UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re: MONTREAL, MAINE & ATLANTIC CANADA CO., Foreign Applicant in Foreign Proceeding.	Chapter 15 Case No. 15-20518

ORDER RECOGNIZING AND ENFORCING THE PLAN SANCTION ORDER OF THE QUÉBEC SUPERIOR COURT

This matter was brought before the Court upon the *Motion for Entry of an Order Recognizing and Enforcing the Plan Sanction Order of the Québec Superior Court* (the "Motion")[1] of Richter Advisory Group Inc., the court-appointed monitor (the "Monitor") and authorized foreign representative of Montreal, Maine & Atlantic Canada Co. ("MMA Canada") in a proceeding (the "Canadian Proceeding") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), pending before the Québec Superior Court of Justice (Commercial Division) (the "Québec Court"), seeking the entry of an order pursuant to sections 105(a), 1507, and 1521 of title 11 of the United States Code (the "Bankruptcy Code") giving full force and effect in the United States to the Plan Sanction Order of the Québec Court dated **July 13, 2015**, including any extensions or amendments thereof (the "Plan Sanction Order"), attached hereto as **Exhibit A**, which Plan Sanction Order sanctions MMA Canada's *Amended Plan of Compromise and Arrangement* dated June 8, 2015 (as the same may be amended, revised or supplemented in accordance with its terms, the "CCAA Plan"), attached hereto as **Exhibit B**. It appearing that the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P); and it appearing that venue is proper in this District pursuant to

[1] Capitalized terms not defined herein have the meaning ascribed to them in the Motion.

28 U.S.C. § 1410; and the Court having considered and reviewed the *Memorandum of Law in Support of Motion for Entry of an Order Recognizing and Enforcing the Plan Sanction Order of the Québec Superior Court* (the "Memorandum of Law"); and the Court having held a hearing to consider the relief requested in the Motion on August 20, 2015 (the "Hearing"), at which time all parties-in-interest were given an opportunity to be heard; and it appearing that sufficient notice of the Motion and Hearing has been given to parties-in-interest and no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefor; the Court hereby **FINDS** and **CONCLUDES** as follows:

A. On June 9, 2015, a meeting of creditors was held in Lac-Megantic, Québec, where the CCAA Plan was approved by the requisite number and amount of creditors required for approval under the CCAA.

B. On June 17, 2015, a hearing was held before the Québec Court for the approval of the CCAA Plan.

C. On July 13, 2015, the Québec Court granted the Plan Sanction Order, and approved the CCAA Plan.

D. On July 20, 2015, the Monitor commenced a chapter 15 case in this Court and requested the relief set forth in *Verified Petition for Recognition of Foreign Proceeding and Related Relief*.

E. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and sections 105(a), 1507, and 1521 of the Bankruptcy Code.

F. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(P).

G. Venue is proper in this District pursuant to 28 U.S.C. § 1410.

H. The relief granted herein is necessary and appropriate, in the interest of the public and international comity, consistent with the public policy of the United States, warranted pursuant to section 105(a), 1507, and 1521 of the Bankruptcy Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of granting that relief.

I. The relief granted herein is not manifestly contrary to the public policy of the United States, as prohibited by section 1506 of the Bankruptcy Code.

J. Each of the releases and injunctions contained in this Order (i) is within the Court's jurisdiction, (ii) is essential to the success of the CCAA Plan, (iii) is an integral element of the CCAA Plan and to its effectuation and (iv) confers material benefits on, and is in the best interests of, MMA Canada and its creditors.

NOW, THEREFORE, IT IS HEREBY **ORDERED**, **ADJUDGED**, AND **DECREED**, AS FOLLOWS:

1. The form and manner of notice and service of the Motion and the notice of hearing described in the Motion is adequate and sufficient, and is hereby approved.

2. The CCAA Plan and Plan Sanction Order, in their entirety, are hereby recognized, granted comity and given full force and effect in the United States and are binding on all persons subject to this Court's jurisdiction pursuant to sections 105(a), 1507, and 1521 of the Bankruptcy Code. All rights of creditors and parties-in-interest of MMA Canada with respect to the Canadian Proceeding, including without limitation, the allowance, disallowance, and dischargeability of claims under the CCAA Plan, shall be assessed, entered and/or resolved in accordance with the CCAA Plan, the Plan Sanction Order and/or the relevant provisions of the CCAA, or as otherwise determined in the Canadian Proceeding, and each and every creditor or party-in-interest is permanently restricted, enjoined and barred from asserting such rights, except as may have been or may be asserted in the Canadian Proceeding in accordance with the CCAA Plan and the Plan Sanction Order.

3. Without limitation as to the relief in the preceding paragraph, the following provisions of the CCAA Plan and Plan Sanction Order are hereby recognized, granted comity and given full force and effect in the United States and are binding on all Persons and other

entities (as defined in section 101(15) of the Bankruptcy Code) subject to this Court's jurisdiction pursuant to sections 105(a), 1507, and 1521 of the Bankruptcy Code:[2]

a. Plan Releases. As set forth in Paragraph 98 of the Plan Sanction Order, and consistent with Section 5.1 of the CCAA Plan, it is hereby ordered, adjudged and decreed that any Claim that any Person (regardless of whether or not such Person is a Creditor or Claimant) holds or asserts or may in the future hold or assert against any of the Released Parties or that could give rise to a Claim against the Released Parties whether through a cross-claim, third-party claim, warranty claim, recursory claim, subrogation claim, forced intervention or otherwise, arising out of, in connection with and/or in any way related to the Derailment, the Policies, MMA, and/or MMAC, is hereby permanently and automatically released and the enforcement, prosecution, continuation or commencement thereof is permanently and automatically enjoined and forbidden. Any and all Claims against the Released Parties are permanently and automatically compromised, discharged and extinguished, and all Persons and Claimants, whether or not consensually, shall be deemed to have granted full, final, absolute, unconditional, complete and definitive releases of any and all Claims to the Released Parties.

b. Injunctions. As set forth in Paragraphs 99 and 100 of the Plan Sanction Order, and consistent with Section 5.1 of the CCAA Plan, it is hereby ordered, adjudged and decreed that

(i) all Persons (regardless of whether or not such Persons are Creditors or Claimants) shall be permanently and forever barred, estopped, stayed and enjoined from (i) pursuing any Claim, directly or indirectly, against the Released Parties, (ii) continuing

[2] Capitalized terms in these provisions, unless otherwise defined in this Order, have the meaning ascribed to them in the Plan Sanction Order.

or commencing, directly or indirectly, any action or other proceeding with respect to any Claim against the Released Parties, or with respect to any claim that, with the exception of any claims preserved pursuant to Section 5.3 of the CCAA Plan against any Third Party Defendants that are not also Released Parties, could give rise to a Claim against the Released Parties whether through a cross-claim, third-party claim, warranty claim, recursory claim, subrogation claim, forced intervention or otherwise, (iii) seeking the enforcement, levy, attachment, collection, contribution or recovery of or from any judgment, award, decree, or order against the Released Parties or property of the Released Parties with respect to any Claim, (iv) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or the property of the Released Parties with respect to any Claim, (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Approval Orders to the full extent permitted by applicable law, (vi) asserting any right of setoff, compensation, subrogation, contribution, indemnity, claim or action in warranty or forced intervention, recoupment or avoidance of any kind against any obligations due to the Released Parties with respect to any Claim or asserting any right of assignment of or subrogation against any obligation due by any of the Released Parties with respect to any Claim, and (vii) taking any actions to interfere with the implementation or consummation of the CCAA Plan; provided, however, that the foregoing shall not apply to the enforcement of any obligations under the CCAA Plan; and (ii) notwithstanding the foregoing, the Plan Releases and Injunctions as provided in Section 5.1 of the CCAA Plan and in the Plan Sanction Order (i) shall have no effect on the rights and obligations provided by the "*Entente*

d'assistance financiere decoulant du sinistre survenu dans la Ville de Lac-Mégantic" signed on February 19, 2014 between Canada and the Province, and (ii) shall not extend to and shall not be construed as extending to any Unaffected Claims.

c. Timing of Releases and Injunctions. As set forth in Paragraph 97 of the Plan Sanction Order, and consistent with Section 5.2 of the CCAA Plan, it is hereby ordered, adjudged and decreed that all releases and injunctions set forth in this Order shall become effective on the Plan Implementation Date at the Effective Time.

d. Claims against Third Party Defendants. As set forth in Section 5.3 of the CCAA Plan, notwithstanding anything to the contrary herein or in the CCAA Plan, it is hereby ordered, adjudged and decreed that any Claim of any Person, including MMAC and MMA, against the Third Party Defendants that are not also Released Parties: (a) is unaffected by the CCAA Plan; (b) is not discharged, released, cancelled or barred pursuant to the CCAA Plan; (c) shall be permitted to continue as against said Third Party Defendants; (d) shall not be limited or restricted by the CCAA Plan in any manner as to quantum to the extent that there is no double recovery as a result of the indemnification received by the Creditors or Claimants pursuant to the CCAA Plan; and (e) does not constitute an Affected Claim under the CCAA Plan. For greater certainty, and notwithstanding anything else contained herein (or in the CCAA Plan), in the event that a Claim is asserted by any Person, including MMAC and MMA, against any Third Party Defendants that are not also Released Parties, any and all right(s) of such Third Party Defendants to claim over, claim against or otherwise assert or pursue any rights or any Claim against any of the Released Parties at any time, shall be released and discharged and forever barred pursuant to the terms of the CCAA Plan, the Plan Sanction Order and this Order.

4. Without limiting the foregoing, as of the Plan Implementation Date, all Persons and other entities (as defined in section 101(15) of the Bankruptcy Code) are hereby, and shall be, permanently enjoined from taking any action, within the territorial jurisdiction of the United States, that is inconsistent with the CCAA Plan or the Plan Sanction Order.

5. As for Derailment Claims, if any, held by the United States, nothing in this Order shall release any Person for criminal charges brought by the United States, nor shall anything in this Order enjoin the United States from bringing any claim, suit, action or other proceeding against any such Person for such charges under such criminal laws. Moreover, nothing in this Order shall release any Person from liability to the United States unrelated to the Derailment, nor shall anything in this Order enjoin the United States from bringing any claim, suit, action or other proceeding against any Person for such liability unrelated to the Derailment.

6. Consistent with representations made at the record of the hearing approving this Order, whatever rights Wheeling & Lake Erie Railway Company has in the pending Chapter 11 case of MMA and in any related adversary proceedings are unaffected by this Order.

7. Within seven (7) days of entry of this Order, the Monitor shall cause it to be served on any of the following who have not otherwise constructively received it through participation in the CM/ECF system: (a) the office of the United States Trustee; (b) counsel to MMA Canada; (c) counsel to the Creditors' Committee in the Chapter 11 Case; (d) federal and state taxing authorities in the United States and in Canada having filed a proof of claim; (e) the holders of secured claims against the MMA Canada and MMA having filed a proof of claim, or if applicable, the lawyers representing such holders; (f) counsel to the plaintiffs in the Québec Class Action; (g) counsel to each Released Party; and (h) counsel to the plaintiffs in the PITWD Cases.

8. Such service in accordance with this Order shall constitute adequate and sufficient service and notice of this Order.

9. Copies of the Plan Sanction Order shall be made available upon request at the offices of Verrill Dana LLP, One Portland Square, P.O. Box 586, Portland, ME 04112-0589,

ATTN: Roger A. Clement, Jr., Esq., Telephone: (207) 774-4000, Email: rclement@verrilldana.com.

10. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order.

Dated: August 26, 2015

/s/ Peter G. Cary

The Honorable Peter G. Cary
Chief Judge of the United States Bankruptcy Court
for the District of Maine

EXHIBIT A – Part 1

COUR SUPÉRIEURE
(Chambre commerciale)

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE SAINT-FRANÇOIS

N° : **450-11-000167-134**

DATE : 13 juillet 2015

SOUS LA PRÉSIDENCE DE : L'HONORABLE GAÉTAN DUMAS, J.C.S.

DANS L'AFFAIRE DU PLAN DE TRANSACTION OU D'ARRANGEMENT DE :

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

Débitrice

et

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

Contrôleur

et

COMPAGNIE DE CHEMIN DE FER CANADIEN PACIFIQUE

Opposante

JUGEMENT SUR REQUÊTE
EN APPROBATION DU PLAN D'ARRANGEMENT

JD 2364

[1] Le tribunal est saisi d'une requête en approbation d'un plan d'arrangement accepté à l'unanimité lors d'une assemblée des créanciers de la débitrice tenue à Lac-Mégantic le 9 juin 2015.

[2] Ce plan d'arrangement fait suite à la tragédie ferroviaire qui a coûté la vie à 48 personnes, et a dévasté le centre-ville de la ville de Lac-Mégantic le 6 juillet 2013.

[3] Après une ordonnance initiale prononcée par notre collègue, Martin Castonguay, j.c.s., en août 2013, le soussigné s'est vu assigner le présent dossier.

[4] Plus de 40 jugements et ordonnances ont été rendus par le soussigné dans le cadre du présent dossier.

[5] Comme le rappelait le soussigné dans un jugement rendu le 17 février 2014 :

> [26] Les procédures en vertu de la LACC avaient pour but de poursuivre, dans la mesure du possible, l'exploitation du chemin de fer afin de desservir les nombreuses municipalités et les nombreux clients situés le long de son parcours. Elles avaient également pour but de mettre en place un processus de vente afin de procéder à la vente des actifs de MMA et de MMAR en tant qu'entreprises en exploitation (*as a going concern*). Railroad Acquisition Holdings (RAH) a été la soumissionnaire gagnante pour la quasi-totalité des actifs des sociétés pour lesquelles le tribunal a autorisé la vente le 23 janvier 2014.
>
> [27] Les procédures en vertu de la LACC avaient également pour but de maintenir les emplois du personnel spécialisé qui travaille toujours chez la requérante, et ce, afin de maximiser la valeur des actifs de la requérante et idéalement pour assurer que les emplois soient maintenus après la vente.
>
> [28] Selon l'entente d'achat d'actifs, RAH devrait conserver le poste de la majorité des employés actuels de MMA.
>
> [29] Les procédures en vertu de la LACC avaient également pour but de mettre en place un processus de réclamation pour éviter que plusieurs recours judiciaires soient menés en parallèle et pour traiter efficacement les réclamations de toutes les parties intéressées, y compris les familles des victimes et les détenteurs de réclamations liées au déraillement.

[6] L'importance de conserver un chemin de fer pour les industries desservies n'a pas besoin de plus amples explications.

[7] Ce premier objectif a été atteint dès février 2014, soit moins de sept mois après la tragédie ferroviaire, par la vente des actifs de la débitrice avec les ordonnances

nécessaires pour pouvoir parfaire la vente des actifs. Il reste donc à compléter le deuxième but clairement exprimé dès le départ par la débitrice, à savoir d'indemniser les victimes de cette tragédie ferroviaire pour laquelle la débitrice a presque immédiatement reconnu sa responsabilité.

[8] Le tribunal ne reprendra pas ici l'historique complet du dossier, puisque tous les jugements rendus précédemment en font amplement état. Qu'il suffise de rappeler que le soussigné a rendu un jugement le 27 mai 2015 résumant les faits depuis le début du dossier ainsi que le jugement rendu par le soussigné par le 17 février 2014 qui faisait état de la situation à l'époque.

[9] Par contre, il est important de rappeler que dès février 2014, le soussigné s'est questionné sur l'obligation de déposer un plan d'arrangement viable pour la continuation du sursis d'exécution et sur la question de savoir si un plan d'arrangement pouvait prévoir la liquidation d'une compagnie, ou si le plan devait obligatoirement prévoir une restructuration complète de l'entreprise.

[10] Puisque le déroulement du dossier semble être la suite logique de ce qu'affirme le soussigné aux pages 8 à 30 du jugement du 17 février 2014, et puisque plus de 4 000 créanciers se fient à l'orientation donnée au dossier, il nous semble important de rappeler ce que mentionne le soussigné dans ce jugement, à savoir :

> **<u>Obligation de déposer un plan d'arrangement viable pour la continuation du sursis des procédures</u>**
>
> [57] Il existe depuis fort longtemps un débat sur l'obligation de déposer un plan d'arrangement si l'on désire bénéficier de la *LACC*.
>
> [58] Avant les amendements de 2009, il existait même un débat sur l'autorité des tribunaux d'autoriser la liquidation d'une compagnie sans l'acceptation d'un plan d'arrangement. L'article 36 *LACC* (L.C. 2007, c.36) adopté en 2007 prévoit :
>
> > « 36. (1) Il est interdit à la compagnie débitrice à l'égard de laquelle une ordonnance a été rendue sous le régime de la présente loi de disposer, notamment par vente, d'actifs hors du cours ordinaire de ses affaires sans l'autorisation du tribunal. Le tribunal peut accorder l'autorisation sans qu'il soit nécessaire d'obtenir l'acquiescement des actionnaires, et ce, malgré toute exigence à cet effet, notamment en vertu d'une règle de droit fédérale ou provinciale.
> >
> > Avis aux créanciers
> >
> > *(2)* La compagnie qui demande l'autorisation au tribunal en avise les créanciers garantis qui peuvent vraisemblablement être touchés par le projet de disposition.

Facteurs à prendre en considération

(3) Pour décider s'il accorde l'autorisation, le tribunal prend en considération, entre autres, les facteurs suivants :

a) la justification des circonstances ayant mené au projet de disposition;

b) l'acquiescement du contrôleur au processus ayant mené au projet de disposition, le cas échéant;

c) le dépôt par celui-ci d'un rapport précisant que, à son avis, la disposition sera plus avantageuse pour les créanciers que si elle était faite dans le cadre de la faillite;

d) la suffisance des consultations menées auprès des créanciers;

e) les effets du projet de disposition sur les droits de tout intéressé, notamment les créanciers;

f) le caractère juste et raisonnable de la contrepartie reçue pour les actifs compte tenu de leur valeur marchande. »

[59] Avant cet amendement, aucune disposition de la loi ne permettait expressément la liquidation partielle ou totale des actifs d'une compagnie.

[60] Les tribunaux utilisaient leurs pouvoirs inhérents pour autoriser la vente des actifs hors du cours ordinaire des affaires.

[61] L'auteure Shelley C. Fitzpatrick[1] mentionnait que la flexibilité de la *LACC* permettait la liquidation d'actifs excédentaires. Le débat découlait plutôt du fait que plusieurs tribunaux ont autorisé la liquidation d'actifs qui n'entraient pas dans cette catégorie :

> « *As is evident from the comments of Blair J.A. in Metcalfe, one of the major strengths of the CCAA is its flexibility in meeting any particular fact situation. Clearly, Parliament intended to allow a downsizing of redundant assets as part of the restructuring process. Such downsizing would assist in returning the debtor company to profitability and thereby enable it to remain in business. (page 41)*
>
> *The courts, however, have permitted asset sales that extend well beyond a sale of redundant assets as part of a downsizing of operations. There are a variety of liquidation scenarios. On one end of the spectrum is a sale of assets to various purchasers who do not intend to continue the operations of any part of the debtor's business. On the other end of the spectrum is a sale to a single purchaser who does intend to continue operating the debtor's business.*

> *Somewhere in the middle is a sale to one or more purchasers who do intend to continue certain parts of the debtor's business on a going concern basis.»*

[1] Shelley C. Fitzpatrick, *Liquidating CCAAs – Are We Praying to False Gods?*, dans *AnnualReview of Insolvency Law 2008*, Janis P. Sarra, Toronto, Thomson/Carswell, 2008, p.41.

