibit R-4**;
23. Respondent Harding failed to apply any or insufficient hand brakes, thereby failing to act in accordance with existing requirements, regulations, and policy;
24. Respondent Harding, the only employee assigned to operate the Train, then left at approximately 11:25 PM and went to a local hotel for the night;
25. At approximately 11:30 PM, residents of Nantes noticed a significant amount of smoke coming from the Train and called 9-1-1;
26. At approximately 11:45 PM, the Nantes fire department arrived on the scene to extinguish a small fire in the locomotive, reportedly caused by a ruptured oil or fuel line in the locomotive. ;
27. At approximately 11:50 PM, the fire was reported to rail traffic control and Respondent MMAR dispatched two (2) track maintenance employees ("MMAR Representatives") to the scene. Neither Respondent Harding nor another properly qualified engineer attended ;

28. By 12:15 AM on July 6, 2013, the blaze was completely extinguished and the firefighters left the Train in the custody of the MMAR Representatives, who confirmed that the Train was safe;
29. At approximately 12:56 AM, after the emergency responders had left and, while no MMAR Representatives were present, the Train began to move downhill along the track towards the town of Lac-Mégantic;
30. At approximately 1:14 AM, the Train derailed at the Rue Frontenac road crossing in Lac-Mégantic and crashed into the downtown core of the town (hereinafter referred to as the "Train Derailment");
31. Between 1:15 am and 4:00 am, several tanker cars caught fire and the highly flammable tank cars with Shale Oil exploded, decimating the entire area. The explosions continued for several hours as 2,000 residents were evacuate from the area (hereinafter referred to as the "Explosion"), the whole as appears more fully from a copy of the National Post article entitled "Death Toll Rises to 13 with Dozens More Still Missing" dated July 9, 2013, produced herein as **Exhibit R-5**;
32. In the aftermath of the Train Derailment and Explosion, 38 have been confirmed and 13 people suspected to have died in the explosion remain missing (...). Numerous people also sustained extensive physical injuries as a result of the blasts;
33. At least thirty (30) buildings were destroyed in the downtown "red zone" and at least 20 people lost their homes;
34. The Transportation Safety Board of Canada ("TSBC") and the Sûreté du Québec ("SQ") have both launched investigations into the causes of the Train Derailment, the whole as appears more fully from a copy of the Transportation Safety Board of Canada's Rail Investigation Report entitled "Railway investigation R13D0054" dated July 12, 2013 and from a copy of the Globe and Mail article entitled "Police signal there are sufficient grounds for charges in Lac-Mégantic" dated July 9, 2013, produced herein, *en liasse*, as **Exhibit R-6**;
35. On July 10, 2013, Respondent Edward Burkhardt gave an impromptu press conference to the media in Lac-Mégantic, in which he was asked by a reporter: "You don't accept full responsibility for this?", his answer was the following:

"I didn't say that, you see people are always putting words in my mouth, please, I did not say that, we think we have plenty of responsibility here, whether we have total responsibility is yet to be determined. We have plenty of it. We're going to try to help out with everything that we can in this community, working through the city and the Red Cross to do our best to meet our obligation to make repairs and put people back in homes and things like that."

And when asked about the application of the brakes on the Train, Respondent Burkhardt replied:

"This was a failure of the brakes; it's very questionable whether the brakes- the hand brakes- were properly applied on this train. As a matter of fact, I'd say they weren't or we wouldn't have had this incident [...] I don't think the employee removed brakes that were set; I think they failed to set the brakes in the first place. We know the brakes were applied properly on a lot of the locomotive. The fact that when the air-brakes released on the locomotive, that the train "ran away", would indicate that the hand brakes on the balance of the train were not properly applied. It was our employee that was responsible for setting an adequate number of hand brakes on the train."

The Respondent MMAR's Poor Safety Record

36. Since 2003, Respondent MMAR has reported 129 accidents, including 14 main track derailments and 4 collisions, according to Canada's Transportation Safety Board (Exhibit R-6);
37. In the United States, Respondent MMAR has reported 23 accidents, injuries and other mishaps from 2010 to 2012, according to Federal Railroad Administration data, the whole as appears more fully from a copy of the Wall Street Journal article entitled "Runaway Quebec Train's Owner Battled Safety Issues" dated July 9, 2013, produced herein as **Exhibit R-7**;
38. In 2012, Respondent MMAR had an average of 36.1 occurrences per million miles, while the national average was 14.6. Between 2003 and 2011, the company's rate ranged between 23.4 and 56 incidents per million miles, while the national average ranged between 15.9 and 19.3, according to Federal Railroad Administration data (Exhibit R-7);
39. Several of these incidents involved brakes that failed or were not properly activated, resulting in the train rolling away unmanned;
40. For example, in February 2010, a train of 3 MMAR locomotives were left unattended in Brownville Junction, Maine. The air brakes failed and the train rolled down a hill and crashed, causing physical injury and spilling more than 1,100 litres of fuel, the whole as appears more fully from a copy of the Bureau of Remediation & Waste Management report number B-97-2013, produced herein as **Exhibit R-8**;
41. On June 11, 2013, a MMAR train derailed in Frontenac, Quebec, just east of Lac Mégantic and spilled 13,000 litres of diesel fuel, the whole as appears more fully

from a copy of the La Presse article entitled "Déversement de 13 000 litres de diesel à Frontenac, près de Lac-Mégantic" dated June 11, 2013, produced herein as **Exhibit R-9**;