[62] L'auteur Bill Kaplan[2] abonde dans le même sens en précisant que les tribunaux provinciaux à travers le Canada s'accordent sur la possibilité d'autoriser la liquidation d'actifs sous la *LACC*, mais que la jurisprudence n'est pas constante en ce qui a trait à la façon dont on permet cette liquidation :

> *« We will see later that there is no consensus among the Alberta Court of Appeal, the Ontario Courts and the British Columbia Court of Appeal considering the proper exercise of that jurisdiction, but there is no disagreement that there is jurisdiction under the CCAA to approve a liquidation of assets.* » (page 94)

[2] Bill Kaplan, *Liquidating CCAAs: Discretion gone Awry?*, dans *Annual Review of Insolvency Law 2008*, Janis P. Sarra, Toronto, Thomson/Carswell, 2008, p.79

[63] Il y avait donc un débat sur les circonstances dans lesquelles une liquidation d'actifs sous la *LACC* pouvait être autorisée tant en ce qui a trait aux actifs visés qu'à l'obligation ou non de soumettre la liquidation au vote des créanciers.

Arguments favorables à la liquidation

[64] Dans certains cas, la liquidation d'actifs par le biais de la *LACC* est préférable à la liquidation sous un autre régime d'insolvabilité et c'est pourquoi certains tribunaux l'ont permise. Le fait de poursuivre les activités de la compagnie peut avoir pour effet d'augmenter sa valeur lors d'une liquidation et ainsi améliorer le sort des créanciers et des diverses parties prenantes[3].

[3] *Ibid*, p.89.

[65] Selon l'auteure Fitzpatrick[4], ce courant jurisprudentiel a été enclenché par les affaires suivantes :

> *« The line of cases that, in obiter, "endorse" liquidating CCAAs can be traced to two early authorities: Re Amirault Fish Co. and Re Associated Investors of Canada Ltd.* »
> **[Citations omises]**

[4] *Supra*, note 1, p. 47.

[66] Elle réfère également à d'autres décisions[5] qui ont justifié la liquidation d'actifs dans l'intérêt des créanciers. Il est à noter que ces décisions sont issues de tribunaux ontariens qui au fil du temps ont été autrement plus proactifs qu'ailleurs au Canada pour autoriser la liquidation d'actifs sous la *LACC*, nous y reviendrons :

> *« In Re Anvil Range Mining Corp., [...] Farley J. referred to Olympia & York and Lehndorff as support for the principle that "the CCAA may be used to effect a sale, winding up or liquidation of a company and its assets in appropriate circumstances".*
>
> *It is important to note that in Anvil Range, Farley J. also mentioned "maximizing the value of the stakeholders pie". In Lehndorff, Farley J. stated that it appeared to him that "the purpose of the CCAA is also to protect the interests of creditors" which may involve a liquidation or downsizing of the business, "provided the same is proposed in the best interests of the creditors generally". »*
>
> [5] *Re Lehndorff General Partner Ltd.* (1993), 17 C.B.R. (3d) 24; *Re Olympia & York Developments Ltd*, (1995), 34 C.B.R. (3d) 93; *Re Anvil Range Mining Corp.* (2001), 25 C.B.R. (4th) 1.

[67] Dans un deuxième temps, et c'est ici l'argument qui suscite le plus de controverse, les professionnels qui interviennent dans le cadre d'une liquidation encourent des risques moindres si la liquidation est faite sous la *LACC* que si elle procédait sous la *Loi sur la faillite et l'insolvabilité* (*LFI*). En effet, lorsqu'un administrateur est nommé sous la *LFI* et qu'il prend possession et administre les actifs de la compagnie, celui-ci engage sa responsabilité[6]. Sous la LACC, la compagnie demeure propriétaire de ses actifs et continue d'assurer ses opérations, ce qui n'engage pas la responsabilité d'un tiers, ce qui peut contribuer à rassurer les créanciers sur la gestion de l'entreprise.

[6] *Supra*, note 2, p.90.

<u>Arguments défavorables à la liquidation</u>

Utilisation contraire à l'objectif de la loi

[68] Le premier argument à l'encontre de la liquidation d'actifs autres qu'excédentaires est que l'objectif de la *LACC* n'est pas de permettre la liquidation d'une entreprise et qu'il existe d'autres régimes, comme la *LFI*, sous lesquels la liquidation devrait se dérouler. Dans l'affaire *Hongkong Bank of Canada* c. *Chef Ready Foods Ltd*[7] la Cour d'appel de la Colombie-Britannique définit l'objectif de la LACC et le rôle du tribunal comme suit :

> *« The purpose of the C.C.A.A. is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors to the end that the company is able to continue business. [...] When a company has recourse to the C.C.A.A., the Court is called upon to play a kind of supervisory role to preserve the status quo and to move the process along to the point where a compromise or arrangement is approved or it is evident that the attempt is doomed to failure.»*
>
> [7] (1990), 4 C.B.R. (3d) 311 (CB C.A.).

[69] Cette interprétation est supportée par la décision de la Cour d'appel de la Colombie-Britannique dans *Cliffs Over Maple Bay Investments Ltd.* c. *Fisgard Capital Corp.*[8] dont nous discuterons plus loin.

[8] 2008 BCCA 327.

[70] Au Québec, la Cour d'appel sous la plume du juge Louis Lebel, abondait dans le même sens et établissait une distinction entre la *LACC* et la *LFI*. Elle mentionnait dans *Banque Laurentienne du Canada* c. *Groupe Bovac Ltée*[9] :

> *« 26 Plus que vers la liquidation de la compagnie, cette Loi est orientée vers la réorganisation de l'entreprise et sa protection pendant la période intermédiaire, au cours de laquelle l'on procédera à l'approbation et à la réalisation du plan de réorganisation. A l'inverse, la Loi sur la faillite (L.R.C. 1985, c. B-3) recherche la liquidation ordonée* **(sic)** *des biens du failli et la répartition du produit de cette liquidation entre les créanciers, suivant l'ordre de priorité définie par la Loi. La Loi sur les arrangements répond à un besoin et à un objectif distinct, du moins selon l'interprétation qui lui a été généralement donnée depuis son adoption. On veut soit prévenir la faillite, soit faire émerger l'entreprise de cette situation. »*

[9] EYB 1991-63766 (QC C.A.), par. 26.

[71] Toutefois, comme le soulève Shelley C. Fitzpatrick[10], la situation demeure non résolue, car aucune cour d'appel au Canada ne s'est récemment penchée sur la question à savoir si la liquidation d'actifs sous la *LACC* est conforme à son objectif.

[10] *Supra*, note 1.

Les créanciers garantis accomplissent indirectement ce qu'ils ne peuvent faire directement

[72] Comme mentionné un peu plus tôt, la liquidation d'actifs sous la *LACC* a l'avantage de réduire les risques qu'engagent les professionnels qui y sont impliqués. Dans le cas d'une liquidation sous la *LFI*, les créanciers garantis doivent verser une indemnité à ces professionnels pour pallier à ces risques. Bien qu'ils doivent faire de même lors d'une liquidation sous la *LACC*, l'indemnité est inévitablement moindre, car le risque encouru est diminué. Ainsi, avec l'accord de la compagnie débitrice, les créanciers garantis procèdent à une liquidation des actifs de la compagnie sous la *LACC* sans n'avoir jamais eu l'objectif de s'entendre sur un plan d'arrangement ou de voir la compagnie survivre, ce qui est contraire à l'objectif de la loi[11].

[11] *Supra*, note 2, p.54, 55.

Iniquités envers les diverses parties prenantes

[73] Comme le rappelle la Cour d'appel de l'Ontario dans l'affaire *Metcalfe*[12], la *LACC* a été adoptée lors de la grande dépression des années 1930 et avait pour objectif de réduire le nombre de faillites d'entreprises et par le fait même le taux de chômage anormalement élevé. Au fil du temps, les tribunaux ont accordé une visée sociale à cette loi qui doit maintenant servir l'intérêt des investisseurs, créanciers, employés et autres parties prenantes impliquées dans une entreprise.

[12] *ATB Financial* v. *Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587 (Ont. C.A.), par.51, 52.

[74] Cette évolution a eu pour effet de pousser les tribunaux à prendre des positions plus politiques que judiciaires dans certains cas, et ce, dans l'intérêt plus large de la collectivité.

[75] Le fait d'inclure ces critères sociaux dans le processus décisionnel des tribunaux a parfois pour effet de créer certains traitements inégaux entre les diverses parties prenantes impliquées. En effet, il est rare que les intérêts des investisseurs, des créanciers, des employés et des autres parties prenantes se rejoignent dans une même solution. Cette situation s'est produite dans l'affaire *Re Pope &Talbot Ltd*[13] dans laquelle la Cour suprême de la Colombie-Britannique a autorisé la vente d'actifs de la compagnie non pas à celui qui présentait l'offre la plus lucrative, mais bien à une compagnie qui proposait de continuer les activités de l'entreprise, et ce, malgré l'existence d'une offre plus élevée. Essentiellement, le tribunal a déterminé que l'intérêt de la collectivité et du maintien des emplois dans cette entreprise devait primer sur l'obtention du meilleur prix et de la satisfaction des créanciers, ce que décrie l'auteure Fitzpatrick[14] :

> *« The court is essentially making a legislative statement grounded in public policy as to whether the community of Nanaimo is better off with pulp mill jobs as opposed to construction/golf course jobs (or whatever alternative use the site would have been put to). It is difficult to see the evidentiary basis upon which the court could come to the conclusion that the interests of the employees, suppliers and the community of Nanaimo outweighed obtaining the best price for the assets. »*

[13] 2009 BCCS 17 (CanLII).
[14] *Supra*, note 1, p.60.

[76] L'auteure soulève également un point intéressant dans ce passage en mentionnant que le tribunal prend une position législative. En effet, comme elle le soulève plus loin, ce type de position à caractère social devrait être laissé au pouvoir législatif et non aux tribunaux[15].

[15] *Supra*, note 1, p.61.

Impacts sur les droits des tiers

[77] Lorsqu'une compagnie est placée sous la protection de la *LACC*, ses fournisseurs n'ont pas à remplir leurs obligations contractuelles si la compagnie ne le souhaite pas ou si elle n'entend pas exécuter ses obligations corrélatives[16].

[16] *Supra*, note 1, p.71.

[78] Dans l'affaire *Pope & Talbot*, Canfor, un fournisseur de Pope & Talbot, s'est vu imposer de continuer à remplir ses obligations contractuelles envers Pope & Talbot par ordonnance du tribunal à l'occasion de la demande initiale. De plus, le tribunal a ordonné de surseoir au droit de Canfor de mettre fin au contrat la liant à Pope & Talbot, et ce, malgré les inexécutions contractuelles de cette dernière[17].

[17] *Supra*, note 1, p.72, 73.

[79] Ainsi, Pope & Talbot, et par le fait même ses créanciers, pouvaient maintenir le contrat en vie sans remplir leurs obligations et éventuellement le transférer à un acheteur de l'entreprise. Cette situation a pour effet d'accorder plus de droits aux créanciers de la compagnie qui bénéficie de la protection de la *LACC* que la compagnie elle-même si elle ne bénéficiait pas de cette protection, et ce, aux dépens de fournisseurs tels Canfor[18]. Pour reprendre une métaphore employée dans le texte de Shelley C. Fitzpatrick, les créanciers utilisent la loi comme une épée leur permettant d'obtenir une meilleure position stratégique et donc un prix supérieur pour les actifs de la compagnie et non comme un bouclier permettant de maintenir le statu quo comme il se doit[19].

[18] *Supra*, note 1, p.73.
[19] *Supra*, note 2, p.67.

Circonstances et paramètres de la liquidation

[80] Le nouvel article 36 de la loi règle la question du pouvoir des tribunaux de permettre la liquidation. Par contre, il donne très peu d'indications quant à la façon dont le tribunal devra exercer ce pouvoir. Le nouvel article 36 prévoit tout de même que le tribunal pourra autoriser la liquidation sans l'accord des créanciers.

Diverses applications de la discrétion exercée par les tribunaux

Ontario

[81] Comme nous l'avons mentionné précédemment, les tribunaux ontariens sont significativement plus actifs qu'ailleurs au Canada dans l'exercice de leur discrétion d'autoriser la liquidation d'actifs sous la *LACC*. Ainsi, des liquidations ont été autorisées sans qu'un plan d'arrangement ait été préalablement approuvé.

[82] C'est le cas dans *Re Canadian Red Cross Society / Société Canadienne de la Croix-Rouge*[20]. Alors que l'organisme faisait face à des poursuites de près de 8

milliards de dollars de victimes ayant contracté diverses maladies par des transfusions de sang contaminé, le tribunal a autorisé le transfert de ses actifs à d'autres organismes avant qu'un plan d'arrangement ait été proposé aux créanciers. Le juge Blair justifie sa décision par la flexibilité de la *LACC* qui lui permet d'agir de la sorte et par les circonstances en l'espèce qui en font la meilleure solution[21] :

> « *[45] It is very common in CCAA restructurings for the Court to approve the sale and distribution of assets during the process and before the Plan is formally tendered and voted upon. There are many examples where this has occurred, the recent Eaton's restructuring being only one of them. The CCAA is designed to be a flexible instrument and it is that very flexibility which gives it its efficacy.*
>
> [...]
>
> *[46]* [...] *There is no realistic alternative to the sale and transfer that is proposed and the alternative is a liquidation/bankruptcy scenario, which, on the evidence would yield an average of about 44% of the purchase price which the two agencies will pay. To forego that purchase price supported as it is by reliable expert evidence would in the circumstances be folly, not only for the ordinary creditors but also for the Transfusion Claimants, in my view.* »

[20] 1998 CanLII 14907 (ON S.C.).
[21] *Ibid*, par.45, 47.

[83] L'auteur Bill Kaplan donne également l'exemple de l'affaire *Re Anvil Range Mining Corp.*[22] dans laquelle le tribunal a autorisé la liquidation des actifs de la compagnie suite à un plan d'arrangement qui n'avait été voté que par les créanciers garantis. Le plan prévoyait que seuls les créanciers garantis étaient autorisés à voter et que les créanciers non garantis ne recevraient aucun montant des suites de la liquidation. Le tribunal s'appuya sur le fait que ces derniers créanciers n'en souffriraient aucun préjudice, car, peu importe la solution retenue, la liquidation ne permettrait en aucun cas de leur verser une quelconque indemnité[23].

[22] 2001 CanLII 28449 (ON S.C.).
[23] *Ibid*, par.12.

[84] Bill Kaplan résume la position des tribunaux ontariens quant à la liquidation d'actifs sous la *LACC* comme suit, tout en précisant qu'elle s'éloigne de celle des autres provinces[24] :

> « *The Ontario authority demonstrates not only that the courts in Ontario have embraced liquidating CCAAs, but will approve asset sales under the CCAA without requiring that a plan of arrangement be filed. That is not an approach sanctioned by the Alberta Court of Appeal, or apparently by the British Columbia Court of Appeal, nor as we shall see, is it an approach that as met favour with Courts in the province of Quebec.* »

[24] *Supra*, note 2, p.103.

Colombie-Britannique

[85] La situation en Colombie-Britannique est intéressante, car jusqu'à récemment les tribunaux de cette province emboîtaient le pas aux tribunaux ontariens lorsqu'il s'agissait d'autoriser la liquidation d'actifs sous la *LACC*. Toutefois, la situation a été diamétralement modifiée depuis la décision *Cliffs Over Maple Bay Investments Ltd. c. Fisgard Capital Corp.*[25]

[25] *Supra*, note 8.

[86] Dans cette décision, la Cour d'appel de la Colombie-Britannique conclut que, conformément à l'objectif de la *LACC*, elle ne peut octroyer la protection de la *LACC* lorsque la compagnie débitrice n'a pas l'intention de proposer un plan d'arrangement à ses créanciers. Comme l'explique Bill Kaplan[26] :

> « *The Court of Appeal observed that the fundamental purposes of the CCAA was to facilitate, comprises and arrangements between companies and their creditors. Section 11, the stay provision, was merely ancillary to that fundamental purpose, and should only be granted in furtherance of that fundamental purpose. While the filing of a draft plan of arrangement or compromise is not a prerequisite to the granting of a stay under s. 11, the Court concluded that a stay should not be granted if the debtor company does not intend to propose a compromise or arrangement to its creditors.* »

[26] *Supra*, note 2, p.85.

Alberta

[87] La jurisprudence en Alberta est plus exigeante qu'ailleurs qu'au Canada lorsque vient le temps d'autoriser une liquidation d'actifs sous la *LACC*. L'affaire *Royal Bank c. Fracmaster Ltd.*[27] en est un bon exemple. En effet, la Cour d'appel de l'Alberta a profité de cette décision pour prendre position sur les conditions qui devraient guider le tribunal lors de l'autorisation d'une liquidation sous la *LACC*[28] :

> « *Although there are infrequent situations in which a liquidation of a company's assets has been concluded under the CCAA, the proposed transaction must be in the interests of the creditors generally [...] There must be an ongoing business entity that will survive the asset sale [...] A sale of all or substantially all of the assets of the company to an entirely different entity with no continued involvement by former creditors and shareholders does not meet this requirement.* »
>
> **[citation provenant du texte *Liquidating CCAAs: Discretion Gone Awry?*]**

[27] (1999), 11 C.B.R. (4th) 204 (Alta. Q.A.).
[28] *Ibid*, par.16.

[88] En imposant la condition de la survie de l'entreprise pour qu'une liquidation des actifs sous la *LACC* soit autorisée, l'affaire *Fracmaster* a eu pour effet de rendre

cette procédure significativement plus difficile à obtenir en Alberta qu'ailleurs au Canada[29].

[29] *Supra*, note 2, p.112.

Québec

[89] Selon l'auteur Bill Kaplan, les tribunaux québécois exigent qu'il existe une preuve matérielle de la structure générale et du contenu d'un éventuel plan d'arrangement à être présenté aux créanciers avant d'octroyer la protection de la *LACC* à une compagnie[30].

[30] *Supra*, note 2, p.113.

[90] Au soutien de ses dires, il invoque la décision *Re Boutiques San Francisco Incorporées*[31]. Dans cette affaire, le tribunal refuse d'octroyer la protection de la loi sous l'article 11 *LACC* au motif que le plan présenté par la compagnie débitrice était incomplet[32] :

> « 20 As a result, while it is receptive to issue some Initial Order to allow the BSF Group the possibility to avail itself of some of the protections of the CCAA under the circumstances, the Court will not grant all the conclusions sought at this stage because of this situation and the lack of information on the proposed plan. »

[31] EYB 2003-51913 (QCCS).
[32] *Ibid*, par.20.

[91] Au soutien de cette décision, le tribunal réfère au jugement du juge LeBel de la Cour d'appel dans *Banque Laurentienne du Canada c. Groupe Bovac Ltée*[33] :

> *« 56 [...] Si les art.4 et 5 indiquent que l'ordre de convoquer les créanciers ou, le cas échéant, les actionnaires de la compagnie dépend de la discrétion du juge, l'exercice de celui-ci suppose l'existence d'un élément de base. Cet événement survient lorsqu'une transaction ou un arrangement "est proposé". Il faut que, matériellement, existe un projet d'arrangement. L'on ne peut se satisfaire d'une simple déclaration d'intention. Autrement, l'on transforme radicalement les mécanismes de la Loi. On fait de celle-ci une méthode pour obtenir un simple sursis, sans que l'on ait à établir qu'il existe un projet d'arrangement et sans que l'on puisse faire évaluer sa plausibilité. La Loi n'est pas formaliste. Elle n'exige pas que le projet d'arrangement soit incorporé dans le texte de la requête. Il peut se retrouver dans des documents annexes, dans des projets de lettres aux créanciers, pourvu que l'on puisse indiquer au juge, auquel on demande la convocation de l'assemblée, qu'il existe et que l'on puisse en décrire les éléments principaux.* [...]
>
> *57 Non seulement cette nécessité se dégage-t-elle du texte de Loi mais correspond-elle aussi aux exigences d'un exercice suffisamment éclairé de la discrétion du tribunal de convoquer les créanciers et actionnaires et, dans certains cas, d'émettre des ordres de sursis en vertu de l'art. 11.*

> *58 En l'absence d'une description du projet d'arrangement des éléments principaux, certaines des informations nécessaires pour permettre au tribunal d'exercer sa discrétion en connaissance de cause font défaut. Elles sont requises pour assurer la prise en compte des intérêts de tous les groupes concernés. En effet, les conséquences de la mise en oeuvre des mécanismes de la Loi sur les arrangements avec les créanciers des compagnies sont plus draconiennes, particulièrement pour les créanciers garantis et comportent, à l'inverse, moins de risques d'abord pour la débitrice, puisque le recours infructueux à la Loi ou le rejet de ces propositions n'entraîne pas la faillite. Par surcroît, l'on peut arrêter toutes les procédures de réalisation des créanciers, de quelque nature que ce soit, pour des périodes indéterminées.*
>
> *59 Le recours à la Loi suppose un contrôle judiciaire. Il appartient au juge de peser, au départ, l'intérêt pour l'entreprise de présenter une proposition, la plausibilité de sa réussite, les conséquences de cette proposition et des ordres de sursis qui sont demandés pour les créanciers, les risques qu'elle ferait courir pour ses créanciers garantis, le juge doit examiner ces intérêts divers avant d'autoriser la convocation des créanciers et de déclencher la mise en œuvre de la Loi. La Loi n'est pas une législation conçue pour accorder, sans conditions ni réserves, des termes de grâce à des débiteurs en difficulté. Elle se veut une loi de réorganisation d'entreprises en difficulté. À ce titre, saisi de la demande de convocation d'une assemblée et de sursis, le juge doit être en mesure d'apprécier, d'abord si l'entreprise est susceptible de survivre pendant la période intermédiaire jusqu'à l'approbation du compromis puis s'il est raisonnable d'estimer que l'accord projeté est réalisable. Pour savoir s'il est réalisable, l'une des conditions de base est d'en connaître les termes essentiels, quitte à ce que ceux-ci soient précisés ou modifiés par la suite.* [...] »
>
> [33] *Supra*, note 9, par.56-59 (EYB 1991-63766).

[92] Malgré les dires de l'auteur Kaplan, il ne semble pas que cette exigence de présenter des preuves matérielles suffisantes d'un éventuel plan d'arrangement ait été suivie uniformément par les tribunaux québécois. L'affaire *Re Papier Gaspésia Inc.*[34] en est un exemple alors que la protection de la loi a été accordée sans que des éléments d'un plan d'arrangement aient été présentés.

> [34] 2004 CanLII 41522 (QC C.S.).

[93] Comme le mentionne la Cour d'appel dans cette même cause[35], le processus de vente d'actif en l'espèce devra être soumis à l'accord des créanciers :

> *« [14] Par ailleurs, l'appel d'offres permis à certaines conditions par le jugement de première instance n'équivaut pas à liquidation pure et simple, malgré qu'on puisse le considérer comme l'amorce d'un éventuel processus de liquidation, qui pourrait cependant ne pas avoir lieu si un acheteur se manifestait et se montrait intéressé à la relance de l'entreprise (quoique cela paraisse peu probable). En outre, afin d'assurer la protection de l'intérêt des créanciers (dont les requérantes), le premier juge ordonne que leur soient soumis les termes et conditions de cet appel d'offres, les recommandations*

> *d'acceptation ou de refus des soumissions reçues et le mode de distribution du prix de vente, le tout par le biais d'un amendement au plan d'arrangement déjà proposé (voir par. 101 du jugement de première instance). Non seulement ce plan d'arrangement doit-il être présenté aux créanciers, mais il doit en outre être homologué par la Cour supérieure. S'il y a lieu, les requérantes pourront s'assurer alors que leurs droits soient convenablement protégés (notamment en réclamant la constitution d'une classe particulière de créanciers) et elles pourront s'adresser au tribunal dans ce but. Les requérantes pourront aussi, ce qu'elles n'ont d'ailleurs pas manqué de faire valoir à plusieurs reprises lors de l'audition, voter contre le plan d'arrangement, s'il ne leur convient pas, ou en déférer au tribunal si elles estiment que leurs droits ne sont pas pris en considération ou sont bafoués. »*
> **[Citation omise]**
>
> [35] *Papier Gaspésia inc., Re*, 2004 CanLII 46685 (QC C.A.), par.14.

[94] Ainsi, bien que l'exigence d'un plan d'arrangement pour octroyer la protection de la loi ne soit pas automatique au Québec, on exige tout de même qu'un tel plan soit soumis au vote des créanciers.

La voie à suivre

[95] On se retrouve donc dans une situation où l'application et l'interprétation d'une loi de juridiction fédérale diffèrent de façon importante d'une province à l'autre. Malgré certaines décisions plus drastiques, telles *Fracmaster* ou *Cliffs Over Maple*, il semble faire l'unanimité que la liquidation d'actifs sous la *LACC* est possible, surtout depuis l'adoption de l'article 36 *LACC*. On peut être en désaccord avec cette situation, mais l'état du droit à ce jour est à cet effet.

[96] Il existe toutefois des divergences fondamentales dans l'application de cette discrétion à travers le Canada, et ce, tant en ce qui a trait aux actifs qui peuvent faire l'objet d'une telle liquidation qu'aux critères qui doivent guider le tribunal dans l'application de son pouvoir.

[97] Dans la recherche d'une solution, il faut garder à l'esprit les objectifs de la *LACC* qui doivent guider l'interprétation qu'on en fait et que Kaplan résume comme suit[36] :

> « *The judicial and academic pronouncements all identify the following general policy objectives: maximization of creditor recovery, minimization of the detrimental impact upon employment and supplier, customer and other economic relationships, preservation of the tax base and other contributions the enterprise makes to its local community, and the rehabilitation of the debtor company.* »
>
> [36] *Supra*, note 2, p.117.

Solutions proposées par Bill Kaplan

[98] L'auteur Bill Kaplan débute son appréciation de l'état de la jurisprudence en affirmant que les affaires *Fracmaster* et *Cliffs Over Maple* ne viennent pas condamner les liquidations sous la *LACC*. Selon lui, ces deux décisions d'importances viennent surtout prévenir contre un usage abusif de la *LACC* pour effectuer la liquidation des actifs d'une compagnie et mettre l'emphase sur les droits des créanciers qui sont brimés lorsque la liquidation est permise.

[99] Kaplan précise toutefois qu'il est d'avis que l'affaire *Fracmaster* est trop drastique lorsqu'on l'interprète comme posant l'exigence de la survie de l'affaire pour octroyer la protection de la loi. Kaplan voit toutefois une utilité dans la décision quand elle suggère qu'une partie qui requiert la protection de la *LACC*, alors que les objectifs commerciaux en jeu seraient remplis par une d'autres procédures d'insolvabilité, telles la *LFI* ou l'exécution de droits hypothécaires, doit démontrer pourquoi l'application de la *LACC* est nécessaire.

[100] Pour ce qui est du vote des créanciers avant de procéder à une liquidation d'actifs, Kaplan est d'avis que le vote n'est pas nécessaire en tout temps et qu'il revient au tribunal de déterminer lorsqu'il est nécessaire. Il souligne que l'accord du tribunal est nécessaire pour procéder à une telle liquidation, ce qui assure un certain contrôle, et qu'il serait néfaste de rendre le vote obligatoire peu importe la situation, car il s'agit d'un processus long et coûteux. Afin de déterminer s'il doit y avoir un vote, le tribunal devrait évaluer le degré d'opposition des créanciers à une telle liquidation et soupeser la valeur des alternatives à une liquidation sous la *LACC*. Il précise que le tribunal doit accorder une plus grande importance aux droits des créanciers qu'à ceux des autres parties prenantes lorsque vient le temps d'évaluer les bénéfices et les inconvénients d'une liquidation sous la *LACC* par rapport aux autres solutions proposées.

[101] Enfin, l'auteur propose de rendre obligatoire la présentation d'un plan d'arrangement aux créanciers dans tous les cas. Il ajoute que ledit plan devrait être présenté à tous les créanciers, incluant les créanciers ordinaires même dans les cas où ces derniers ne recevraient rien de la liquidation des actifs. Cette mesure irait davantage dans l'objectif de la loi qui demeure d'obtenir un arrangement avec les créanciers.

[102] Il est important de préciser que la position proposée dans l'affaire Fracmaster ne ferme pas complètement la porte à la liquidation d'actifs sous la *LACC*. En effet, et je suis également de cet avis, la liquidation d'actifs excédentaires peut et doit être possible sous la *LACC* afin d'assainir les finances de la compagnie. Le critère devrait donc revenir à déterminer si l'affaire, et pas nécessairement la compagnie elle-même, survivra suite au plan d'arrangement.

[103] La solution de Bill Kaplan est intéressante, mais elle a pour effet d'accorder une très grande latitude aux tribunaux, ce qui est à la base même du courant jurisprudentiel qui est aujourd'hui critiqué. L'approche de *Fracmaster* est plus draconienne et a pour effet de restreindre le large pouvoir d'interprétation des tribunaux, mais elle est nécessaire dans les circonstances.

[104] Bien que le soussigné aurait été porté à privilégier la thèse que la *LACC* et la *LFI* sont deux régimes distincts qui s'appliquent à deux types de situations distinctes et qui servent des objectifs distincts, les amendements apportés à la *LACC* et le cas particulier du présent dossier militent pour la possibilité de permettre la liquidation des actifs sous la *LACC*.

[105] Tous les facteurs à prendre en considération mentionnés à l'article 36(3) *LACC* militaient en faveur de l'autorisation d'une vente des actifs. Non seulement cela a permis une réalisation supérieure à ce qui aurait pu être obtenu de n'importe quelle autre façon, elle a aussi permis le maintien d'un chemin de fer indispensable à l'économie régionale.

[106] Le jugement rendu par le soussigné autorisant la vente des actifs a été rendu du consentement de toutes les parties impliquées. Il n'y a pas eu appel de ce jugement. Le jugement a donc l'autorité de la chose jugée sur l'opportunité de vendre les actifs de la compagnie.

[107] C'est également en tenant compte de l'intérêt de la collectivité et du maintien des emplois que le tribunal avait permis que la vente puisse se faire même si ce n'était pas au meilleur prix. Finalement, nous avons obtenu le meilleur prix mais il y avait possibilité que ce ne soit pas le cas.

[108] Cela étant dit, que faisons-nous pour la suite du dossier?

[109] Dans l'état actuel du dossier, il semble peu probable qu'un plan d'arrangement puisse être déposé. Il est donc inutile pour le moment de prévoir un processus coûteux de dépôt de preuves de réclamation puisqu'aucun vote ne sera nécessaire si aucun plan d'arrangement n'est proposé.

La seule possibilité de continuation du processus en vertu de la *LACC*

[110] Plusieurs pourraient être portés à penser qu'il n'y a plus de raison de continuer le présent dossier.

[111] Par contre, la seule lecture du *service list* et la présence des personnes représentées à chaque étape des procédures peuvent laisser penser qu'un arrangement est possible.

[112] Nous avons déjà mentionné qu'exceptionnellement, notre collègue Martin Castonguay avait ordonné le sursis des procédures contre *XL Insurance Company Limited*. Cela a été fait de façon exceptionnelle et pour éviter le chaos et la course aux jugements contre la compagnie d'assurance.

[113] Nous l'avons déjà dit, en principe, la *Loi sur les arrangements des créanciers et des compagnies* ne s'applique qu'aux compagnies débitrices. Par contre, exceptionnellement, des ordonnances peuvent être rendues pour libérer certains tiers qui participent au plan d'arrangement par une contribution monétaire, mais en échange d'une quittance.

[114] Le soussigné dans l'affaire du plan d'arrangement de la *Société industrielle de décolletage et d'outillage (SIDO)*[37] avait homologué un plan d'arrangement qui prévoyait la quittance à certains tiers en plus des administrateurs.

[37] 460-11-001833-097, 2009 QCCS 6121.

[115] La juge Marie-France Bich dans un jugement rejetant une requête pour permission d'appeler de ce jugement mentionnait[38] :

[38] 2010 QCCA 403.

> [32] **Les quittances.** L'article 7.2 du plan d'arrangement approuvé par le juge de première instance comporte les dispositions suivantes :
>
> **Article 7.2 Quittances**
>
> À la date de prise d'effet, la Débitrice et/ou les autres Personnes nommées ci-dessous bénéficieront des quittances et des renonciations suivantes, lesquelles prendront effet à l'Heure de prise d'effet :
>
> 7.2.1 Une quittance complète, finale et définitive des Créanciers quant à toute Réclamation contre la Débitrice et une renonciation des Créanciers à exercer tout droit personnel ou réel à l'égard des Réclamations;
>
> 7.2.2 Une quittance complète, finale et définitive des Créanciers quant à toute réclamation, autre qu'une réclamation visée au paragraphe 5.1(2) LACC, qu'ils ont ou pourraient avoir, directement ou indirectement, contre les administrateurs, dirigeants, employés ou autres représentants ou mandataires de la Débitrice en raison ou à l'égard d'une Réclamation Visée et une renonciation des Créanciers à exercer tout droit personnel ou réel à l'égard de toute telle réclamation;
>
> 7.2.3 Une quittance complète, finale et définitive des Créanciers quant à toute réclamation qu'ils ont ou pourraient avoir, directement ou indirectement, contre DCR et Fortin, de même que leurs dirigeants, administrateurs, directeurs, employés, conseillers financiers, conseillers

> juridiques, banquiers d'affaires, consultants, mandataires et comptables actuels et passés respectifs à l'égard de l'ensemble des demandes, réclamations, actions, causes d'action, demandes reconventionnelles, poursuites, dettes, sommes d'argent, comptes, engagements, dommages-intérêts, décisions, jugements, dépenses, saisies, charges et autres recouvrements au titre d'une créance, d'une obligation, d'une demande ou d'une cause d'action de quelque nature que ce soit qu'un Créancier pourrait avoir le droit de faire valoir à l'encontre de DCR ou Fortin;
>
> 7.2.4 Une quittance complète, finale et définitive des Créanciers quant à toute réclamation qu'ils ont ou pourraient avoir, directement ou indirectement, contre la Débitrice ou le Contrôleur ou leurs administrateurs, dirigeants, employés ou autres représentants ou mandataires ainsi que leurs conseillers juridiques à l'égard de toute mesure prise ou omission faite de bonne foi dans le cadre des Procédures ou de la préparation et la mise en œuvre du Plan ou de tout contrat, effet, quittance ou autre convention ou document créé ou conclu, ou de toute autre mesure prise ou omise relativement aux Procédures ou au Plan, étant entendu qu'aucune disposition du présent paragraphe ne limite la responsabilité d'une Personne à l'égard d'une faute relativement à une obligation expressément formulée qu'elle a aux termes du Plan ou aux termes de toute convention ou autre document conclu par cette Personne après la Date de détermination ou conformément aux modalités du Plan, ni à l'égard du manquement à un devoir de prudence envers quelque autre Personne et survenant après la Date de prise d'effet. À tous égards, la Débitrice et le Contrôleur et leurs employés, dirigeants, administrateurs, mandataires et conseillers respectifs ont le droit de s'en remettre à l'avis de conseillers juridiques relativement à leurs obligations et responsabilités aux termes du Plan; et
>
> 7.2.5 Une quittance complète, finale et définitive de la Débitrice quant à toute réclamation qu'elle a ou pourrait avoir, directement ou indirectement, contre ses administrateurs, dirigeants et employés.

[...]

[37] Or, devant la Cour supérieure, se basant principalement sur l'arrêt de la Cour d'appel de l'Ontario dans *A.T.B. Financial* v. *Metcalfe & Mansfield Alternative Invesments II Corp.*, l'intimée faisait à cet égard valoir que la quittance en faveur de DCR était légale et appropriée en l'espèce, considérant que cette quittance a un lien raisonnable avec la réorganisation proposée. Dans l'argumentaire écrit remis au juge de première instance, l'intimée citait les passages suivants de l'arrêt *Metcalfe* :

> [113] At para. 71 above I recited a number of factual findings the application judge made in concluding that approval of the Plan was within his jurisdiction under the CCAA and that it was fair and reasonable. For convenience, I reiterate them here — with two additional

findings — because they provide an important foundation for his analysis concerning the fairness and reasonableness of the Plan. The application judge found that :

> a) The parties to be released are necessary and essential to the restructuring of the debtor;
>
> b) The claims to be released are rationally related to the purpose of the Plan and necessary for it;
>
> c) The Plan cannot succeed without the releases;
>
> d) The parties who are to have claims against them released are contributing in a tangible and realistic way to the Plan;
>
> e) The Plan will benefit not only the debtor companies but creditor Noteholders generally;
>
> f) The voting creditors who have approved the Plan did so with knowledge of the nature and effect of the releases; and that,
>
> g) The releases are fair and reasonable and not overly broad or offensive to public policy.

[38] Manifestement, le juge de première instance a estimé que la quittance dont DCR est bénéficiaire selon la clause 7.2.3 du plan d'arrangement répondait à ces exigences.

[39] Le plan d'argumentation produit par l'intimée devant la Cour supérieure et, de même, le plan d'argumentation déposé aux fins du présent débat citent aussi, entre autres, l'affaire *Muscletech Research and Development Inc.*, où l'on reconnaît la possibilité, dans le cadre d'un arrangement régi par la *L.a.c.c* de stipuler une quittance en faveur du tiers qui finance la restructuration de l'entreprise débitrice. Or, c'est précisément, en l'espèce, le cas de DCR, qui versera une somme considérable afin de soutenir la réorganisation des affaires de l'intimée dans le cadre du plan d'arrangement.

[40] Il n'est pas inutile de reproduire ici quelques-uns des passages de l'affaire *Muscletech* :

> [7] With respect to the relief sought relating to Claims against Third Parties, the position of the Objecting Claimants appears to be that this court lacks jurisdiction to make any order affecting claims against third parties who are not applicants in a CCAA proceeding. I do not agree. In the case at bar, the whole plan of compromise which is being funded by Third Parties will not proceed unless the plan provides for a resolution of all claims against the Applicants and Third Parties arising out of "the development, advertising and marketing, and sale of health supplements, weight loss and sports nutrition or other products by the Applicants or

any of them" as part of a global resolution of the litigation commenced in the United States. In his Endorsement of January 18, 2006, Farley J. stated:

> the Product Liability system vis-à-vis the Non-Applicants appears to be in essence derivative of claims against the Applicants and it would neither be logical nor practical/functional to have that Product Liability litigation not be dealt with on an all encompassing basis.