The Rail World Respondents' Cutbacks

42. In 2003, Respondent Rail World bought the Bangor & Aroostook Railroad, which spans approximately 1200 kilometers of regional rail track in Maine, Vermont and Canada, and renamed it Montreal, Maine and Atlantic Railway Inc.;
43. From the beginning, Respondent MMAR suffered many financial difficulties, largely due to decreases in the lumber and pulp-and-paper industries that once sustained it, the whole as appears more fully from a copy of The Gazette article entitled "Railway companies cutting back crew" dated July 10, 2013, produced herein as **Exhibit R-10**;
44. Following the takeover, employee wages were drastically cut in order to save costs. Cuts and layoffs continued in 2006 and again in 2008, the whole as appears more fully from a copy of The Ottawa Star article entitled "Lac Megantic: Railway's history of cost-cutting" dated July 11, 2013, produced herein as **Exhibit R-11**;
45. Respondent MMAR, contrary to industry standards, reduced its locomotive crews by half, replacing two (2) workers with a single employee in charge of an entire train. In North America, most train operators, including two of Canada's largest - Canadian National Railway Ltd. and Canadian Pacific Railway Ltd- use two staff to operate one train (**Exhibit R-7**). In particular, it had a special duty to ensure the usage of adequate train crews when transporting highly flammable Shale Liquids through urban and residential areas;
46. In 2010, Respondent MMAR sold 375 kilometers of rail line in Maine to the state itself for close to \$20.1 million, citing economic hardship (**Exhibit R-7**);
47. In 2012, Respondent MMAR's finances had somewhat improved after years of operating losses, in part due to the new business of shipping petroleum products to Irving Oil in Saint John, New Brunswick, where the Train was headed before the Train Derailment;
48. In order to keep costs at a minimum and the company profitable, Respondent MMAR began outfitting its trains with remote-control communications technology systems and employing other cost-cutting tactics, such as employee cutbacks, with complete disregard for industry safety and security practices when transporting inherently dangerous goods;

49. These cutbacks demonstrate a serious and concerted preoccupation with finances at the expense of the necessary safety and security policies that should have been the primary concern of the Respondents;
50. The policies pertaining to the transportation of goods by rail and the implementation of such policies by Respondent MMAR emanate from Respondent Rail World, of which Respondent Burkhardt is President and Chief Executive Officer;
51. All directives concerning the number of employees required to operate the Train, the number and manner in which the hand brakes are to be applied, the decisions to leave the Train unattended, the lack of safety and security measures or procedures are dictated and enforced by Respondent Rail World and its alter ego, Respondent Burkhardt in his capacity as President and Chairman of the Board, at his sole unfettered discretion;
52. Canada's rail industry is largely self-regulating, allowing rail corporations such as Respondent Rail World to implement and enforce their own guidelines and standards. Because of the lack of regulation in this industry, it is impossible to know whether these corporations actually implemented these protocols and, if so, whether they actually adhered to their safety protocols;
53. Respondent Burkhardt, through Respondent Company Rail World maintains authority, control, decision making and governing power over all the subsidiary and affiliated corporations including Respondents Rail World Holdings, MMAR, Earlston, Pea Vine, MMAC, MMAR Canada. Rail World is, effectively, the alter-ego of these companies through which it is able to exercise various business transactions;

The DOT-111 Tankers are Prone to Rupture and Explosion

- 53.1 DOT-111 tank cars, also known as CTC-111A tank cars, were leased by Irving Oil and/or World Fuel and/or MMAR and were used to transport the Shale Liquids from North Dakota to New Brunswick. These tanks are multi-purpose, non-pressure tank cars that are widely known to the all Respondents and to regulators to be vulnerable to leaks, ruptures and explosions;
- 53.2 The United States National Transportation Safety Board ("U.S. NTSB") repeatedly noted in numerous investigations, beginning as early as May 1991, that DOT-111 model tank cars have multiple design flaws which result in a high incidence of tank failures during collisions, and render them less suitable for the transport of dangerous products, the whole as appears more fully from a copy of the U.S. NTSB Safety Recommendation dated March 2, 2012, produced herein as Exhibit R-12;



53.3 The TSBC has also noted that the DOT-111 tank's design is flawed, resulting in a high incidence of tank failure during accidents. Accidents in Canada where DOT-111 design flaws were ultimately identified as contributing to the damages that were caused are numerous and include, but are not limited to:

- a) the January 30, 1994 derailment of 23 freight cars northwest of Sudbury, Ontario, in which three DOT-111 tanks cars containing dangerous goods failed and released product; the whole as appears more fully from a copy of TSBC Railway Occurrence Report dated January 30, 1994, produced herein as Exhibit R-13;
- b) the October 17, 1994 derailment of six tank cars containing methanol in Lethbridge, Alberta. Four derailed DOT-111 tank cars failed and released approximately 230,700 litres of methanol. A 20-square-block area of the city was evacuated; the whole as appears more fully from a copy of TSBC Railway Occurrence Report dated October 17, 1994, produced herein as Exhibit R-14;
- c) the January 21, 1995 derailment of 28 freight cars of sulfuric acid near Gouin, Quebec. Eleven DOT-111 tanks failed and released 230,000 litres of sulphuric acid, causing considerable environmental damage; the whole as appears more fully from a copy of TSBC Railway Occurrence Report dated January 21, 1995, produced herein as Exhibit R-15;
- d) the August 27, 1999 derailment of a DOT-111 tank that failed and released 5,000 gallons of combustible product in Cornwall, Ontario, resulting in a temporary evacuation of customers and staff from nearby businesses; the whole as appears more fully from a copy of TSBC Railway Investigation Report dated August 27, 1999, produced herein as Exhibit R-16; and
- e) the May 2, 2005 collision of 74 freight cars, in which a DOT-11 tank failed and released 98,000 litres of denatured alcohol, resulting in the evacuation of 200 people; the whole as appears more fully from a copy of TSBC Railway Investigation Report dated May 2, 2005, produced herein as Exhibit R-17;

53.4 Known flaws in the design of the DOT-111 tank cars include: the tank is not double-hulled and its steel shell is too thin to resist puncture; the tank's ends are especially vulnerable to tears from couplers that can fly up after ripping off between cars; unloading valves and other exposed fittings on the tops of the tanks can break during rollovers; and the tanks are not equipped with shields to resist shock in the event of a collision (Exhibit R-12). As a result, the tanks are highly prone to failure and leakage even in collisions at low speed;

53.5 These flaws were repeatedly identified as concerning to Canadian and American regulators. In 2011, the American Association of Railroads' Tank Car Committee imposed design changes intended to improve safety in new DOT-111s, including requirements for thicker heads, low-pressure release valves and puncture-proof shells. These design modifications have also been adopted for new DOT-111 cars manufactured and used in Canada, but there is no requirement to modify existing tanks. While these changes decrease the likelihood of tank rupture in tanks produced in late 2011 and onwards, the benefits are not realized unless a train is composed entirely of tanks that possess these modifications;

53.6 In the presence of ongoing concerns, the U.S. NTSB issued safety guidelines in March, 2012 for all DOT-111s, which included a recommendation that all tank cars used to carry ethanol and crude oil be reinforced to render them more resistant to punctures and that existing non-reinforced tank cars are phased out completely. These guidelines noted the dangers posed by the transport of large quantities of ethanol and crude oil by rail and specifically cited the increased volume of crude oil being shipped out of the Bakken region of North Dakota as one of many justifications for the requirement for improved standards (Exhibit R-12);

53.7 Despite known concerns surrounding the use of unenforced DOT-111 tanks to transport crude oil, many of the tanks involved in the Train Derailment were older model DOT-111 tanks that were not reinforced, thus remaining highly prone to rupture in the event of a collision;

53.7 The Respondents knew or ought to have known that DOT-111 tanks were prone to rupture and should therefore not have been used to transport the Shale Liquids. The Respondents had a duty to ensure that the Shale Liquids were safely transported in tanks that had property safety features to limit failure in the event of a collision.

#### D) The Faults

54. The Respondents had a duty to the Petitioners and the Class Members to abide by the rules of conduct, usage or law to ensure the safe transportation of the Shale Liquids and the safe operation of the Train;

54.1 The Respondents had a duty to the Petitioners and the Class Members to exercise reasonable care in their determination of the methods, railway, railway operator and tanks used to ship the Shale Liquids from North Dakota to New Brunswick, and to exercise reasonable care in their physical shipment of the Shale Liquids from North Dakota to New Brunswick.

55. The Train Derailment and the resulting injuries and damages were caused by the faults of the Respondents themselves, as well as, of their agents or servants, for whose actions, omissions and negligence they are responsible, the particulars of which include, but are not limited to:

A. With regards to the Irving Oil and World Fuel Respondents:

- a) they failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were properly and safely transported;
- b) they failed and/or neglected to take reasonable or any care to ensure that the Shale Liquids were not transported in DOT-111 tanks, or that it was only transported in DOT-111 tanks that were properly reinforced;
- c) they failed and/or neglected to inspect or adequately inspect the Train and its equipment before allowing it to be used to transport the Shale Liquids;
- d) they failed and/or neglected to hire a safe and qualified railway operator with a positive safety record to transport the Shale Liquids;
- e) they failed and/or neglected to identify the risk of the Train Derailment in the present circumstances when they ought reasonably to have done so, and they failed and/or neglected to prevent such an incident from occurring;
- f) they failed and/or neglected to promulgate, implement and enforce rules and regulations pertaining to the safe shipment of the Shale Liquids by train;
- g) they hired incompetent employees and servants, and are liable for the acts, omissions or negligence of same;
- h) they failed or neglected to properly instruct and educate their employees on how to safely transfer Shale Liquids by train;
- i) they allowed a dangerous situation to exist, when, by the use of a reasonable effort, they could have prevented the Train Derailment;