[8] Moreover, it is not uncommon in CCAA proceedings, in the context of a plan of compromise and arrangement, to compromise claims against the Applicants and other parties against whom such claims or related claims are made. In addition, the Claims Resolution Order, which was not appealed, clearly defines Product Liability Claims to include claims against Third Parties and all of the Objecting Claimants did file Proofs Of Claim settling out in detail their claims against numerous Third Parties.

[9] It is also, in my view, significant that the claims of certain of the Third Parties who are funding the proposed settlement have against the Applicants under various indemnity provisions will be compromised by the ultimate Plan to be put forward to this court. That alone, in my view, would be a sufficient basis to include in the Plan, the settlement of claims against such Third Parties. The CCAA does not prohibit the inclusion in a Plan of the settlement of claims against Third Parties. In *Canadian Airlines Corp., Re* (2000), 20 C.B.R. (4th) 1 (Alta. Q.B.), Paperney J. stated at p. 92:

> While it is true that section 5.2 of the CCAA does not authorize a release of claims against third parties other than directors, it does not prohibit such releases either. The amended terms of the release will not prevent claims from which the CCAA expressly prohibits release.

[Soulignements ajoutés]

[41] Ultérieurement, la Cour supérieure de justice de l'Ontario, dans une décision rendue dans le même dossier en 2007, écrira que :

> [20] A unique feature of this Plan is the Releases provided under the Plan to Third Parties in respect of claims against them in any way related to "the research, development, manufacture, marketing, sale, distribution, application, advertising, supply, production, use or ingestion of products sold, developed or distributed by or on behalf of" the Applicants (see Article 9.1 of the Plan). It is self-evident, and the Subject Parties have confirmed before this court, that the Contributed Funds would not be established unless such Third Party Releases are provided and accordingly, in my view it is fair and reasonable to provide such Third Party releases in order to establish a fund to provide for distributions to creditors of the Applicants. With respect to support of the Plan, in addition to unanimous approval of the Plan by the creditors represented at meetings of creditors, several other

stakeholder groups support the sanctioning of the Plan, including Iovate Health Sciences Inc. and its subsidiaries (excluding the Applicants) (collectively, the "Iovate Companies"), the Ad Hoc Committee of MuscleTech Tort Claimants, GN Oldco, Inc. f/k/a General Nutrition Corporation, Zurich American Insurance Company, Zurich Insurance Company, HVL, Inc. and XL Insurance America Inc. It is particularly significant that the Monitor supports the sanctioning of the Plan.

[21] With respect to balancing prejudices, if the Plan is not sanctioned, in addition to the obvious prejudice to the creditors who would receive nothing by way of distribution in respect of their claims, other stakeholders and Third Parties would continue to be mired in extensive, expensive and in some cases conflicting litigation in the United States with no predictable outcome.

[...]

[23] The representative Plaintiffs opposing the sanction of the Plan do not appear to be rearguing the basis on which the class claims were disallowed. Their position on this motion appears to be that the Plan is not fair and reasonable in that, as a result of the sanction of the Plan, the members of their classes of creditors will be precluded as a result of the Third Party Releases from taking any action not only against MuscleTech but against the Third Parties who are defendants in a number of the class actions. I have some difficulty with this submission. As stated above, in my view, it must be found to be fair and reasonable to provide Third Party Releases to persons who are contributing to the Contributed Funds to provide funding for the distributions to creditors pursuant to the Plan. Not only is it fair and reasonable; it is absolutely essential. There will be no funding and no Plan if the Third Party Releases are not provided. The representative Plaintiffs and all the members of their classes had ample opportunity to submit individual proofs of claim and have chosen not to do so, except for two or three of the representative Plaintiffs who did file individual proofs of claim but withdrew them when asked to submit proof of purchase of the subject products. Not only are the claims of the representative Plaintiffs and the members of their classes now barred as a result of the Claims Bar Order, they cannot in my view take the position that the Plan is not fair and reasonable because they are not participating in the benefits of the Plan but are precluded from continuing their actions against MuscleTech and the Third Parties under the terms of the Plan. They had ample opportunity to participate in the Plan and in the benefits of the Plan, which in many cases would presumably have resulted in full reimbursement for the cost of the product and, for whatever reason, chose not to do so.

[...]

[Soulignements ajoutés]

> [42] Dans le même sens, on pourra consulter la décision de la Cour supérieure dans *Charles-Auguste Fortier inc. (Arrangement relatif à)*, qui fait une étude approfondie de la question et conclut à l'opportunité d'une quittance en faveur de la caution de la société débitrice, caution qui joue un rôle central dans la réorganisation des affaires de celle-ci et sans le concours de laquelle le plan échouera.
>
> [43] La situation de l'espèce est analogue : DCR injectera des sommes substantielles dans la réorganisation de l'intimée en vertu du plan d'arrangement, ce qu'elle ne fera pas si elle ne peut bénéficier de la quittance prévue par la clause 7.2.3. La requête pour permission d'appeler et les observations présentées à l'audience ne permettent pas de conclure que le requérant conteste ce fait ou conteste l'absence d'une autre source de financement, son argument étant plutôt que cette quittance est sans lien avec les activités de l'entreprise. Avec égards, cet argument ne peut être retenu et, à mon avis, il n'a pas de chance raisonnable de succès devant cette Cour. La permission d'appeler ne saurait donc, sur le fondement de ce moyen, être accordée.

[116] La débitrice ne s'en cache pas, elle désire continuer les procédures sous la *LACC* pour ultimement obtenir la libération des administrateurs.

[117] Divers recours collectifs ont été intentés contre la débitrice. Un des recours déposés au Québec et dont les requérants ont produit des requêtes qui ont été remises au 26 février implique non seulement la débitrice et ses administrateurs, mais aussi plus de 35 défendeurs.

[118] Ce sont ces défendeurs que la débitrice veut faire asseoir à la table pour tenter d'en venir à un règlement qui profiterait à tous. Plusieurs de ces défendeurs sont présents à toutes les étapes dans le présent dossier.

[119] Un règlement dans le présent dossier aurait l'avantage d'éviter, à tous ceux qui y participent, des recours judiciaires qui s'échelonneront sur plusieurs années.

[120] Dans l'état actuel du dossier, il est impossible pour un tribunal d'ordonner que les sommes que reconnaît devoir la Compagnie d'Assurance XL soient payées à un créancier plutôt qu'à un autre.

[121] La seule façon pratique, économique et juridiquement possible de régler le présent dossier est que des tiers participent à une proposition d'arrangement qui devra être soumise à la masse des créanciers.

[122] Rien n'empêchera les requérants au recours collectif de continuer les procédures contre les défendeurs qui n'y participeront pas, mais cela leur permettra de participer à la distribution de l'indemnité d'assurance totalisant 25 000 000 $.

[123] Évidemment, pour réussir, il faudra que des tiers participent pour des montants substantiels. Les requérants du recours collectif ne peuvent se voir attribuer les sommes des assurances, ils n'y ont pas droit. Il y a d'autres victimes, pas seulement les requérants en recours collectif. Ces autres victimes ont autant le droit au bénéfice de l'assurance que les requérants en recours collectif. Un autre facteur à tenir en considération est que le gouvernement du Québec par la voix de ses procureurs déclare depuis le début qu'il désire que le montant des assurances soit remis aux victimes. Ce souhait a été mentionné lors des différentes auditions, mais ne lie personne pour le moment. Le procureur du gouvernement a aussi déclaré que sa définition de victimes n'est pas la même que celle du tribunal. En effet, une compagnie d'assurance qui aurait indemnisé un commerçant pour la perte d'un immeuble ou pour perte de chiffres d'affaires est aussi une victime de la tragédie ferroviaire. Légalement cette compagnie d'assurance aurait parfaitement le droit de recevoir une part du 25 000 000 $ de XL Assurance.

[124] Le gouvernement du Québec peut bien vouloir préférer les victimes physiques, cela ne lie pas XL Assurance.

[125] Évidemment si la province de Québec a une réclamation de 200 000 000 $ et qu'elle réussit à récupérer des sommes, elle pourra en faire ce qu'elle veut.

[126] La somme de 200 000 000 $ mentionnée semble d'ailleurs conservatrice. Si la province récupère des sommes, elle est en droit d'en faire ce qu'elle veut.

[127] Mais pour le moment, nous sommes dans une situation où il n'y a aucun actif possiblement partageable entre les créanciers. Il est donc inutile d'établir un processus de réclamation très coûteux. D'ailleurs, qui financerait ce processus? Les requérants en recours collectif et le gouvernement du Québec ne peuvent non plus agir comme s'ils étaient les seuls créanciers de MMA. On peut facilement croire que la valeur des réclamations autres dépasse aussi la centaine de millions de dollars. Mais les créanciers entre eux sont souverains. S'ils décident qu'une catégorie de créanciers recevra des sommes alors que d'autres auraient été en droit d'en recevoir, mais y renoncent, ils en ont le droit. Ils en ont peut-être le droit, mais les moyens d'y arriver rapidement ne sont pas nombreux. Pour le moment, les procédures engagées pourraient mener à un tel règlement pourvu qu'un plan soit déposé et que les créanciers l'acceptent. Oublions une proposition concordataire en vertu de la *LFI*, le processus serait trop coûteux dans l'état actuel du dossier. La *LACC* a aussi l'avantage d'être plus flexible. La seule solution possible et rapide est donc celle proposée par la débitrice. Que des tiers participent à l'élaboration d'une proposition. Un apport monétaire est essentiel pour y participer. Si un plan acceptable est proposé, les créanciers pourront l'accepter et pourront décider de catégories de créanciers pouvant participer au partage. Ils pourraient également accepter que des tiers soient libérés.

> [128] Si le tribunal lève le sursis des procédures contre XL Compagnie d'Assurance, ce sera le chaos et la course aux jugements.
>
> [129] Le procureur de XL a déjà mentionné au tribunal que son interprétation du contrat lui permet d'affirmer que le contrat d'assurance oblige la compagnie à payer les indemnités en payant le premier arrivé.
>
> [130] D'innombrables recours pourraient donc être intentés contre la débitrice et la compagnie d'assurance et celle-ci n'aurait plus l'obligation de payer lorsqu'une somme de 25 000 000 $ aurait été déboursée.
>
> [131] Les chances d'obtenir un jugement suite à un recours collectif avant les recours intentés par la voie ordinaire seraient illusoires surtout lorsque les défendeurs admettent leur responsabilité.
>
> [132] Le tribunal ne voit pas comment les procédures devant d'autres instances pourraient être suspendues en attendant le résultat du recours collectif. Nul n'est tenu de participer à un tel recours.

[12] À la suite de ce jugement, un processus de négociation, avec les tiers potentiellement responsables, débute. C'est cette négociation qui permet la formation d'un fonds d'indemnisation de 430 millions de dollars pour indemniser les victimes de la tragédie ferroviaire qui, rappelons-le, sont toutes créancières de la débitrice.

[13] Tous les défendeurs poursuivis dans un recours collectif intenté au Québec ont accepté de participer au fonds d'indemnisation, à l'exception de l'opposante, la compagnie de chemin de fer Canadien Pacifique (CP).

[14] L'honorable Martin Bureau, j.c.s. a accordé la requête pour autorisation d'exercer un recours collectif contre le CP et World Fuel Services qui s'est par la suite jointe au groupe contribuant au fonds d'indemnisation.

[15] Le CP refuse de participer au fonds plaidant qu'elle n'est pas responsable de la tragédie ferroviaire. Cela est parfaitement son droit.

[16] Par contre, pour les motifs ci-après exposés, il est évident que la contestation de CP n'a pour seul but que de faire avorter le plan d'arrangement proposé ou de se donner un avantage stratégique de négociation qui lui créerait même plus de droits qu'elle n'en aurait, si les parties avaient tout simplement décidé de régler hors cour le recours collectif intenté. Nous y reviendrons.

[17] Dans son plan d'argumentation, CP soulève les questions suivantes :

a) L'article 4 de la LACC confère-t-il à un tribunal siégeant en vertu de la LACC la compétence d'homologuer un « plan » qui ne propose pas de transaction ni d'arrangement entre un débiteur en vertu de la LACC et ses créanciers?

b) Si le Tribunal répond à la question a) par l'affirmative, a-t-il compétence en vertu de la LACC pour homologuer une quittance en faveur d'un tiers solvable qui n'est pas « raisonnablement liée à la restructuration » du débiteur en vertu de la LACC?

c) Si le Tribunal répond à la question b) par l'affirmative, a-t-il compétence en vertu de la LACC pour homologuer un « plan » qui contient des quittances en faveur des tierces parties sans rapport avec la résolution de toutes les réclamations contre le débiteur insolvable, c'est-à-dire que les réclamations contre le débiteur ne sont pas visées par le plan et que ce plan ne confère aucun avantage à ce débiteur?

d) Une réponse affirmative à la question b) ou à la question c) constitue-t-elle une interprétation constitutionnelle valide de la compétence du Tribunal pour homologuer un plan d'arrangement ou de transaction en vertu de la LACC?

e) Si le Tribunal répond à toutes les questions précédentes par l'affirmative, le Plan et les conventions de règlement partielles qui en font partie intégrante sont-ils raisonnables, justes et équitables pour toutes les parties concernées, y compris les entités non parties au règlement?

[18] Le 31 mars 2015, MMAC dépose un plan de transaction et d'arrangement, dont l'article 2.1 stipule l'objet :

2.1 Objet

Le Plan vise :

a) à proposer un compromis, une quittance, une libération et une annulation complètes, finales et irrévocables de toutes les Réclamations Visées contre les Parties Quittancées;

b) à permettre la distribution des Fonds pour Distribution et le paiement des Réclamations Prouvées, tel qu'il est indiqué aux paragraphes 4.2 et 4.3;

Le Plan est présenté eu égard au fait que les Créanciers, lorsqu'ils sont considérés globalement, tireront un plus grand avantage de sa mise en œuvre que cela ne serait le cas dans l'éventualité d'une faillite de MMAC.

[19] Le *Dix-neuvième rapport du Contrôleur sur le plan d'arrangement de la requérante* du 14 mai 2015 indique le contexte dans lequel le plan a été mis de l'avant par MMAC, et plus précisément, son objectif sous-jacent.

- Les paragraphes 11 et 13 du Dix-neuvième rapport :

> « 11. Afin de compenser les créanciers pour les dommages subis en raison du Déraillement, il était clair dès le départ pour toutes les parties intéressées que cela ne pouvait être accompli qu'avec la contribution de tiers potentiellement responsables (les "Tiers"), en échange de quittances totales et finales à l'égard de tout litige pouvant découler du Déraillement.
>
> [...]
>
> 13. Le Plan est le résultat de plusieurs mois de discussions multilatérales entre le conseiller juridique de la Requérante, [...] le Syndic, les principales parties intéressées de la Requérante, soit la province de Québec (la "Province"), les Représentants d'un groupe de créanciers, les avocats des victimes du déraillement dans le cadre des procédures en vertu du Chapitre 11 (les "Conseillers juridiques américains") et l'avocat du Comité officiel des victimes dans le cadre des procédures en vertu du Chapitre 11 (le "Comité officiel") (collectivement les "Principales parties intéressées"), avec les Tiers, qui visaient à négocier des contributions à un Fonds de Règlement au profit des victimes du Déraillement. [...]
>
> [nos soulignés]

[20] CP plaide que l'objectif exclusif du plan est par conséquent irréfutable, à savoir le *règlement des réclamations des créanciers victimes contre des tiers potentiellement responsables*, et que le plan ne porte d'aucune façon sur la restructuration de MMAC.

[21] Cela est inexact. Si l'on suit la logique du CP, il faudrait obligatoirement que la restructuration de l'entreprise se fasse après l'approbation du plan par les créanciers.

[22] Or, il arrive fréquemment que la restructuration soit complétée avant l'approbation du plan par les créanciers. C'est ce qui s'est produit dans le présent dossier.

[23] En l'instance, le chemin de fer est sauvé, les emplois sont sauvés et toutes les industries et les municipalités bénéficiant du chemin de fer sont assurées de pouvoir continuer d'en bénéficier.

[24] Ce n'est pas parce qu'une partie des objectifs de départ sont atteints qu'il faut faire abstraction de cette réussite.

[25] Sans le bénéfice de la *LACC,* les rails de chemin de fer auraient bien pu être vendus à la ferraille. Cette deuxième catastrophe a été évitée.

[26] En contrepartie de leurs contributions respectives au Fonds d'indemnisation, les parties quittancées bénéficieront de « Quittances et Injonctions » ayant une portée très générale.

[27] MMAC n'est pas une partie quittancée aux termes du plan.

[28] Plus précisément, le paragraphe 5.1 du plan prévoit l'exécution (i) de quittances ayant une portée très large en faveur des parties quittancées, et (ii) des injonctions interdisant toute future réclamation contre les parties quittancées :

> **5.1 Quittances et Injonctions aux termes du Plan**
>
> Toutes les Réclamations Visées feront entièrement, définitivement, absolument, inconditionnellement, complètement, irrévocablement et à jamais, l'objet d'un compromis, d'une remise, d'une quittance, d'une libération, d'une annulation et seront proscrites à la Date de Mise en Œuvre du Plan contre les Parties Quittancées.
>
> Toutes les Personnes (peu importe si ces Personnes sont ou non des Créanciers ou des Réclamants) seront empêchées et il leur sera interdit, en permanence et à jamais, i) de poursuivre toute Réclamation, directement ou indirectement, contre les Parties Quittancées, ii) de poursuivre ou d'entreprendre, directement ou indirectement, toute action ou autre procédure à l'égard d'une Réclamation contre les Parties Quittancées ou de toute Réclamation qui pourrait donner lieu à une Réclamation contre les Parties Quittancées, au moyen d'une demande reconventionnelle, d'une réclamation de tiers, d'une réclamation au titre d'une garantie, d'une réclamation récursoire, d'une réclamation par subrogation, d'une intervention forcée ou autrement, iii) de tenter d'obtenir une exécution, une imposition, une saisie-arrêt, une perception, une contribution ou un recouvrement concernant un jugement, une sentence, un décret ou une ordonnance contre les Parties Quittancées ou leurs biens relativement à une Réclamation, iv) de créer, de parfaire ou de faire valoir autrement, de quelque manière que ce soit et directement ou indirectement, toute priorité ou charge de quelque nature que ce soit contre les Parties Quittancées ou leurs biens à l'égard d'une Réclamation, v) d'agir ou de procéder de quelque manière que ce soit et à tout endroit quel qu'il soit qui ne serait pas conforme aux dispositions des Ordonnances d'Approbation ou qui ne les respecteraient pas dans toute la mesure permise par les lois applicables, vi) de faire valoir tout droit de compensation, de dédommagement, de subrogation, de contribution, d'indemnisation, de réclamation ou d'action en garantie ou d'intervention forcée, de recouvrement ou en annulation de quelque nature que ce soit à l'égard des obligations dues aux Parties Quittancées relativement à une Réclamation ou de faire valoir un droit de cession ou de subrogation concernant une obligation due par l'une des Parties Quittancées relativement à une Réclamation et vii) de prendre toute mesure destinée à entraver la mise en œuvre ou la conclusion du présent Plan; il est toutefois entendu que les interdictions précitées ne s'appliqueront pas à l'exécution des obligations aux termes du Plan. Malgré ce qui précède, les Quittances et Injonctions en vertu du Plan prévues au présent paragraphe 5.1i) n'auront aucun effet sur les droits et obligations prévus dans l'Entente d'assistance financière découlant du sinistre survenu dans la ville de Lac-Mégantic intervenue le 19 février 2014 entre le Canada et la Province, et ii) ne s'appliqueront pas aux Réclamations Non Visées ni ne seront interprétées comme s'y appliquant.
>
> Malgré ce qui précède, les Quittances et Injonctions en vertu du Plan prévues au présent paragraphe 5.1i) n'auront aucun effet sur les droits et obligations prévus dans l'Entente d'assistance financière découlant du sinistre survenu dans la ville de Lac-

> Mégantic intervenue le 19 février 2014 entre le Canada et la Province, et ii) ne s'appliqueront pas aux Réclamations Non Visées ni ne seront interprétées comme s'y appliquant.
>
> [nos soulignés]

[29] En plus de ce qui précède, le paragraphe 5.3 du plan stipule expressément que toute réclamation contre des tiers défendeurs :

> « a) n'est pas visée par le plan;
>
> b) n'est pas quittancée;
>
> c) pourra suivre son cours;
>
> d) ne sera pas limitée ni restreinte de quelque manière que ce soit quant au montant dans la mesure où il n'y a aucun double recouvrement; et
>
> e) ne constitue pas une réclamation visée. »

De plus, le paragraphe 5.3 du plan réitère qu'aucune personne ne peut faire valoir de réclamation contre l'une ou l'autre des parties quittancées.

> **5.3 Réclamations contre des Tiers Défendeurs**
>
> Toute Réclamation d'une Personne, y compris MMAC et MMA, contre les Tiers Défendeurs qui ne sont pas également des Parties Quittancées : a) n'est pas visée par le présent Plan; b) n'est pas libérée, quittancée, annulée ou exclue conformément au présent Plan; c) pourra suivre son cours contre lesdits Tiers Défendeurs; d) ne sera pas limitée ni restreinte par le présent Plan de quelque manière que ce soit quant au montant dans la mesure où il n'y a aucun double recouvrement par suite de l'indemnisation reçue par les Créanciers ou les Réclamants conformément au présent Plan; et e) ne constitue pas une Réclamation Visée aux termes du présent Plan. Pour plus de précision et malgré toute autre disposition des présentes, si une Personne, y compris MMAC et MMA, fait valoir une Réclamation contre un Tiers Défendeur qui n'est pas également une Partie Quittancée, tous les droits de ce Tiers Défendeur d'intenter une action récursoire, d'opposer une demande ou de faire ou de poursuivre autrement des droits ou une Réclamation contre l'une des Parties Quittancées à quelque moment que ce soit seront libérés, quittancés et proscrits à jamais selon les modalités du présent Plan et des Ordonnances d'Approbation.

[30] Enfin, le paragraphe 3.3 du plan stipule expressément que certaines réclamations ne sont pas visées par le plan :

> **3.3 Réclamations Non Visées**

Malgré toute disposition contraire aux présentes, le présent Plan ne compromet pas, ne quittance pas, ne libère pas, n'annule ou ne proscrit pas, ni n'a d'autre incidence concernant :

(a) les droits ou réclamations des Professionnels Canadiens et des Professionnels Américains pour les honoraires et débours engagés ou devant être engagés pour les services rendus dans le Dossier LACC ou le Dossier de Faillite ou s'y rapportant, y compris la mise en œuvre du présent Plan et du Plan Américain.

(b) dans la mesure où il existe ou peut exister une couverture d'assurance pour ces réclamations aux termes d'une police d'assurance émise par Great American ou un membre de son groupe, y compris, notamment, la Police de Great American, et seulement dans le mesure où une telle couverture d'assurance est réellement fournie, laquelle couverture d'assurance est cédée au Syndic et à MMAC, sans que les Parties Rail World ou les Parties A&D n'aient l'obligation de verser un paiement ou d'effectuer une contribution pour accroître ce que le Syndic ou MMAC obtient réellement aux termes de cette police d'assurance : i) les réclamations de MMAC ou du Syndic (et seulement du Syndic, de MMAC, de leur personne désignée ou, dans la mesure applicable, des Patrimoines) contre les Parties Rail World et(ou) les Parties A&D; et ii) les réclamations des détenteurs de Réclamations dans les Cas de Décès contre Rail World, Inc., à condition, de plus, que tout droit ou tout recouvrement par ces détenteurs d'un droit ou de recouvrement par les détenteurs de Réclamations dans les Cas de Décès par suite de la mesure autorisée au présent sous-paragraphe soit, à tous égards, subordonné aux réclamations du Syndic et de MMAC, ainsi que de leurs successeurs aux termes du Plan, aux termes des Polices précitées, et iii) les Réclamations de MMAC ou du Syndic contre les Parties A&D pour toute prétendue violation de l'obligation fiduciaire ou toute réclamation similaire fondée sur l'autorisation, par les Parties A&D, des paiements aux porteurs de billets et de bons de souscription émis conformément à une certaine convention d'achat de billets et de bons de souscription intervenue en date du 8 janvier 2003 entre MMA et certains porteurs de billets (telle qu'amendée de temps à autre), dans la mesure où de tels paiements résultent de la vente de certains biens de MMA à l'État du Maine.

c) les Réclamations de MMAC et du Syndic en vertu des lois, notamment celles relatives à la faillite et l'insolvabilité, destinées à annuler et(ou) à recouvrer les transferts de MMA, de MMAC ou de MMA Corporation aux porteurs de billets et de bons de souscription émis conformément à cette certaine convention d'achat de billets et de bons de souscription intervenue en date du 8 janvier 2003 entre MMA et certains porteurs de billets (telle qu'amendée de temps à autre), dans la mesure où de tels paiements résultent de la distribution du produit tiré de la vente de certains biens de MMA à l'État du Maine.

(d) les réclamations ou causes d'action de toute Personne, y compris MMAC, MMA et les Parties Quittancées (sous réserve des limitations contenues dans leur Convention de Règlement respective) contre des tiers autres que les Parties Quittancées (sous réserve du paragraphe 3.3 (e)).

(e) les Réclamations ou les autres droits préservés par l'une ou l'autre des Parties Quittancées, tel qu'il est indiqué à l'annexe A.

(f) les obligations de MMAC aux termes du Plan, des Conventions de Règlement et des Ordonnances d'Approbation;

(g) les Réclamations contre MMAC, sauf les Réclamations des Parties Quittancées autres que le procureur général du Canada. Toutefois, sous réserve du fait que les Ordonnances d'Approbation deviennent des ordonnances finales, le procureur général du Canada i) s'est engagé à retirer irrévocablement la Preuve de Réclamation produite pour le compte du ministère des Transports du Canada et la Preuve de Réclamation produite pour le compte du Department of Public Safety and Emergency Preparedness, ii) a consenti à une réaffectation en faveur des Créanciers de tous les dividendes payables aux termes du présent Plan ou du Plan Américain sur la Preuve de Réclamation produite pour le compte du Développement économique Canada pour les régions du Québec, tel qu'il est indiqué à la clause 4.3, et iii) a convenu de ne pas produire de Preuve de Réclamation additionnelle au dossier LACC ou au Dossier de Faillite;

(h) toute responsabilité ou obligation des Tiers Défendeurs et toute Réclamation contre ceux-ci, pour autant qu'ils ne soient pas des Parties Quittancées, de quelque nature que ce soit à l'égard du Déraillement ou s'y rapportant, y compris, notamment, le Recours Collectif et les Actions dans le Comté de Cook;

(i) toute Personne pour fraude ou des accusations criminelles ou quasi-criminelles qui sont ou peuvent être produites et, pour plus de précision, pour toute amende ou pénalité découlant de telles accusations;

(j) toute Réclamation que l'une des Parties Rail World ou des Parties A&D peut avoir pour tenter de recouvrer auprès de ses assureurs les dépenses, coûts et honoraires d'avocats qu'elle a engagés avant la Date d'Approbation.

(k) les Réclamations qui font partie de celles décrites au paragraphe 5.1 (2) de la LACC.

Tous les droits et Réclamations précités indiqués au présent paragraphe 3.3, inclusivement, sont collectivement appelés les « Réclamations Non Visées » et, individuellement, une « Réclamation Non Visée ».

[nos soulignés]

[31] C'est ce qui est fait dire à CP que :

Le plan « ne compromet pas, ne quittance pas, ne libère pas, n'annule ou ne proscrit pas, ni n'a d'autre incidence concernant » les réclamations contre MMAC, c'est-à-dire que les réclamations contre MMAC ne sont pas visées par le plan. MMAC ne fait pas l'objet d'une restructuration.

EXHIBIT A – Part 2

[32] Aussi le CP plaide que :

a) Les réclamations de toutes les « victimes » et même possiblement des parties quittancées pourront être poursuivies, ou de nouveaux recours pourront être intentés, tant au Canada qu'aux États-Unis, contre les entités non parties au règlement, y compris le CP;

b) Les demandeurs, aux termes du recours collectif peuvent continuer leur action en justice contre les défenderesses CP et World Fuel Services, avec le bénéfice supplémentaire que ces défenderesses « héritent » ainsi de la responsabilité de MMAC, alors que celles-ci se voient empêchées de réclamer toute contribution ou indemnité des parties quittancées!

[33] C'est d'ailleurs là le principal argument du CP. Ce qu'elle reproche au plan d'arrangement est que CP se retrouve maintenant seule poursuivie dans le recours collectif. Elle se plaint également que, puisqu'elle n'est pas quittancée en vertu du plan, elle pourrait être poursuivie par toutes personnes ayant subi des dommages à la suite du déraillement. Elle se plaint également qu'elle devrait supporter la part qui reviendrait à MMA. Nous y reviendrons.

[34] CP résume bien les critères d'exercice du pouvoir discrétionnaire du tribunal dans l'approbation d'un plan, lorsqu'elle mentionne :

a) Le plan doit être strictement conforme à toutes les exigences prévues par les lois et aux ordonnances antérieures du Tribunal;

b) Tous les documents déposés et les procédures entreprises doivent être examinés pour déterminer si toute mesure prise ou supposée avoir été prise est interdite en vertu de la *LACC*;

c) Le plan doit être juste et équitable.[1]

[35] CP plaide que le plan est illégal et dépasse la portée autorisée par la *LACC*.

[36] Il est vrai qu'au stade de l'audition sur l'homologation, le tribunal doit s'assurer que le processus en vertu de la *LACC* a été suivi sans enfreindre celle-ci et que rien dans le plan proposé n'y soit contraire[2].

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1 *Dairy Corporation of Canada Limited (Re)*, (1934) O.R. 436, paragr. 1, 4; *Northland Properties Limited*, (1998) 73 C.B.R. (N.S. 175), paragr. 24 et 29; *Olympia & York Developments Ltd. (Re)*, (1993) 17 C.B.R. (3d) 1 (Ont. Gen. Div.), paragr. 1; *Canadian Airlines Corp. (Re)*, 2000 ABQB 442, paragr. 60; *Uniforêt Inc., Re (Trustee of)*, 2002 CanLII 24468, paragr. 14.

2 *Olympia & York Developments Ltd. (Re)*, (1993) 17 C.B.R. (3d) 1 (Ont. Gen. Div.), paragr. 23-26; *Canadian Airlines Corp. (Re)*, 2000 ABQB 442, paragr. 64.

[37] CP plaide qu'une transaction ou un arrangement implique nécessairement la réorganisation des affaires du débiteur.

[38] Or, CP fait abstraction du fait que, comme déjà mentionné, la réorganisation des affaires de la débitrice a eu lieu, il y a déjà plus d'un an.

[39] D'autre part, le CP allègue :

> « Dans tous les cas, au moment de la vente de tous les éléments d'actifs de MMAC à RAH, l'« objectif secondaire » consistant à maximiser la valeur des actifs de MMAC avait été accompli et l'application de la LACC ne pouvait donc plus accomplir un objectif légitime; en effet, toutes les affaires de MMAC, à l'exception de ses passifs, avaient été complètement et définitivement liquidées. »

[40] Encore une fois, CP semble plaider que, puisque les éléments d'actifs sont vendus, le tribunal devrait mettre fin au processus en vertu de la *LACC*.

[41] Cette prétention n'a aucune assise juridique, et a d'ailleurs déjà fait l'objet d'un jugement[3] par le soussigné dans le présent dossier dont personne ne s'est plaint.

[42] Il faut rappeler que les représentants de CP ont participé à toutes les auditions présidées par le soussigné.

[43] CP plaide à titre subsidiaire que le tribunal n'a pas compétence pour sanctionner les quittances et injonctions prévues en faveur des parties quittancées.

[44] En plus d'avoir déjà fait l'objet d'une décision du soussigné dans le présent dossier, le tribunal croit qu'il est maintenant bien établi que les tribunaux peuvent, en vertu de la *LACC*, homologuer des plans d'arrangement qui prévoient des quittances en faveur de tierces parties.

[45] Dans l'affaire *Metcalfe*[4], la Cour d'appel de l'Ontario énonce les critères d'analyse à appliquer afin de déterminer si l'octroi de quittances en faveur de tiers peut être approuvé :

> [113] At para. 71 above I recited a number of factual findings the application judge made in concluding that approval of the Plan was within his jurisdiction under the CCAA and that it was fair and reasonable. For convenience, I reiterate them here – with two additional findings – because they provide an important foundation for his analysis concerning the fairness and reasonableness of the Plan. The application judge found that:

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[3] Voir jugement du 17 février 2014, p. 22-29, paragr.113-123.

[4] *Metcalfe & Mansfield Alternative Investments II Corp.*, 2008 ONCA 587.

> **a) The parties to be released are necessary and essential to the restructuring of the debtor;**
>
> **b) The claims to be released are rationally related to the purpose of the Plan and necessary for it;**
>
> **c) The Plan cannot succeed without the releases;**
>
> **d) The parties who are to have claims against them released are contributing in a tangible and realistic way to the Plan;**
>
> **e) The Plan will benefit not only the debtor companies but creditor Noteholders generally;**
>
> **f) The voting creditors who have approved the Plan did so with knowledge of the nature and effect of the releases; and that,**
>
> **g) The releases are fair and reasonable and not overly broad or offensive to public policy.**

[46] Dans cette affaire, le juge Blair en est venu à la conclusion que les quittances recherchées en faveur des tierces parties sont justifiées. Il conclut également que les quittances doivent être raisonnablement liées au plan :

> [63] There is nothing to prevent a debtor and a creditor from including in a contract between them a term providing that the creditor release a third party. The term is binding as between the debtor and creditor. **In the CCAA context, therefore, a plan of compromise or arrangement may propose that creditors agree to compromise claims against the debtor and to release third parties, just as any debtor and creditor might agree to such a term in a contract between them.** Once the statutory mechanism regarding voter approval and court sanctioning has been complied with, the plan -- including the provision for releases -- becomes binding on all creditors (including the dissenting minority).
>
> [...]
>
> [66] Certain creditors argued that the court could not sanction the plan because it did not constitute a "compromise or arrangement" between T&N and the EL claimants since it did not purport to affect rights as between them but only the EL claimants' rights against the EL insurers. **The court rejected this argument. Richards J. adopted previous jurisprudence -- cited earlier in these reasons -- to the effect that the word "arrangement" has a very broad meaning and that, while both a compromise and an arrangement involve some "give and take", an arrangement need not involve a compromise or be confined to a case of dispute or difficulty (paras. 46-51).**
>
> [...]

> [69] In keeping with this scheme and purpose, I do not suggest that any and all releases between creditors of the debtor company seeking to restructure and third parties may be made the subject of a compromise or arrangement between the debtor and its creditors. Nor do I think the fact that the releases may be "necessary" in the sense that the third parties or the debtor may refuse to proceed without them, of itself, advances the argument in favour of finding jurisdiction (although it may well be relevant in terms of the fairness and reasonableness analysis).
>
> [70] The release of the claim in question must be justified as part of the compromise or arrangement between the debtor and its creditors. In short, there must be a reasonable connection between the third-party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third-party release in the plan. This nexus exists here, in my view.

[47] Dans l'affaire *Muscletech*[5], la Cour supérieure de l'Ontario approuve également l'octroi de quittances à des tiers ayant financé un plan de liquidation. Bien qu'il juge que l'opposition aux quittances envisagées est prématurée (cette opposition devant plutôt se faire lors d'une éventuelle requête pour homologation), l'honorable juge Ground conclut néanmoins que la *LACC* permet ce type de quittances :

> [7] With respect to the relief sought relating to Claims against Third Parties the position of the Objecting Claimants appears to be that this court lacks jurisdiction to make any order affecting claims against third parties who are not applicants in a CCAA proceeding. I do not agree. In the case at bar, the whole plan of compromise which is being funded by Third Parties will not proceed unless the plan provides for a resolution of all claims against the Applicants and Third Parties arising out of "the development, advertising and marketing, and sale of health supplements, weight loss and sports nutrition or other products by the Applicants or any of them" as part of a global resolution of the litigation commenced in the United States. In his Endorsement of January 18, 2006, Farley J. stated:
>
> > "the Product Liability system vis-à-vis the Non-Applicants appears to be in essence derivative of claims against the Applicants and it would neither be logical nor practical/functional to have that Product Liability litigation not be dealt with on an all encompassing basis."
>
> [...]
>
> [9] **It is also, in my view, significant that the claims of certain of the Third Parties who are funding the proposed settlement have against the Applicants under various indemnity provisions will be compromised by**

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5 *Muscletech Research and Development Inc., Re*, 2006 CanLII 34344 (ON SC).

> **the ultimate Plan to be put forward to this court. That alone, in my view, would be a sufficient basis to include in the Plan, the settlement of claims against such Third Parties. The CCAA does not prohibit the inclusion in a Plan of the settlement of claims against Third Parties.**
>
> [...]
>
> [11] In any event, it must be remembered that the Claims of the Objecting Claimants are at this stage unliquidated contingent claims which may in the course of the hearings by the Claims Officer, or on appeal to this court, be found to be without merit or of no or nominal value. **It also appears to me that, to challenge the inclusion of a settlement of all or some claims against Third Parties as part of a Plan of compromise and arrangement, should be dealt with at the sanction hearing when the Plan is brought forward for court approval and that it is premature to bring a motion before this court at this stage to contest provisions of a Plan not yet fully developed.**

[48] En l'espèce, les quittances recherchées sont une condition essentielle pour la viabilité du plan puisque les parties quittancées sont les seules qui financent celui-ci. Cet élément militant fortement en faveur du caractère juste et raisonnable des quittances recherchées :

> [23] [...] As stated above, in my view, it must be found to be fair and reasonable to provide Third Party Releases to persons who are contributing to the Contributed Funds to provide funding for the distributions to creditors pursuant to the Plan. **Not only is it fair and reasonable; it is absolutely essential. There will be no funding and no Plan if the Third Party Releases are not provided.**[6]

[49] À titre subsidiaire, CP plaide également que le plan ne peut servir d'outil pour régler des différends entre des tiers solvables, sans octroyer une quittance à MMAC. Cet argument subsidiaire rejoint l'argument du CP qui plaide que le plan a une incidence négative sur les droits du CP.

[50] En effet, CP plaide :

> Puisque la responsabilité du CP est, entre autres choses, recherchée sur une base solidaire dans le cadre du recours collectif, et puisque le CP n'est pas une partie quittancée aux termes du plan, ses droits seront directement et considérablement touchés.

[51] CP plaide entre autres que le règlement partiel d'un litige multipartite doit être, à tout le moins, un évènement neutre pour les défendeurs non parties au règlement.

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6 *Muscletech Research and Development Inc. (Re)*, 2007 CanLII 5146
Voir aussi : *Sino-Forest Corporation (Re)*, 2012 ONSC 7050, paragr. 74 (autorisation d'appeler refusée, 2013 ONCA 456).