B. With regards to the Rail World Respondents:

- a) they failed and/or neglected to take reasonable or any care to ensure that the Train was safely and securely stationed for the night;
- b) they failed and/or neglected to inspect or adequately inspect the Train and its equipment before leaving it unattended;

- c) they failed and/or neglected to activate or secure a reasonable amount of the Train's hand brakes;
- d) they failed and/or neglected to have or maintain the Train in proper state of mechanical order suitable for the safe use thereof;
- e) they failed and/or neglected to take the appropriate safety and security measures following the fire at 11:30 PM on July 5, 2013;
- f) they failed and/or neglected to consider the dangers of leaving the Train on a slope and on the main rail line, unattended, for an extended period of time;
- g) they failed and/or neglected to identify the risk of the Train Derailment in the present circumstances when they ought reasonably to have done so and they failed and/or neglected to prevent such an incident from occurring;
- h) they failed and/or neglected to promulgate, implement and enforce rules and regulations pertaining to the safe operation of the Train;
- i) they hired incompetent employees and servants, and are liable for the acts, omissions or negligence of same;
- j) they permitted incompetent employees, whose faculties of observation, perception and judgment were inadequate, to operate the Train;
- k) they caused and/or allowed the train to be operated by a single conductor despite the fact that they knew or should have known that having at least two (2) conductors on board was the common safe practice;
- l) they permitted a person to operate the Train who failed to identify a dangerous situation and take appropriate measures to avoid it;
- m) they failed or neglected to properly instruct and educate their employees on how to safely operate the Train and the appropriate measures to take after a fire;
- n) they allowed a dangerous situation to exist, when, by the use of a reasonable effort, they could have prevented the Train Derailment;

55.1 The Train Derailment and the resulting injuries and damages were caused by Respondents. The Respondents knew or should have known about the volatility of the Shale Liquids, the defects and unsuitability of the DOT-111 tankers used to transport the Shale Liquids, the poor safety record of the Rail World.

Respondents and the fact that transport of a dangerous substance was occurring in a residential area.

55.2 The Respondents ought to have taken care to minimize all safety risks associated with the transportation of the Shale Liquids by ensuring that the Shale Oil was transported in properly reinforced tanks with adequate safety features to reduce the impact of collision and likelihood of failure; by ensuring that the railway used to ship the Shale Liquids had a strong safety record and low record of collisions; and by ensuring that all staff involved in the transport of the Shale Liquids were adequately trained and that the Train would be adequately staffed during the trip to New Brunswick; and failed to do so;

55.2 This negligence and/or recklessness and the resulting risk of harm was directed towards the general public, which in turn materialized as against the Petitioners and the Class Members. The Respondents knowingly endangered the safety of the Petitioners and the Class Members by shipping the Shale Liquids, a highly flammable and inherently dangerous product, through residential areas in a manner that was known to be dangerous and to result in an increased likelihood of collision, explosion and fire;

## II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONERS

### Petitioner Ouellet

56. Petitioner Ouellet resides at 4282 Rue Mauger in Lac-Mégantic, Quebec;
57. Petitioner Ouellet suffered many grave losses due to the Train Derailment including, but not limited to the death of his partner, Diane Bizier. They had been in a serious relationship for five (5) years;
58. Petitioner Ouellet's place of work, a factory, was closed for 3 days following the Train Derailment, which resulted in the loss of many hours of work and income;
59. Furthermore, Petitioner Ouellet took a work leave for one week due to overwhelming stress, anxiety and sadness;
60. As a result of the death of his partner, Petitioner Ouellet also suffered a loss of support, companionship and consortium;
61. Petitioner's damages are a direct and proximate result of the Respondents' conduct;
62. In consequence of the foregoing, Petitioner is justified in claiming damages;

Petitioner Gagné

63. Petitioner Gagné resides at 4722 Rue Papineau in Lac-Mégantic, Quebec;
64. Petitioner Gagné owns and operates a restaurant and small concert venue, Musi-Café, located at 5078, Rue Frontenac in Lac-Mégantic, Quebec;
65. Petitioner Gagné was working at Musi-Café the night of the Train Derailment. He and his partner, who was 7 months pregnant at the time, left the establishment merely 15-30 minutes before the Train Derailment;
66. As a result of the Train Derailment, Petitioner Gagné suffered many damages, including, but not limited to: the loss of his business and his place of work, the loss of 3 employees who perished in the tragedy, the loss of 12 employees who are currently unemployed and the investments made over the last two years in the renovation of Musi-Café;
67. After tragedy struck, Petitioner Gagné also suffered from a great deal of sadness, anguish, stress and melancholy;
68. Petitioner Gagné will have to completely rebuild his life, including taking all the administrative measures to revive his business, if possible. As a result of the damage done to his place of business and livelihood, he anticipates many financial problems in his future;
69. Petitioner Gagné has also suffered loss of time, inconvenience and stress due to disorganization and disorientation following the events of July 6, 2013;
70. Petitioner's damages are a direct and proximate result of the Respondents' conduct;
71. In consequence of the foregoing, Petitioner is justified in claiming damages;