[52] Elle plaide que le plan ne confère pas au CP le titre de protection ordinaire qu'elle pourrait recevoir au terme d'un règlement partiel d'un recours collectif en droit civil.

[53] Comme déjà mentionné, rien n'empêchera CP de se défendre à toute action intentée contre elle. Si elle n'est pas responsable, l'action sera rejetée.

[54] Si elle prétend que les dommages ont été causés par la faute d'un tiers, elle peut le plaider sans que ce tiers soit partie aux procédures.

[55] En fait, cela donnera même un avantage au CP, qui pourra continuer de plaider que la tragédie est la faute de tous, sauf elle.

[56] D'ailleurs, la Cour suprême nous rappelait très récemment que[7] :

> [138] À notre avis, la Cour d'appel a aussi eu raison d'intervenir sur la question des dommages. L'analyse de la juge du procès était entachée d'une erreur déterminante. Elle a fait défaut de tenir compte de la solidarité et de fixer les montants accordés en fonction de la responsabilité respective de chacun des débiteurs solidaires. Comme le souligne la Cour d'appel, « dans toute la mesure où des postes de réclamation pouvaient relever de la responsabilité de plus d'un débiteur solidaire, les remises consenties par M. Hinse rendaient nécessaires l'examen des fautes causales et le partage des parts de responsabilité » : par. 189. M. Hinse aurait dû supporter la part des débiteurs solidaires qu'il a libérés : art. 1526 et 1690 *C.c.Q.*
>
> [139] La juge de première instance a abordé la question des dommages comme si le Ministre était le seul fautif et que le préjudice de M. Hinse ne découlait que de son « inertie institutionnelle » : par. 75-77. De fait, au lieu de déterminer les montants des dommages-intérêts précisément imputables au PGC, la juge s'en est simplement remise aux revendications de M. Hinse :
>
> Comme, de plus, à la suite de la transaction conclue entre le PGQ et Hinse, ce dernier a amendé sa procédure afin de ne réclamer au PGC que la portion qu'il lui attribue selon les différents chefs de dommages qu'il invoque, pour les fins du présent débat, respectant les dispositions plus haut citées, le Tribunal n'analysera que les demandes adaptées à cette nouvelle réalité et qui ne concernent que le PGC. [par. 22]
>
> [140] À l'exception des dommages-intérêts punitifs, elle a ainsi accordé les sommes réclamées en supposant que M. Hinse les avait correctement limitées à ce qui concerne le PGC uniquement. Or, la part de responsabilité des divers

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7 *Hinse* c. *Canada (Procureur général)*, 2015 CSC 35.

> codébiteurs de M. Hinse devait s'évaluer en fonction de la gravité de leur faute respective : art. 1478 *C.c.Q.* La juge ne pouvait pas s'en tenir simplement à la répartition suggérée par M. Hinse; son rôle d'arbitre des dommages-intérêts exigeait qu'elle fixe elle-même la part de responsabilité de chacun.
>
> [141] Au-delà de cette erreur déterminante, qui fausse tous les chefs de dommages accordés, les fondements à l'appui de chacun étaient en outre déficients.
>
> (1) Dommages pécuniaires
>
> [142] La juge Poulin a condamné le PGC à verser un total de 855 229,61 $ au titre des dommages pécuniaires. Ce montant paraît démesuré compte tenu de la somme de 1 100 000 $ déjà versée à ce chapitre par le PGQ aux termes de la transaction intervenue entre ce dernier et M. Hinse. Au minimum, il appartenait à M. Hinse de démontrer que les sommes visaient des compensations distinctes. Il ne l'a pas fait. La ventilation des sommes accordées révèle d'ailleurs que rien ne justifiait les montants réclamés.

[57] Bref, si CP n'est pas responsable, l'action sera rejetée contre elle.

[58] Si elle est responsable, et que des tiers également responsables ont été quittancés, CP sera libérée de la part des débiteurs solidaires qui ont été libérés.

[59] En fait, ce qui serait injuste, serait que CP bénéficie d'une quittance alors qu'elle n'a pas contribué financièrement au plan, contrairement aux autres codéfendeurs.

[60] CP plaide également qu'elle devrait être libérée de sa quote-part de la part de responsabilité avec MMA.

[61] Il ne relève certainement pas de la juridiction du juge soussigné d'en décider.

[62] Le juge saisi du recours contre CP en décidera.

[63] Quant à la question constitutionnelle soulevée dans le plan d'argumentation de CP et pour lequel des avis en vertu de l'article 95 *Cpc* ont été expédiés, le tribunal prend acte du peu d'insistance du CP à plaider cet argument lors de l'audition.

[64] Le tribunal fait siens les arguments proposés par le Procureur général du Canada lorsqu'il affirme :

> 4. Le 15 mai 2015, le PGC recevait un avis de la part de la Compagnie de Chemin de fer Canadien Pacifique (CP) en vertu de l'article 95 du *Code de procédure civile* (*Cpc*).

5. CP ne conteste pas la constitutionnalité de la *Loi sur les arrangements avec les créanciers des compagnies* (« *LACC* ») ni aucune de ses dispositions.

   - *Plan d'argumentation au soutien de la contestation par la Compagnie de Chemin de Fer Canadien Pacifique du Plan de transaction et d'arrangement*, paragr. 110.

6. CP soutient plutôt que l'homologation par le tribunal, sous l'égide de la *LACC*, du Plan de MMAC, empièterait de manière massive et illégitime sur la compétence des législatures provinciales en matière de propriété et de droits civils.

7. En l'absence d'argument de la part de CP quant à l'applicabilité constitutionnelle, la validité ou l'opérabilité de la *LACC*, l'avis en vertu de l'article *CPC* n'était pas requis.

8. Il faut par ailleurs rappeler que la validité constitutionnelle d'une loi est fonction de son caractère véritable et du fait que celui-ci se rattache à une matière relevant de la compétence de la législature qui l'a adoptée. Le caractère véritable de la loi est déterminé en fonction du but de la loi et de ses effets juridiques. Or, la validité constitutionnelle d'une loi ne dépend pas des effets qu'elle peut produire dans un cas en particulier.

   - *Canadian Western Bank* c. *Alberta*, [2007] 2 S.C.R. 3, paragr. 25-27 (autorités de MMAC, onglet 44).

9. De même, et bien que ce ne soit pas le cas en l'espèce, l'existence d'un conflit entre une loi fédérale et une loi provinciale n'est pas pertinente quant à la validité constitutionnelle de la loi. L'existence d'un conflit de lois pourrait être pertinente en vertu de la doctrine de la prépondérance fédérale – mais cette doctrine aurait pour effet de rendre inopérante la loi provinciale dans la mesure de son incompatibilité avec la loi fédérale.

   - Peter HOGG, *Constitutional Law of Canada*, 5e éd., vol.1, feuilles mobiles, Thomson/Carswell, p. 16-1 - 16-3 (autorités du PGC, onglet 1)

10. La *LACC* porte en son caractère dominant et véritable sur l'insolvabilité. Son objet et ses effets favorisent la conclusion de compromis et d'arrangements justes et raisonnables en tenant compte des intérêts des compagnies débitrices, de leurs créanciers, des autres parties intéressées et de l'intérêt public.

    - *Century Services Inc.* c. *Canada (Attorney General)*, [2010] 3 SCR 379, 2010 CSC 60, paragr. 60 (autorités de MMAC, onglet 14)

11. Ainsi, la *LACC* relève manifestement du domaine de la faillite et de l'insolvabilité, un champ de compétence attribué au Parlement par le paragraphe 91(21) de la *Loi constitutionnelle* de 1867.

- *Reference re constitutional validity of the Compagnies Creditors Arrangement Ace* (Dom.) [1934] S.C.R. 659, p. 660 (autorités de MMAC, onglet 46)

12. Il ne fait pas aucun doute que *LACC* n'est pas inconstitutionnelle du seul fait que l'exercice, par les tribunaux, des pouvoirs qui leurs (**sic**) sont conférés produise des effets sur la propriété et les droits civils des parties impliquées, compétence autrement réservée à la législature des provinces

    - *Canadian Western Bank* c. *Alberta,* [2007] 2 S.C.R. 3, paragr. 28 (autorités de MMAC, onglet 44)

    « Le corollaire fondamental de cette méthode d'analyse constitutionnelle est qu'une législation dont le caractère véritable relève de la compétence du législateur qui l'a adoptée pourra, au moins dans une certaine mesure, toucher les matières qui ne sont pas de la compétence sans nécessairement toucher sa validité constitutionnelle. »

13. Autrement, l'efficacité de la *LACC* serait complètement paralysée.

    - Peter HOGG *Constitutional Law of Canada*, 5e éd., vol.1, feuilles mobiles, Thomson/Carswell, p. 25-3 (autorités de MMAC, onglet 45)

14. La *LACC* est constitutionnelle même dans la mesure où les pouvoirs qu'elle octroie aux tribunaux leur permettent d'approuver des plans accordant des quittances à des tiers.

    - *Metcalfe & Mansfield Alternative Investments II Corp.,* (Re), 2008 ONCA 587, paragr. 104 (autorités de MMAC, onglet 24)

15. Par ailleurs, le Conseil Privé a confirmé la validité constitutionnelle d'une loi du Parlement, découlant de sa compétence en matière de faillite et d'insolvabilité, permettant à des agriculteurs de conclure des plans d'arrangements avec leurs créanciers sans que ces agriculteurs soient pour autant libérés de leurs dettes.

    - *Farmers' Creditors Arrangement Act (FCAA)*, [1937] A.C. 391, p. 403-404 (autorités de MMAC, onglet 49), confirmant *Reference re legislative jurisdiction of Parliament of Canada to enact the Farmers' Creditors Arrangement Act, 1934, as amended by the Farmers' Creditors Arrangement Act Amendment Act, 1935,* [1936] S.C.R. 384, p. 398 (autorités de MMAC, onglet 48)

16. Par le fait même, dans la mesure où la *LACC* permet aux tribunaux d'homologuer un plan d'arrangement par lequel la compagnie débitrice n'est pas libérée, cette loi est également *intra vires* du pouvoir du Parlement.

17. La nature réparatrice et flexible de cette loi permet aux tribunaux de rendre des ordonnances innovatrices dans la mesure où elles sont faites en conformité avec la loi, ce qui est le cas en l'espèce.

18. D'ailleurs, un plan d'arrangement octroyant des quittances à des tiers mais non à la débitrice principale a déjà été entériné par la Cour fédérale d'Australie.

    - *Lehman Brother Australia Ltd. In the matter of Lehman Brothers Australia Ltd ((in liq) No2),* [2013] FCA 965, paragr. 34-57 (Australie) (autorités de MMAC, onglet 52)

19. Notons également que les doctrines constitutionnelles reconnaissent que, concrètement, « le maintien de l'équilibre des compétences relève avant tout des gouvernements, et doivent faciliter et non miner ce que la Cour [suprême] a appelé un 'fédéralisme coopératif' ».

    - *Canadian Western Bank* c. *Alberta,* [2007] 2 S.C.R. 3, paragr. 24 (autorités de MMAC, onglet 44)

20. Dans les circonstances, l'avis de question constitutionnelle signifiée par CP aux procureurs généraux, n'a pas sa raison d'être et doit donc être rejeté.

[65] Bref, non seulement le soussigné croit que le plan proposé est juste et raisonnable, mais retenir les arguments présentés par le CP déconsidérait la confiance du public envers les tribunaux.

[66] En effet, depuis plus de deux ans, les victimes de la terrible tragédie de Lac-Mégantic s'en sont remises au processus judiciaire. Depuis deux ans, toutes les actions faites dans le présent dossier étaient orientées vers la présentation du plan d'arrangement qui fut voté à l'unanimité par les créanciers de la débitrice.

[67] Malgré que les ressources judiciaires soient limitées, des ressources considérables ont été mises à contribution pour pouvoir faire en sorte que les victimes de Lac-Mégantic obtiennent justice.

[68] Les procureurs et les justiciables des districts de Mégantic, Saint-François et Bedford étaient conscients que les ressources judiciaires utilisées dans le dossier de Lac-Mégantic ne pouvaient être utilisées par eux.

[69] L'utilisation de ces ressources judiciaires a eu pour effet de retarder d'autres dossiers.

[70] Faire avorter aujourd'hui ce plan d'arrangement pour le seul bénéfice d'un tiers contre qui un recours collectif a été autorisé, alors que ce tiers est partie aux procédures depuis le début, serait injuste et déraisonnable.

[71] Une dernière remarque s'impose. La requérante a déposé sous scellé les quittances et transactions intervenues entre les tiers responsables dans ce dossier. Un jugement du soussigné a été rendu sur la possibilité pour CP de prendre connaissance de ces quittances.

[72] CP a été autorisée à prendre connaissance des quittances caviardées. Elle ne connaît donc pas les montants pour lesquels les tiers responsables ont contribués, sauf en ce qui concerne Irving Oil et World Fuel Services qui ont rendu public le montant de leur contribution.

[73] Le tribunal s'est interrogé, séance tenante, sur la possibilité pour lui de prendre connaissance de la contribution de chaque tiers qui contribue au fonds d'indemnisation sans que le CP en ait connaissance.

[74] En effet, la règle *audi alteram partem* et la règle de la publicité des débats pourraient ne pas être respectées si le tribunal prend en considération une preuve dont n'a pas bénéficié une des parties opposantes.

[75] C'est pourquoi, le tribunal n'a pas pris connaissance de la contribution de chaque partie ayant cotisé au fonds d'indemnisation.

[76] Le tribunal peut apprécier que la contribution totale de 430 M$ est raisonnable en l'espèce.

[77] De plus, le tribunal a été informé tout au long du processus des démarches faites par MMA. Le tribunal a nommé des procureurs pour représenter les victimes de la tragédie de Lac-Mégantic qui ont participé à la négociation pour la constitution du fonds d'indemnisation. Le Gouvernement du Québec a également participé à cette négociation.

[78] Puisque le tribunal connaît la somme finale qui sera payée à même le fonds d'indemnisation, il n'est pas nécessaire de savoir le montant exact de participation de chacune des parties. Le tribunal considère raisonnable le règlement intervenu qui a été voté à l'unanimité par les créanciers.

POUR CES MOTIFS, LE TRIBUNAL :

[79] **ACCUEILLE** la requête en approbation du plan d'arrangement amendé;

DEFINITIONS

[80] **ORDERS** that capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Amended Plan of Compromise and Arrangement of the Petitioner dated June 8, 2015 and filed in the court record on

June 17, 2015, a copy of which is attached hereto as Schedule "**A**" (the "**Plan**") or in the Creditors' Meeting Order granted by the Court on May 5, 2015 (the "**Meeting Order**"), as the case may be;

SERVICE AND MEETING

[81] **ORDERS AND DECLARES** that that the Notification Procedures set out in paragraphs 61 to 66 of the Meeting Order have been duly followed and that there has been valid and sufficient notice of the Creditors' Meeting and service, delivery and notice of the Meeting Materials including the Plan and the Monitor's Nineteenth Report dated May 14, 2015, for the purpose of the Creditors' Meeting, which service, delivery and notice was effected by (i) publication on the Monitor's Website, (ii) sending to the Service List, (iii) mailing of the documents set out in paragraph 64 of the Meeting Order to all known Creditors, by prepaid regular mail, courier, fax or email, at the address appearing on a Creditor's Proof of Claim, and (iv) publication of the Notice to Creditors in the Designated Newspapers, and that no other or further notice is or shall be required;

[82] **ORDERS AND DECLARES** that the Creditors' Meeting was duly called, convened, held and conducted in accordance with the CCAA and the Orders of this Court in these proceedings, including without limitation the Meeting Order;

SANCTION OF THE PLAN

[83] **ORDERS AND DECLARES** that :

a) the Petitioner is a debtor company to which the CCAA applies, and the Court has jurisdiction to sanction the Plan;

b) the Plan has been approved by the required majority of Creditors with Voting Claims in conformity with the CCAA and the Meeting Order;

c) the Petitioner has complied in all respects with the provisions of the CCAA and all the Orders made by this Court in the CCAA Proceedings;

d) the Court is satisfied that the Petitioner has neither done nor purported to do anything that is not authorized by the CCAA; and

e) the Petitioner, Creditors having Government Claims, the Class Representatives, and the Released Parties have each acted in good faith and with due diligence, and the Plan (and its implementation) is fair and reasonable, and in the best interests of the Petitioner, the Creditors, the other stakeholders of the Petitioner and all other Persons stipulated in the Plan;

[84] **ORDERS AND DECLARES** that the Plan and its implementation, are hereby sanctioned and approved pursuant to Section 6 of the CCAA;

PLAN IMPLEMENTATION

[85] **DECLARES** that the Petitioner and the Monitor are hereby authorized and directed to take all steps and actions, and to do all such things, as determined by the Monitor and the Petitioner, respectively, to be necessary or appropriate to implement the Plan in accordance with its terms and as contemplated thereby, and to enter into, adopt, execute, deliver, implement and consummate all of the steps, transactions and agreements, including, without limitation, the Settlement Agreements, as required by the Monitor or the Petitioner, respectively, as contemplated by the Plan, and all such steps, transactions and agreements are hereby approved;

[86] **ORDERS** that as of the Plan Implementation Date, the Petitioner, represented by the Trustee, the sole shareholder of the Petitioner, shall be authorized and directed to issue, execute and deliver any and all agreements, documents, securities and instruments contemplated by the Plan, and to perform its obligations under such agreements, documents, securities and instruments as may be necessary or desirable to implement and effect the Plan, and to take any further actions required in connection therewith;

[87] **ORDERS** that the Plan and all associated steps, compromises, transactions, arrangements, releases, injunctions, offsets and cancellations effected thereby are hereby approved, shall be deemed to be implemented and shall be binding and effective in accordance with the terms of the Plan or at such other time, times or manner as may be set forth in the Plan, in the sequence provided therein, and shall enure to the benefit of and be binding upon the Petitioner, the Released Parties and all Persons affected by the Plan and their respective heirs, administrators, executors, legal personal representatives, successors and assigns;

[88] **ORDERS,** subject to the terms of the Plan, that from and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults of the Petitioner then existing or previously committed by the Petitioner, or caused by the Petitioner, directly or indirectly, or non-compliance with any covenant, warranty, representation, undertaking, positive or negative pledge, term, provision, condition or obligation, expressed or implied, in any contract, instrument, credit document, lease, guarantee, agreement for sale, deed, licence, permit or other agreement, written or oral, and any and all amendments or supplements thereto,

existing between such Person and the Petitioner arising directly or indirectly from the filing by the Petitioner under the CCAA and the implementation of the Plan and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under any such agreement shall be deemed to have been rescinded and of no further force or effect, provided that nothing shall be deemed to excuse the Petitioner from performing its obligations under the Plan or be a waiver of defaults by the Petitioner under the Plan and the related documents;

[89] **ORDERS** that from and after the Plan Implementation Date, and for the purposes of the Plan only, if the Petitioner does not have the ability or the capacity pursuant to applicable law to provide its agreement, waiver, consent or approval to any matter requiring its agreement, waiver, consent or approval under the Plan, such agreement, waiver, consent or approval may be provided by the Trustee, or that such agreement, waiver, consent or approval shall be deemed not to be necessary;

[90] **ORDERS** that upon fulfillment or waiver of the conditions precedent to implementation of the Plan as set out and in accordance with Article 6 of the Plan, the Monitor shall deliver the Monitor's Certificate, substantially in the form attached as Schedule "B" to this Order, to the Petitioner in accordance with Article 6.1 of the Plan and shall file with the Court a copy of such certificate as soon as reasonably practicable on or forthwith following the Plan Implementation Date and shall post a copy of same, once filed, on the Monitor's Website;

DISTRIBUTIONS BY THE MONITOR

[91] **ORDERS** that on the Plan Implementation Date, the Monitor shall be authorized and directed to administer and finally determine the Affected Claims of Creditors and to manage the distribution of the Funds for Distribution in accordance with the Plan and the Claims Resolution Order;

[92] **ORDERS AND DECLARES** that all distributions to and payments by or at the direction of the Monitor, in each case on behalf of the Petitioner, to the Creditors with Voting Claims under the Plan are for the account of the Petitioner and the fulfillment of its obligations under the Plan including to make distributions to Affected Creditors with Proven Claims;

[93] **ORDERS AND DECLARES** that, notwithstanding :

a) the pendency of these proceedings and the declarations of insolvency made therein;

b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C., c. B-3, as amended (the "**BIA**") in respect of the Petitioner and any bankruptcy order issued pursuant to any such application; and

c) any assignment in bankruptcy made in respect of the Petitioner;

the transactions contemplated in the Plan, the payments or distributions made in connection with the Plan and the Settlement Agreements contemplated thereby, whether before or after the Filing Date, and any action taken in connection therewith, including, without limitation, under this Order shall not be void or voidable and do not constitute nor shall they be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other challengeable transaction under the BIA, article 1631 and following of the Civil Code or any other applicable federal or provincial legislation, and the transactions contemplated in the Plan, the payments or distributions made in connection with the Plan and the Settlement Agreements contemplated thereby, whether before or after the Filing Date, and any action taken in connection therewith, do not constitute conduct meriting an oppression remedy under any applicable statute and shall be binding on an interim receiver, receiver, liquidator or trustee in bankruptcy appointed in respect of the Petitioner;

APPROVAL OF SETTLEMENT AGREEMENTS

[94] **ORDERS AND DECLARES** that (i) the Petitioner has entered into the Settlement Agreements in exchange for fair and reasonable consideration; (ii) each Settlement Agreement is a good faith compromise, in the best interests of the Petitioner, the Creditors, the other stakeholders of the Petitioner and all other Persons stipulated in the Plan; (iii) each Settlement Agreement is fair, equitable and reasonable and an essential element of the Plan and (iv) each of the Settlement Agreements be and is hereby approved;

[95] **ORDERS** that the Settlement Agreements shall be sealed and shall not form part of the public record, subject to further Order of this Court;

[96] **ORDERS AND DIRECTS** the Monitor to do such things and take such steps as are contemplated to be done and taken by the Monitor under the Plan. Without limitation: (i) the Monitor shall hold the Indemnity Fund to which the Settlement Funds will be deposited; and (ii) hold and distribute

the Funds for Distribution in accordance with the terms of the Plan and the Claims Resolution Order;

RELEASES AND INJUNCTIONS

[97] **ORDERS AND DECLARES** that the compromises, arrangements, releases, discharges and injunctions contemplated in the Plan, including those granted by and for the benefit of the Released Parties, are integral components thereof and are necessary for, and vital to, the success of the Plan and that all such releases, discharges and injunctions are hereby sanctioned, approved, binding and effective as and from the Effective Time on the Plan Implementation Date. For greater certainty, nothing herein or in the Plan shall release or affect any rights or obligations provided under the Plan;

[98] **ORDERS** that, without limiting anything in this Order, including without limitation, paragraph 19 hereof, or anything in the Plan, any Claim that any Person (regardless of whether or not such Person is a Creditor or Claimant) holds or asserts or may in the future hold or assert against any of the Released Parties or that could give rise to a Claim against the Released Parties whether through a cross-claim, third-party claim, warranty claim, recursory claim, subrogation claim, forced intervention or otherwise, arising out of, in connection with and/or in any way related to the Derailment, the Policies, MMA, and/or MMAC, is hereby permanently and automatically released and the enforcement, prosecution, continuation or commencement thereof is permanently and automatically enjoined and forbidden. Any and all Claims against the Released Parties are permanently and automatically compromised, discharged and extinguished, and all Persons and Claimants, whether or not consensually, shall be deemed to have granted full, final, absolute, unconditional, complete and definitive releases of any and all Claims to the Released Parties;

[99] **ORDERS** that all Persons (regardless of whether or not such Persons are Creditors or Claimants) shall be permanently and forever barred, estopped, stayed and enjoined from (i) pursuing any Claim, directly or indirectly, against the Released Parties, (ii) continuing or commencing, directly or indirectly, any action or other proceeding with respect to any Claim against the Released Parties, or with respect to any claim that, with the exception of any claims preserved pursuant to Section 5.3 of the Plan against any Third Party Defendants that are not also Released Parties, could give rise to a Claim against the Released Parties whether through a cross-claim, third-party claim, warranty claim, recursory claim, subrogation

claim, forced intervention or otherwise, (iii) seeking the enforcement, levy, attachment, collection, contribution or recovery of or from any judgment, award, decree, or order against the Released Parties or property of the Released Parties with respect to any Claim, (iv) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or the property of the Released Parties with respect to any Claim, (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Approval Orders to the full extent permitted by applicable law, and (vi) asserting any right of setoff, compensation, subrogation, contribution, indemnity, claim or action in warranty or forced intervention, recoupment or avoidance of any kind against any obligations due to the Released Parties with respect to any Claim or asserting any right of assignment of or subrogation against any obligation due by any of the Released Parties with respect to any Claim; and (vii) taking any actions to interfere with the implementation or consummation of this Plan, provided, however, that the foregoing shall not apply to the enforcement of any obligations under the Plan;

[100] **ORDERS** that notwithstanding the foregoing, the Plan Releases and Injunctions as provided in this Order (i) shall have no effect on the rights and obligations provided by the "Entente d'assistance financière découlant du sinistre survenu dans la ville de Lac-Mégantic" signed on February 19, 2014 between Canada and the Province, (ii) shall not extend to and shall not be construed as extending to any Unaffected Claims;

[101] **ORDERS** that, without limitation to the Meeting Order and Claims Procedure Order, any holder of a Claim, including any Creditor, who did not file a Proof of Claim before the applicable Bar Date shall be and is hereby forever barred from making any Claim against the Petitioner and Released Parties and any of their successors and assigns, and shall not be entitled to any distribution under the Plan, and that such Claim is forever extinguished;

CHARGES

[102] **ORDERS** that, subject to paragraphs 25 and 27 hereof, upon the Plan Implementation Date, all CCAA Charges against the Petitioner or its property created by the Initial Order or any subsequent orders (as defined in the Initial Order, the "**CCAA Charges**") shall be terminated, discharged and released;

[103] **ORDERS** that, notwithstanding paragraph 24 hereof, the Canadian Professionals and U.S. Professionals are entitled to the Administration Charge set out in Article 7 of the Plan as security for the payment of the fees and disbursements of the Canadian Professionals and U.S. Professionals;

[104] **DECLARES** that the Canadian Professionals and U.S. Professionals, as security for the professional fees and disbursements owed or to be owed to them in connection with or relating to the CCAA Proceeding including the Plan and its implementation, be entitled to the benefit of and are hereby granted a charge and security in the Settlement Funds, to the exclusion of the XL Indemnity Payment, to the extent of the aggregate amount of $20,000,000.00, plus any applicable sales taxes for the Canadian Professionals (defined in the Plan as the Administration Charge Reserve). The Administration Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances, security or rights of whatever nature or kind or deemed trusts (collectively "**Encumbrances**") affecting the Settlement Funds, to the exclusion of the XL Indemnity Payment, if any;

[105] **ORDERS** that the Petitioner shall not grant any Encumbrances in or against the Settlement Funds that rank in priority to, or *pari passu* with, the Administration Charge unless the Petitioner obtains the prior written consent of the Monitor and the prior approval of the Court.

[106] **DECLARES** that the Administration Charge shall immediately attach to the Settlement Funds, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

[107] **DECLARES** that the Administration Charge and the rights and remedies of the beneficiaries of same, 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 or other arrangement which binds the Petitioner (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement :

a) the creation of the Administration Charge 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

b) any of the beneficiaries of the Administration Charge 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 Administration Charge;

[108] **DECLARES** 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 Settlement Funds made by the Monitor pursuant to the Plan and the granting of the Administration Charge, 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;

[109] **DECLARES** that the Administration Charge shall be valid and enforceable as against all Settlement Funds, subject to the Administration Charge Reserve, and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Petitioner, for all purposes;

[110] **ORDERS** that, notwithstanding any of the terms of the Plan or this Order, the Petitioner shall not be released or discharged from its obligation in respect of the Unaffected Claims, including, without limitation, to pay the fees and expenses of the Canadian Professionals and the U.S. Professionals;

STAY OF PROCEEDINGS

[111] **EXTENDS** the Stay Period (as defined in the Initial Order and as extended from time to time) to and including December 15, 2015;

[112] **ORDERS** that all orders made in the CCAA Proceedings shall continue in full force and effect in accordance with their respective terms, except to the extent that such Orders are varied by, or inconsistent with, this Order,

the Meeting Order, the Claims Resolution Order or any further Order of this Court;

THE MONITOR

[113] **ORDERS** that all of the actions and conduct of the Monitor disclosed in the Monitor's Reports are hereby approved, and **DECLARES** that the Monitor has satisfied all of its obligations up to and including the date of this Order;

[114] **ORDERS** that, effective upon the Plan Implementation Date, any and all claims against (a) the Monitor in connection with the performance of its duties as Monitor of the Petitioner up to the Plan Implementation Date, (b) the Released Parties in connection with any act or omission relating to the negotiation, drafting or execution of their respective Settlement Agreements, or the negotiation, solicitation or implementation of the Plan, (c) Creditors having Government Claims in connection with the negotiation, solicitation and implementation of the Plan, and (d) the Class Representatives in connection with the negotiation, solicitation and implementation of the Plan shall, in each case, be and are hereby stayed, extinguished and forever barred and neither the Monitor, the Released Parties, Creditors having Government Claims nor the Class Representatives shall have any liability in respect thereof except for any liability arising out of gross negligence or willful misconduct on the part of any of them, provided however that this paragraph shall not release (i) the Monitor of its remaining duties pursuant to the Plan and this Order (the "**Remaining Duties**") or (ii) the Released Parties from their remaining duties pursuant to their respective Settlement Agreements;

[115] **ORDERS** that no action or other proceeding shall be commenced against the Monitor in any way arising from or related to its capacity or conduct as Monitor except with prior leave of this Court on notice to the Monitor and upon such terms as may be determined by the Court;

[116] **DECLARES** that the protections afforded to Richter Advisory Group Inc., as Monitor and as officer of this Court, pursuant to the terms of the Initial Order and the other Orders made in the CCAA Proceedings shall not expire or terminate on the Plan Implementation Date and, subject to the terms hereof, shall remain effective and in full force and effect;

[117] **DECLARES** that the Monitor has been and shall be entitled to rely on the books and records of the Petitioner and any information provided by the

Petitioner without independent investigation and shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information;

[118] **DECLARES** that any distributions under the Plan and this Order shall not constitute a "distribution" and the Monitor shall not constitute a "legal representative" or "representative" of the Petitioner for the purposes of section 14 of the Tax Administration Act (Québec) or any other similar provincial or territorial tax legislation (collectively the "**Tax Statutes**") given that the Monitor is only a disbursing agent of the payments under the Plan, and the Monitor in making such payments is not "distributing", nor shall be considered to "distribute" nor to have "distributed", such funds for the purpose of the Tax Statutes, and the Monitor shall not incur any liability under the Tax Statutes in respect of it making any payments ordered or permitted hereunder or under the Plan, and is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of payments made or to be made under the Plan or this Order and any claims of this nature are hereby forever barred;

[119] **DECLARES** that the Monitor shall not, under any circumstances, be liable for any of the Petitioner's tax liabilities regardless of how or when such liability may have arisen;

[120] **DECLARES** that neither the Monitor, the Released Parties, Creditors having Governmental Claims nor the Class Representatives shall incur any liability as a result of acting in accordance with the Plan and the Orders, including without limitation, this Order, other than any liability arising out of or in connection with the gross negligence or willful misconduct of any of them;

[121] **ORDERS** that upon the completion by the Monitor of its Remaining Duties, including, without limitation, distributions made by or at the direction of the Monitor in accordance with the Plan, the Monitor shall file with the Court the Monitor's Plan Completion Certificate, substantially in the form attached as Schedule "**C**" to this Order (the "**Monitor's Plan Completion Certificate**") stating that all of the Monitor's Remaining Duties have been completed and that the Monitor is unaware of any claims with respect to its performance of such Remaining Duties, and upon the filing of the Monitor's Plan Completion Certificate, Richter Advisory Group Inc. shall be deemed to be discharged from its duties as Monitor of the Petitioner in the

CCAA Proceedings and released from any and all claims relating to its activities as Monitor in the CCAA Proceedings;

[122] **ORDERS AND DECLARES** that the Monitor and the Petitioner, and their successors and assigns, as necessary, are authorized to take any and all actions as may be necessary or appropriate to comply with applicable tax withholding and reporting requirements. All amounts withheld on account of taxes shall be treated for all purposes as having been paid to the Affected Creditors in respect of which such withholding was made, provided such withheld amounts are remitted to the appropriate governmental authority;

GENERAL

[123] **DECLARES** that the Monitor or the Petitioner may, from time to time, apply to this Court for any advice, directions or determinations concerning the exercise of their respective powers, duties and rights hereunder or in respect of resolving any matter or dispute relating to the Plan, the Claims Resolution Order or this Order, or to the subject matter thereof or the rights and benefits thereunder, including, without limitation, regarding the distribution mechanics under the Plan;

[124] **DECLARES** that any other directly affected party that wishes to apply to this Court, including with respect to a dispute relating to the Plan, its implementation or its effects, must proceed by motion presentable before this Court after a 10-day prior notice of the presentation thereof given to the Petitioner and the Monitor in accordance with the Initial Order;

[125] **DECLARES** that the Monitor is 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 an order recognizing the Plan and this Order and confirming that the Plan and this Order are binding and effective in such jurisdiction and that the Monitor is the Petitioner's foreign representative for those purposes;

[126] **REQUESTS** 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, including the registration of this Order in any office of public

record by any such court or administrative body or by any Person affected by the Order;

[127] **ORDERS** that Schedule **B** to the Amended Plan and the Settlement agreements included therein, save and except for the XL Settlement Agreement, be filed under seal, the whole subject to further Order of this Court;

[128] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security;

[129] **LE TOUT** avec dépens contre la compagnie de chemin de fer Canadien Pacifique.

(S) *Gaétan Dumas*

GAÉTAN DUMAS, J.C.S.

Me Patrice Benoit
Me Alexander Bayus
Gowling Lafleur Henderson LLP
Pour Montréal, Maine & Atlantic Canada Co.

Me Sylvain Vauclair
Woods LLP
Pour Richter Groupe Conseil inc.
(Richter Advisory Group inc.)

Me Alain Riendeau
Me Enrico Forlini
Me André Durocher
Me Brandon Farber
Fasken Martineau Dumoulin
Pour Compagnie de chemin de fer Canadien Pacifique

Date d'audience : 17 juin 2015

SCHEDULE "B"

MONITOR'S PLAN IMPLEMENTATION DATE CERTIFICATE

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-

SUPERIOR COURT

Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE OF:

●

Petitioner

-and-

●

Monitor

CERTIFICATE OF THE MONITOR OF ● (Plan Implementation)

All capitalized terms not otherwise defined herein have the meanings ascribed thereto in the Plan of Compromise and Arrangement of ● pursuant to the *Companies' Creditors Arrangement Act, R.S.C.* 1985, c. C-36, as amended, dated ● (as may be amended, restated, supplemented and/or modified in accordance with its terms, the "**Plan**").

Pursuant to section ● of the Plan, ● (the "**Monitor**"), in its capacity as Court-appointed Monitor of **[DEBTOR]**, delivers this certificate to **[DEBTOR]** and hereby certifies that all of the conditions precedent to implementation of the Plan as set out in section ● of the Plan have been satisfied or waived by ● . Pursuant to the Plan, the **[Plan Implementation Date]** has occurred on this day. This Certificate will be filed with the Court and posted on the Monitor's Website.

DATED at the City of Montréal, in the Province of Québec, this ____ day of _____, ●.

●, in its capacity as the Court-appointed Monitor of **[DEBTOR]**

Per:

Name:

Title:

SCHEDULE "C"

MONITOR'S PLAN COMPLETION CERTIFICATE

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

No. : 500-11-

SUPERIOR COURT

Commercial Division
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE OF:

●

Petitioner

-and-

●

Monitor

CERTIFICATE OF THE MONITOR
(Plan Completion)

RECITALS:

A. Pursuant to an Order of the Honourable ● of the Québec Superior Court (Commercial Division) (the "**Court**") dated ●, ● was appointed as the Monitor (the "**Monitor**") of **[DEBTOR]**.

B. Pursuant to an Order of the Honourable ● of the Court dated ● (the "**Sanction Order**"), the Court sanctioned and approved the Plan of Compromise of ● pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, dated ● (as may be amended, restated, supplemented and/or modified in accordance with its terms, the "**Plan**").

C. Pursuant to the Sanction Order, the Court ordered that upon the completion by the Monitor of its Remaining Duties, including, without limitation, distributions to be made by or at the direction of the Monitor in accordance with the Plan, the Monitor shall file with the Court a certificate stating that all of the Remaining Duties have been completed and that the Monitor is unaware of any claims with respect to its performance of such Remaining Duties, and upon the filing of such certificate, ● shall be deemed to be discharged from its duties as Monitor of ● in the CCAA Proceedings and released from any and all claims relating to its activities as Monitor in the CCAA Proceedings.

D. All capitalized terms not otherwise defined herein shall have the meaning set out in the Sanction Order.

Pursuant to paragraph ● of the Sanction Order, ● in its capacity as Court-appointed Monitor of ● (the "**Monitor**") hereby certifies that the Monitor has completed its Remaining Duties, including, without limitation, distributions to be made by or at the direction of the Monitor in accordance with the Plan and that the Monitor is unaware of any claims with respect to its performance of such Remaining Duties.

DATED at the City of Montréal, in the Province of Québec, this ____ day of _____, ●.

●, in its capacity as the Court-appointed Monitor of ●

Per: _____

Name:

Title:

EXHIBIT B – Part 1

Court File No. 450-11-000167-134

SUPERIOR COURT
(COMMERCIAL DIVISION)

SITTING AS A COURT DESIGNATED PURSUANT TO THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. C. C 36, AS AMENDED)

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

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

PETITIONER

AND

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

MONITOR

AMENDED PLAN OF COMPROMISE AND ARRANGEMENT

pursuant to the *Companies' Creditors Arrangement Act*
concerning, affecting and involving

MONTREAL, MAINE & ATLANTIC CANADA CO.