**III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP**

72. Every member of the group resided in, owned or leased property in or were physically present in Lac-Mégantic, Quebec and suffered a loss of nature or kind resulting directly or indirectly from the Train Derailment;
73. Each member of the class is justified in claiming at least one or more of the following as damages:
  - a. For physical injury or death, the individuals or their estates may claim at least one or more of the following non-exhaustive list, namely:

- i. pain and suffering, including physical injury, nervous shock or mental distress;
- ii. loss of enjoyment of life;
- iii. past and future lost income;
- iv. past and future health expenses which are not covered by Medicare;
- v. property damages; and/or
- vi. any other pecuniary losses;

b. Those individuals who did not suffer physical injury may claim one or more of the following non-exhaustive list, namely:

- i. mental distress;
- ii. incurred expenses;
- iii. lost income;
- iv. expenses incurred for preventative health care measures which are covered by Medicare ;
- v. inconvenience;
- vi. loss of real or personal property;
- vii. property damages causing replacement and/or repairs;
- viii. diminished value of real property; and/or
- ix. any other pecuniary losses;

c. Family members of those that died or were physically injured may claim one or more of the following non-exhaustive list, namely:

- i. expenses reasonably incurred for the benefit of the person who was injured or who has died;
- ii. funeral expenses incurred ;
- iii. travel expenses incurred in visiting the injured person during his or her treatment or recovery;
- iv. loss of income or for the value of services where, as a result of the injury, the family member provides nursing, housekeeping or other services for the injured person; and
- v. an amount to compensate for the loss of guidance, care and companionship that the family member might reasonably have expected to receive from the person if the injury or death had not occurred; and/or
- vi. any other pecuniary loss;

d. Businesses Owning or Leasing Property and/or Operating in Lac-Mégantic may claim one or more of the following non-exhaustive list, namely:

- i. loss of real or personal property ;
- ii. property damages causing replacement or and repairs;
- iii. loss of income, earnings, or profits;
- iv. diminished value of real property; and/or

v. any other pecuniary loss;

74. All of these damages to the Class Members are a direct and proximate result of the Respondents' faults and/or negligence;

#### **IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION**

A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical

75. Petitioners estimate that there are 5,932 persons living in Lac-Mégantic as of 2011. However, Petitioners are unaware of the precise number of persons who, were residing in, owning or leasing property in, or were physically present in Lac-Mégantic and suffered damages arising directly or indirectly from the Train Derailment that took place on July 6, 2013;

76. In addition, given the significant costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondents. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of Respondents would increase delay and expense to all parties and to the court system;

77. These facts demonstrate that it would be difficult or impractical to contact each and every member of the class to obtain mandates and to join them in one action;

78. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;

B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondents and that which the Petitioners wish to have adjudicated upon by this class action

79. Individual questions, if any pale by comparison to the numerous common questions that predominate;

80. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, a single accident and the Respondents' alleged misconduct;



81. The recourse of the Class Members raises identical, similar or related questions of fact or law, namely:

a. Did the Respondents negligently and/or recklessly cause or contribute to the Train Derailment and the resulting fire, explosion and Shale Liquids spill?

b. Did the Respondents know or should they have known of the risk of the Train Derailment and did they exercise sufficiently reasonable care in order to prevent such an incident from occurring?

c. Did the Respondents properly inspect the Train and its equipment to assure that it was free from defects, in proper working order and fit for its intended purpose and did this cause or contribute to the Train Derailment?

d. Did the Respondents' agents and/or employees commit any faults in the performance of their duties and did this cause or contribute to the Train Derailment?

e. Did the Rail World Respondents promulgate, implement and enforce rules and regulations pertaining to the safe operations of their trains which would have prevented the Train Derailment?

f. Did the Rail World Respondents fail to properly operate and/or maintain the Train in a manner that would have prevented the Train Derailment?

f.1 Did the Oil Respondents fail and/or neglect to exercise reasonable care to ensure that the Shale Liquids were properly and safely transported?

g. In the affirmative to any of the above questions, did the Respondents' conduct engage their solidary liability toward the members of the Class?

h. What is the nature and the extent of damages and other remedies to which the members of the class can claim?

i. Are members of the class entitled to bodily, moral and/or material damages?

j. Are members of the class entitled to aggravated and/or punitive damages?

k. Are the Mises-en-Cause, as the Rail World Respondents' liability insurers, contractually required to pay members of the class for their prejudice, injury and damages?

82. The interest of justice favour that this motion be granted in accordance with its conclusions;

**V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT**

83. The action that the Petitioners wish to institute on behalf of the members of the class is an action in damages;

84. The conclusions that the Petitioners wish to introduce by way of a motion to institute proceedings are:

GRANT the class action of the Petitioners and each of the members of the class;

DECLARE the Defendants solidarily liable for the damages suffered by the Petitioners and each of the members of the class;

CONDEMN the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendants to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioners request that he be attributed the status of representative of the Class

85. Petitioners are members of the class;

86. Petitioners are ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the Fonds d'aide aux recours collectifs, as the case may be, and to collaborate with their attorneys;
87. Petitioners have the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;
88. Petitioners have given the mandate to their attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
89. Petitioners, with the assistance of their attorneys, are ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;
90. Petitioners are in good faith and have instituted this action for the sole goal of having their rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondents' conduct;
91. Petitioners understand the nature of the action;
92. Petitioners' interests are not antagonistic to those of other members of the class;

B) The Petitioners suggest that this class action be exercised before the Superior Court of justice in the district of Saint-François

93. A great number of the members of the class reside in the judicial district of Mégantic (...);
94. The present motion is well founded in fact and in law.

**FOR THESE REASONS, MAY IT PLEASE THE COURT:**

**GRANT** the present motion;

**AUTHORIZE** the bringing of a class action in the form of a motion to Institute proceedings in damages (...);

**ASCRIBE** the Petitioners the status of representatives of the persons included in the class herein described as:

- all persons and entities (natural persons, legal persons established for a private interest, partnerships or associations as defined in article 999 of the Code of Civil Procedure of Quebec) residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic [including their estate, successor, spouse or partner, child, grandchild, parent, grandparent and sibling], who have suffered a loss of any nature or kind relating to or arising directly or indirectly from the train derailment that took place on July 6, 2013 in Lac-Mégantic (the "Train Derailment"), or any other group to be determined by the Court;

**IDENTIFY** the principle questions of fact and law to be treated collectively as the following:

- a. Did the Respondents negligently and/or recklessly cause or contribute to the Train Derailment and the resulting fire, explosion and Shale Liquids spill?
- b. Did the Respondents know or should they have known of the risk of the Train Derailment and did they exercise sufficiently reasonable care in order to prevent such an incident from occurring?
- c. Did the Respondents properly inspect the train and its equipment to assure that it was free from defects, in proper working order and fit for its intended purpose and did this cause or contribute to the Train Derailment?
- d. Did the Respondents' agents and/or employees commit any faults in the performance of their duties and did this cause or contribute to the Train Derailment?
- e. Did the Rail World Respondents promulgate, implement and enforce rules and regulations pertaining to the safe operations of their trains which would have prevented the Train Derailment?
- f. Did the Rail World Respondents fail to properly operate and/or maintain the Train in a manner that would have prevented the Train Derailment?
  - f.1 Did the Oil Respondents fail and/or neglect to exercise reasonable care to ensure that the Shale Liquids were properly and safely transported?
- g. In the affirmative to any of the above questions, did the Respondents' conduct engage their solidary liability toward the members of the Class?
- h. What is the nature and the extent of damages and other remedies to which the members of the class can claim?

i. Are members of the class entitled to bodily, moral and/or material damages?

j. Are members of the class entitled to aggravated and/or punitive damages?

k. Are the Mises-en-Cause, as the Rail World Respondents' liability insurers, contractually required to pay members of the class for their prejudice, injury and damages?

**IDENTIFY** the conclusions sought by the class action to be instituted as being the following:

**GRANT** the class action of the Petitioners and each of the members of the class;

**DECLARE** the Defendants solidarily liable for the damages suffered by the Petitioners and each of the members of the class;

**CONDEMN** the Defendants to pay to each member of the class a sum to be determined in compensation of the damages suffered, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay to each of the members of the class, punitive damages, and **ORDER** collective recovery of these sums;

**CONDEMN** the Defendants to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

**ORDER** the Defendants to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

**ORDER** that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

**CONDEMN** the Defendants to bear the costs of the present action including expert and notice fees;

**RENDER** any other order that this Honourable court shall determine and that is in the interest of the members of the class;

**DECLARE** that all members of the class that have not requested their exclusion, be bound by any judgment to be rendered on the class action to be instituted in the manner provided for by the law;

**FIX** the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgment to be rendered herein;

**ORDER** the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgment to be rendered herein in LA PRESSE (national edition), LE DEVOIR, LA TRIBUNE, L'ÉCHO DE FRONTENAC and the LE JOURNAL DE QUÉBEC;

**ORDER** that said notice be available on the Respondents' websites with a link stating "Notice to all persons and entities residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic and who have suffered a loss relating to the Train Derailment that took place on July 6, 2013";

**RENDER** any other order that this Honourable court shall determine and that is in the interest of the members of the class;

**THE WHOLE** with costs, including all publications fees.

Lac-Mégantic, July 17, 2013

(s) Daniel Larochelle

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ME DANIEL LAROCHELLE  
Attorney for the Petitioners

(s) Jeff Orenstein

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CONSUMER LAW GROUP INC.  
Per: Me Jeff Orenstein  
Attorneys for the Petitioners

**EXHIBIT F**

ACTIONS INSTITUTED IN THE UNITED-STATES AGAINST MMA AND ALS – LAC MÉGAN TIC 2013

ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
Meyers & Flowers, LLC (Illinois)	Annick Roy, as Special Administrator of the ESTATE OF JEAN-GUY VEILLEUX, Deceased	Montreal, Maine & Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing, LLC and DPTS Marketing, LLC	July 22, 2013	Amount of claim in excess of \$50,000
Meyers & Flowers, LLC (Illinois)	Réal Breton, as Special Administrator of the ESTATE OF GENEVIÈVE BRETON, Deceased	Montreal, Maine & Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services	July 25, 2013	Amount of claim in excess of \$1,000,000



ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
Meyers & Flowers, LLC (Illinois)	Réjean Roy, as Special Administrator of the ESTATE OF MELISSA ROY, Deceased	Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing, LLC and DPTS Marketing, LLC	July 25, 2013	Amount of claim in excess of \$1,000,000
		Montreal, Maine & Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing,		

ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
<p>Edelman, Combs, Laiturner &amp; Goodwin, LLC (Chicago, Illinois)                      Weller, Green, Touns &amp; Terrell, LLP (Beaumont, Texas)                      Edward Jazlowiecki Law offices (Bristol, Connecticut)                      Me Glorienne Blais, Lac Mègantic (Québec)</p>	<p>Simon Custeau, individually and as representative of the Estate of Real Custeau, Deceased; Richard Custeau; Sylvie Custeau; Sonia Pepin and Jeremy Custeau</p>	<p>LLC and                      DPTS Marketing, LLC                      Montreal, Maine &amp; Atlantic Railway, Inc.                      Rail World, Inc.                      Edward Burkhardt, individually                      World Fuel Services Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC,                      Dakota Plains Transloading, LLC                      Dakota Petroleum Transport Solutions, LLC                      Dakota Plains Marketing, LLC and                      DPTS Marketing, LLC</p>	<p>July 26, 2013</p>	<p>Amount of claim in excess of \$50,000</p>
<p>Meyers &amp; Flowers, LLC (Illinois)                      And                      The Webster Law Firm (Texas)</p>	<p>Georgette Martin, as Special Administrator of the ESTATE OF DAVID MARTIN, Deceased</p>	<p>Montreal, Maine &amp; Atlantic Railway, Inc.                      Rail World, Inc.                      Edward Burkhardt, individually                      World Fuel Services</p>	<p>July 29, 2013</p>	<p>Amount of claim in excess of \$1,000,000</p>

ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
<p>Meyers &amp; Flowers, LLC (Illinois)                      And                      The Webster Law Firm (Texas)</p>	<p>Marie-Josée Grimard, as Special Administrator of the ESTATE OF HENRIETTE LATULIPPE, Deceased</p>	<p>Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC                      Dakota Petroleum Transport Solutions, LLC                      Dakota Plains Marketing, LLC and                      DPTS Marketing, LLC</p>	<p>July 29, 2013</p>	<p>Amount of claim in excess of \$1,000,000</p>

ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
Meyers & Flowers, LLC (Illinois) And The Webster Law Firm (Texas)	Sophie Veilleux, as Special Administrator of the ESTATE OF RICHARD VEILLEUX, Deceased	LLC and DPTS Marketing, LLC  Montreal, Maine & Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing, LLC and DPTS Marketing, LLC	July 29, 2013	Amount of claim in excess of \$1,000,000
Meyers & Flowers, LLC (Illinois) And The Webster Law Firm (Texas)	Thérèse Dubois Poulin, as Special Administrator of the ESTATE OF DENIS DUBOIS, Deceased	Montreal, Maine & Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services	July 29, 2013	Amount of claim in excess of \$1,000,000

ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
<p>Meyers &amp; Flowers, LLC (Illinois) And The Webster Law Firm (Texas)</p>	<p>Sandy Bédard, as Special Administrator of the ESTATE OF MICHEL GUERTIN, Deceased</p>	<p>Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing, LLC and DPTS Marketing, LLC</p>	<p>July 29, 2013</p>	<p>Amount of claim in excess of \$1,000,000</p>

ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
Meyers & Flowers, LLC (Illinois) And The Webster Law Firm (Texas)	Joannie Proteau, as Special Administrator of the ESTATE OF MAXIME DUBOIS, Deceased	LLC and DPTS Marketing, LLC  Montreal, Maine & Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing, LLC and DPTS Marketing, LLC	July 29, 2013	Amount of claim in excess of \$1,000,000
Meyers & Flowers, LLC (Illinois) And The Webster Law Firm (Texas)	Alexia Dumas-Chaput, as Special Administrator of the ESTATE OF MATHIEU PELLETIER, Deceased	Montreal, Maine & Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services	July 29, 2013	Amount of claim in excess of \$1,000,000

ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
<p>Meyers &amp; Flowers, LLC (Illinois) And The Webster Law Firm (Texas)</p>	<p>Karine Paquet, as Special Administrator of the ESTATE OF ROGER PAQUET, Deceased</p>	<p>Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing, LLC and DPTS Marketing, LLC</p>	<p>July 29, 2013</p>	<p>Amount of claim in excess of \$1,000,000</p>

ATTORNEYS	CLIENT	DEFENDANTS	DATE	AMOUNT
<p>Meyers &amp; Flowers, LLC (Illinois) And The Webster Law Firm (Texas)</p>	<p>Lisette Fortin-Bolduc, as Special Administrator of the ESTATE OF STEPHANE BOLDUC, Deceased</p>	<p>LLC and DPTS Marketing, LLC  Montreal, Maine &amp; Atlantic Railway, Inc. Rail World, Inc. Edward Burkhardt, individually World Fuel Services Corporation, Western Petroleum Company, Petroleum Transport Solutions, LLC, Dakota Plains Transloading, LLC Dakota Petroleum Transport Solutions, LLC Dakota Plains Marketing, LLC and DPTS Marketing, LLC</p>	<p>July 29, 2013</p>	<p>Amount of claim in excess of \$1,000,000</p>



**EXHIBIT G**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO

In Re:	)	
LTV STEEL COMPANY, INC. et al	)	Case No. 00-43866
	)	
	)	Chapter 11
	)	
Debtor(s)	)	Chief Judge William T. Bodoh

APPOINTMENT OF COMMITTEE OF ADMINISTRATIVE CLAIMANTS

Pursuant to section 1102(a) of the Bankruptcy Code, the following creditors of the above-named debtors being among those holding the largest administrative claims and who are willing to serve, are appointed to the committee of administrative claimants.

**AIR PRODUCTS & CHEMICALS INC.**  
c/o Lynne Richardson  
7201 Hamilton Blvd.  
Allentown, PA 18195-1501  
(610) 481-3077 Phone  
(610) 481-2244 Fax  
(Temporary Chairperson)

**VESUVIUS USA CORPORATION**  
c/o Peter J. Reynolds  
27 Noblestown Road  
Carnegie, PA 15106  
(412) 276-1750 ext. 260 Phone  
(412) 276-7252 Fax

**BEARING SERVICE CO. OF PA.**  
c/o David A. Michaud  
8800 Sweet Valley Drive  
Cleveland, OH 44125  
(216) 642-9922 Phone  
(216) 642-7690 Fax

**HUNTER CORPORATION**  
c/o Chester Jones  
2533 Portage Mall #B  
Portage, IN 46368  
(219) 762-0200 Phone  
(219) 762- 9483 Fax

**CLEVELAND CLIFFS INC.**  
c/o William R. Calfee  
1100 Superior Avenue  
Cleveland, OH 44114-2589  
(216) 694-5547 Phone  
(216) 694-5534 Fax

**GENERAL ELECTRIC**  
c/o Glenn Reisman  
Two Corporate Drive  
P.O. Box 861  
Shelton, CT 06484-0861  
(203) 944-3042 Phone  
(203) 944-3044 Fax

**GAFX CAPITAL CORP.**  
c/o Ian M. Irvine  
4 Embarcadero Center  
Suite 2200  
San Francisco, CA 94111  
(415) 955-3247 Phone  
(415) 955-3444 Fax

**C & K INDUSTRIAL SERVICES INC.**  
c/o Arthur Karas  
5617 Schaaf Road  
Independence, OH 44131  
(216) 642-0055 Phone  
(216) 642-0059 Fax

**UNITED STEELWORKERS**

c/o David R. Jury  
Five Gateway Center  
Room 807  
Pittsburgh, PA 15222  
(412) 562-2546 Phone  
(412) 562-2429 Fax

**KOPPERS INDUSTRY**

c/o Martin Smerk  
436 Seventh Avenue #1750  
Pittsburgh, PA 15219  
(412) 227-2154 Phone  
(412) 227-2159 Fax

**THE PANGERE CORPORATION**

c/o Steve N. Pangere  
4050 West 4<sup>th</sup> Avenue  
Gary, IN 46404-1718  
(219) 949-1368 Phone  
(219) 944-3028 Fax

Respectfully Submitted,

/s/ Saul Eisen

SAUL EISEN  
United States Trustee, Region 9

cc: Those listed on the certificate of service

Date: February 25, 2003

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE

*In re:*

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.,

Debtor.

Chapter 11

Case No. 13-10670 (LHK)

**ORDER GRANTING MOTION OF INFORMAL COMMITTEE OF QUÉBEC  
CLAIMANTS FOR APPOINTMENT OF CREDITORS' COMMITTEE  
PURSUANT TO BANKRUPTCY CODE SECTION 1102(a)(2)**

Upon consideration of the motion (the "**Motion**")<sup>1</sup> of the Informal Committee of Québec Claimant seeking entry of an order, pursuant to section 1102(a)(2) of chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"), directing the United States Trustee (the "**U.S. Trustee**") to appoint a committee of creditors; all as more fully set forth in the Motion; and it appearing that the Court has jurisdiction to consider the Motion and the relief requested therein; and due notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor; it is hereby **ORDERED** that:

1. The Motion is GRANTED.
2. The U.S. Trustee shall promptly appoint an official committee comprised of personal injury, property and environmental victims of the July 6 Accident, such as those represented on the Québec Committee, which shall be permitted to exercise, in its discretion, the powers enumerated under Bankruptcy Code section 1103(c), in accordance with applicable law.

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<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion.

3. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
HONORABLE LOUIS H. KORNREICH  
CHIEF UNITED STATES BANKRUPTCY JUDGE