June 8, 2015

TABLE OF CONTENTS

PLAN OF COMPROMISE AND ARRANGEMENT
(THE CAPITALIZED TERMS USED IN THIS DOCUMENT HAVE THE MEANING ASCRIBED THERETO IN SECTION 1.1 HEREOF)

WHEREAS on July 6, 2013, a train operated by MMAC derailed in the city of Lac-Mégantic, Quebec, Canada, causing numerous fatalities, bodily injuries, psychological and moral damages to thousands of people, and extensive property and environmental damages;

WHEREAS as a result of the numerous claims against MMAC and its parent company, MMA, arising out of the Derailment, along with the ensuing operational and financial impact arising therefrom, MMAC and MMA became insolvent;

WHEREAS numerous claims arising out of the Derailment have also been made against other persons and entities, including the Released Parties in both Canada and the United States of America;

WHEREAS on August 7, 2013, MMA filed a voluntary petition in the Bankruptcy Court for relief under Chapter 11 of the U.S. Bankruptcy Code;

WHEREAS on August 8, 2013, the Honourable Justice Castonguay of the CCAA Court granted an initial order in respect of MMAC (the "**Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**");

WHEREAS on August 21, 2013, the United States Trustee appointed the Trustee having full rights and power under the Bankruptcy Code to act for and on behalf of MMA;

WHEREAS on September 4, 2013, the CCAA Court and the Bankruptcy Court adopted the Cross-Border Insolvency Protocol entered into between MMAC, the Monitor and the Trustee, the purpose of which is, *inter alia*, to facilitate the fair, open and efficient administration of the CCAA Proceeding and of the Bankruptcy Case for the benefit of the Creditors and interested parties;

WHEREAS through the concerted and coordinated efforts of MMAC, the Monitor and the Trustee, predicated on constituting an Indemnity Fund with a view to providing compensation for the Derailment Claims filed pursuant to the Claims Procedure Order, a number of Settlement Agreements have been reached with the Released Parties providing for contributions towards the Indemnity Fund;

WHEREAS the aforesaid Settlement Agreements are conditional upon obtaining for the Released Parties appropriate releases and the Injunction and Release enforceable both in Canada and the United States of America;

WHEREAS the Monitor will seek recognition and enforcement of this Plan and of the Canadian Approval Order from the Bankruptcy Court pursuant to Chapter 15 of the Bankruptcy Code;

WHEREAS the Trustee (for and on behalf of MMA) will file in the Bankruptcy Case the U.S. Plan, which will provide, among other things, for distribution of the Funds for Distribution in accordance with this Plan and the entry of the U.S. Approval Order;

NOW THEREFORE, MMAC hereby proposes this plan of compromise and arrangement pursuant to the CCAA.

ARTICLE 1
INTERPRETATION

1.1 Defined Terms

Administration Charge	has the meaning ascribed thereto in Section 7.1 hereof.
Administration Charge Reserve	has the meaning ascribed thereto in Section 7.1 hereof.
Affected Claims	any and all Claims, other than any Unaffected Claim and any Claim referred to in Section 5.3.
Approval Date	the date on which the Approval Orders become Final Orders. If the Canadian Approval Order, the Class Action Order and the U.S. Approval Order become Final Orders on different dates, the Approval Date is the latest date on which any of the Canadian Approval Order, the Class Action Order or the U.S. Approval Order becomes a Final Order.
Approval Orders	the Canadian Approval Order, the Class Action Order and the U.S. Approval Order, collectively.
Bankruptcy Case	the case styled *in re Montreal, Maine & Atlantic Railway Ltd., Bankr. D. Me. No. 13-10670.*
Bankruptcy Code	Title 11 of the United States Code.
Bankruptcy Court	United States Bankruptcy Court for the District of Maine, as presiding over the Bankruptcy Case.
Bodily Injury and Moral Damages Claims	shall have the meaning ascribed thereto in Section 3.5(b) hereof.
Business Day	a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Montreal, Québec, Canada.
Canadian Approval Order	an Order, as set out in Schedule C hereof, entered in the CCAA Proceeding, which Order shall, among other things, (i) approve, sanction and/or confirm the Plan, (ii) approve the Settlement Agreements; (iii) authorize the Parties to undertake the settlement and the transactions contemplated by the Settlement Agreements; and (iv) provide for the Injunction and Release.
Canadian Professionals	the Monitor, Woods LLP, Gowling Lafleur Henderson LLP and the Claims Officer.

CCAA	has the meaning ascribed thereto in the recitals.
CCAA Court	Superior Court, Province of Quebec, as presiding over the CCAA Proceeding.
CCAA Filing Date	August 8, 2013.
CCAA Proceeding	*In the Matter of the Plan of Compromise or Arrangement of Montreal Maine & Atlantic Canada Co.*, Superior Court, Province of Quebec, No. 500-11-045094-139.
Chubb	Chubb & Son, a division of Federal Insurance Company, together with its parents, subsidiaries, affiliates, officers and directors, but strictly as insurer under the Chubb Policy.
Chubb Policy	That certain insurance policy bearing number 8210 2375 issued by Federal Insurance Company to Rail World, Inc. and Rail World Holdings LLC.
Claim or Claims	means, as the context requires, past, present and future claims, causes of action, obligations, rights, liens suits, judgments, orders, applications of any kind including for judicial review, remedies, interests, actions, liabilities, demands, duties, injuries, compensation, damages, expenses, fees, and/or costs of whatever kind or nature (including attorney's fees and expenses), whether foreseen or unforeseen, known or unknown, asserted or unasserted, contingent or matured, liquidated or unliquidated, whether in tort, contract, extra-contractual responsibility or otherwise, whether statutory, at common law, civil law, public law or in equity, regardless of the legal theory, including but not limited to claims for breach of contract, tort, breach of the implied covenant of good faith and fair dealing, loss of support, loss of consortium, statutory or regulatory violations, for indemnity or contribution, for any damages either moral, material, bodily injury, punitive, exemplary or extra-contractual damages of any type, in any jurisdiction (a) in any way arising out of, based upon, or relating in any way, in whole or in part, directly or indirectly, whether through a claim that was, is, may or could have been asserted in the Canadian Class Action, or a direct claim, cross-claim, third-party claim, warranty claim, recursory claim, subrogation claim, forced intervention, contribution claim, class action or otherwise, to (i) the Derailment, including but not limited to any claims for wrongful death, survival, personal injury, emotional distress, loss of support, loss of consortium, property damage, economic loss, moral damage, material damage and bodily injury, statutory and common law product and manufacturing liability, negligence, or environmental damage, remediation, exposure or any claim that would constitute any right to an equitable remedy for breach of performance even if such breach does not give rise to a right of payment and/or or exposure; (ii) the Policies; (iii) the issuance of the Policies; (iv) insurance coverage under the Policies,

	reimbursement or payment under the Policies; (v) any act or omission of an insurer of any type for which a Claimant might seek relief in connection with the Policies; (vi) the Existing Agreements; or (b) that would otherwise constitute a claim as against MMA, MMAC or their Estates (i) provable in bankruptcy under the Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3, had MMAC become bankrupt on August 6, 2013; and/or (ii) within the definition of "claim" set forth in section 101(5) of the Bankruptcy Code; and/or (iii) that are advanced or could have been advanced in the Canadian Class Action.
Claimant	any Person holding or potentially holding any Claim (including any transferee or assignee of a Claim) against (i) MMA, (ii) MMAC, (iii) to the extent applicable, the Estates, and/or (iv) any of the Released Parties.
Claims Bar Date	has the meaning ascribed thereto in the Claims Procedure Order.
Claims Officer	the court officer to be appointed pursuant to the Claims Resolution Order to adjudicate on the validity and quantum of any disputed Claims for the purpose of this Plan.
Claims Procedure	the procedure established for the filing of Claims in the CCAA Proceeding pursuant to the Claims Procedure Order.
Claims Procedure Order	the Amended Claims Procedure Order rendered on June 13, 2014, in the CCAA Proceeding by the CCAA Court, establishing, among other things, a claims procedure in respect of MMAC, as such Order may be amended, restated or varied from time to time.
Claims Resolution Order	an order of the CCAA Court establishing the procedure for determining the validity and quantum of any disputed Claims for the purpose of this Plan.
Class Action	the putative class action commenced on or about July 15, 2013, before the Superior Court, Province of Quebec, under court file 450-06-000001-132, including all subsequent amendments and all proceedings in this Court file, whether before or after the action is authorized to proceed as a class action.
Class Action Court	Superior Court, Province of Quebec, as presiding over the Class Action.
Class Action Order	an order, issued in the Class Action (i) confirming and declaring that the Canadian Approval Order and the U.S. Approval Order shall be binding and given full effect against parties designated and part of the Class Action, whether as a class representative, class member, named defendant/respondent or mis-en-cause, (ii) removing the allegations and conclusions against the Released Parties, and (iii) terminating the Class Action against the Released

	Parties without costs.
Class Representatives	has the meaning ascribed to "Class Action Plaintiffs" and to "Class Counsel" by the CCAA Court in the Representation Order.
Cook County Actions	the civil actions transferred pursuant to 28 U.S.C. §157(b)(5) in connection with the Bankruptcy Case to the District Court, originally filed in the Cook County, Illinois state court, and appearing on the docket of the District Court as Civil Action Nos. 00113-00130NT.
Creditors	collectively all Persons having Proven Claims and "Creditor" means any one of them.
D&O Parties	Edward A. Burkhardt, Larry Parsons, Steven J. Lee, Stephen Archer, Robert C. Grindrod, Joseph R. McGonigle, Gaynor Ryan, M Donald Gardner, Jr., Fred Yocum, Yves Bourdon and James Howard, each of whom is or was a director or officer of MMA, MMAC, Montreal, Maine & Atlantic Corporation and/or LMS Acquisition Corporation.
Derailment	July 6, 2013 derailment in Lac-Mégantic, Quebec, including any and all events leading up to and related to such derailment and/or any and all consequences of such derailment, including, without limitation, the explosion, crude oil spill, fire and/or other consequences related to such derailment.
Derailment Claims	the Proof of Claims filed under Schedules 1, 2, 3, 4 and 5 pursuant to the Claims Procedure Order.
Distribution Date	the date or dates from time to time set in accordance with the provisions of the Plan to effect distributions in respect of the Proven Claims.
Effective Time	8:00 a.m. (Montreal time) on the Plan Implementation Date.
Estates	the MMA bankruptcy estate and, to the extent applicable, the MMAC estate.
Existing Agreements	The contracts between MMAC and/or MMA and some of the Released Parties, listed in Schedule D hereto.
Final Order	an order of the CCAA Court, the Class Action Court or the Bankruptcy Court that has not been reversed, vacated, amended, modified or stayed and is no longer subject to further appeals, either because the time to appeal has expired without an appeal being filed, or because it has been affirmed by any and all courts with jurisdiction to consider any appeals therefrom.
Filing Date	August 8, 2013.

Funds for Distribution	the net amount of the Settlement Funds following payment to the Canadian Professionals of their CCAA Court-approved professional fees and disbursements and of the U.S. Professionals Bankruptcy Court-approved administrative expenses, for each group of professionals respectively up to a maximum amount equal to the amount of their share of the Administration Charge Reserve.
Great American	Great American Insurance Company, together with its parents, subsidiaries, affiliates, officers and directors.
Great American Policy	that certain policy of insurance bearing number DML 9924 836 issued by Great American to MMAC.
Government Claims	has the meaning ascribed thereto in Section 3.5(e) hereof.
Hartford	The Hartford Casualty Insurance Company, together with its parents, subsidiaries, affiliates, officers and directors, but strictly as insurer under the Hartford Policy.
Hartford Policy	that certain policy of insurance bearing number 83 SBA PBO432 SA issued by Hartford to Rail World Inc.
Indemnity Claims	has the meaning ascribed thereto in Section 3.5(f) hereof.
Indemnity Fund	trust accounts into which the Settlement Funds shall be paid.
Indian Harbor	Indian Harbor Insurance Company, but strictly as insurer under the Indian Harbor Policy.
Indian Harbor Policy	insurance policy issued by Indian Harbor to MMA, bearing number RRL003723801.
Injunction and Release	an order by the CCAA Court and the Bankruptcy Court permanently and automatically releasing, enjoining and forbidding the enforcement, prosecution, continuation and/or commencement of any Claim that any Person or Claimant holds or asserts or may in the future hold or assert against any of the Released Parties or that, with the exception of any claims preserved pursuant to Section 5.3 hereof against any Third Party Defendants that are not also Released Parties, could give rise to a Claim against the Released Parties whether through a cross-claim, third-party claim, warranty claim, recursory claim, subrogation claim, forced intervention or otherwise, arising out of, in connection with and/or in any way related to the Derailment, the Policies, MMA, and/or MMAC. The Injunction and Release order shall provide that any and all Claims against the Released Parties be permanently and automatically compromised, discharged and extinguished, that all Persons and Claimants, whether or not consensually, shall be deemed to have granted full, final, absolute, unconditional, complete and definitive releases of any and all Claims to the Released Parties and shall be permanently and forever barred,

	estopped, stayed and enjoined from (i) pursuing any Claim, directly or indirectly, against the Released Parties, (ii) continuing or commencing, directly or indirectly, any action or other proceeding with respect to any Claim against the Released Parties, (iii) seeking the enforcement, levy, attachment, collection, contribution or recovery of or from any judgment, award, decree, or order against the Released Parties or property of the Released Parties with respect to any Claim, (iv) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or the property of the Released Parties with respect to any Claim, (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Approval Orders to the full extent permitted by applicable law, and (vi) asserting any right of setoff, compensation, subrogation, contribution, indemnity, claim or action in warranty or forced intervention, recoupment or avoidance of any kind against any obligations due to the Released Parties with respect to any Claim or asserting any right of assignment of or subrogation against any obligation due by any of the Released Parties. The Injunction and Release order shall provide that it has no effect on the rights and obligations provided by the "*Entente d'assistance financière découlant du sinistre survenu dans la ville de Lac-Mégantic*" signed on February 19, 2014 between Canada and the Province. Notwithstanding the foregoing, the "Injunction and Release" shall not extend to and shall not be construed as extending to Unaffected Claims.
Meeting	a meeting or meetings of the Creditors and Claimants to consider and vote on the Plan held pursuant to the Meeting Order and includes any meeting or meetings resulting from the adjournment thereof.
Meeting Order	an order of the CCAA Court directing the calling and holding of the Meeting.
MMA	Montreal, Maine & Atlantic Railway Ltd.
MMAC	Montreal, Maine & Atlantic Canada Co.
Monitor	Richter Advisory Group Inc. (Richter Groupe Conseil Inc.), in its capacity as Monitor in the CCAA Proceeding.
Non-Derailment Claims	has the meaning ascribed thereto in Section 3.5(g) hereof.

Person	means and includes an individual, a natural person or persons, a group of natural persons acting as individuals, a group of natural persons acting in collegial capacity (e.g., as a committee, board of directors, etc.), a corporation, partnership, limited liability company or limited partnership, a proprietorship, joint venture, trust, legal representative, or any other unincorporated association, business organization or enterprise, any government entity and any successor in interest, heir, executor, administrator, trustee, trustee in bankruptcy, or receiver of any person or entity.
Plan	This plan of compromise and arrangement in the CCAA Proceeding.
Plan Implementation Date	The Business Day on which the Monitor has filed with the CCAA Court the certificate contemplated in Section 6.2 hereof.
Plan Termination Date	January 29, 2016
Policies	the Indian Harbor Policy, the XL Policy, the Chubb Policy and the Hartford Policy
Property and Economic Damages Claims	has the meaning ascribed thereto in Section 3.5(c) hereof.
Proof of Claim	the form of Proof of Claim for Creditors as approved by the Claims Procedure Order.
Proven Claim	a Claim finally determined, settled or accepted for voting and distribution purposes in accordance with the provisions of this Plan or the Claims Resolution Order.
Province	the Attorney General for the Province of Quebec.
Rail World Parties	means (i) Rail World Holdings, LLC; (ii) Rail World, inc.; (iii) Rail World Locomotive Leasing LLC ("RWLL"); (iv) The San Luis Central R.R. Co.; (v) Pea Vine Corporation; (vi) LMS Acquisition Corporation; (vii) Earlston Associates L.P.; (viii) Montreal, Maine & Atlantic Corporation; and (ix) each of the shareholders, directors and officers or members or partners of the foregoing, to the extent they are not D&O Parties. For the avoidance of doubt, Rail World Parties also includes Edward Burkhardt, solely in his capacity as director, officer and shareholder of the Rail World Parties.
Released Parties	the Persons listed in Schedule "A" hereto.
Representation Order	the order rendered on March 28, 2014 in the CCAA Proceeding by the CCAA Court appointing, as representatives of the class members designated in the Class Action and for the purposes of the CCAA Proceeding, the Class Action Plaintiffs and the Class Counsel (as these terms are defined in said order).

Settlement Agreements	collectively, those agreements whereby Third Party Defendants undertake to make acceptable monetary contributions toward the Indemnity Fund in consideration for being included as Released Parties in the Plan. Individually referred to as a "Settlement Agreement".
Settlement Funds	the aggregate monetary contributions payable under the Settlement Agreements, including the XL Indemnity Payment and the XL Additional Payment, before potential recovery on claims assigned to MMAC and the Trustee by certain of the Released Parties, which monetary contributions are estimated, as of the date hereof, at one hundred eighty-two million three hundred thousand Canadian dollars (CAD$182,300,000.00) plus ~~eighty-nine million four hundred thousand US dollars (US$89,400,000.00)~~ one hundred ninety-eight million nine hundred thousand US dollars (US$198,900,000.00).
Subrogated Insurer Claims	has the meaning ascribed thereto in Section 3.5(d) hereof.
Third Party Defendants	any Person with a risk of liability arising out of or related to the Derailment, including, without limitation, the defendants to the Class Action and the Cook County Actions.
Trustee	Robert J. Keach, in his capacity as chapter 11 Trustee appointed in the Bankruptcy Case, or such other Person(s) as may be approved by the Bankruptcy Court in the future to serve in such capacity in the Bankruptcy Case.
Unaffected Claims	has the meaning given to that term in Section 3.3 hereof.
U.S. Approval Order	(i) an Order entered in the Bankruptcy Case sanctioning, approving and/or confirming the U.S. Plan or (ii) an order entered in the Bankruptcy Case pursuant to the applicable sections of chapter 15 of the Bankruptcy Code, which order sanctions, recognizes and enforces the terms of the Canadian Approval Order. In either case, a "U.S. Approval Order" must, among other things, (a) approve the Settlement Agreements; (b) authorize the parties to undertake the settlement and the transactions contemplated by the Settlement Agreements; and (c) order the Injunction and Release.
U.S. Plan	the plan of liquidation, to be filed by the Trustee (for and on behalf of MMA) in the Bankruptcy Case, which shall provide, among other things, for the distribution of the Funds for Distribution in accordance with this Plan, the Canadian Approval Order and U.S. Approval Order.
U.S. Professionals	the Trustee, the Trustee's professionals and Paul Hastings LLP as counsel for the Official Committee of Victims as defined in the order authorizing the appointment of a victims' committee entered in the Bankruptcy Case on October 18, 2013.

XL Companies	Indian Harbor and XL Insurance.
XL Additional Payment	USD $5 million.
XL Indemnity Payment	CAD $25 million.
XL Insurance	the Canadian Branch of XL Insurance Company SE (formerly XL Insurance Company Limited) but strictly as insurer under the XL Policy.
XL Policy	insurance policy issued by XL Insurance, bearing number RLC003808301.
XL Settlement Agreement	the agreement attached as Schedule "H" and executed among the XL Companies, MMAC and the Trustee providing for the payment of the XL Indemnity Payment and the XL Additional Payment, which shall constitute a Settlement Agreement within the meaning of Section 1.1.
Website	the website maintained by the Monitor in respect of the CCAA Proceedings pursuant to the Initial Order at the following web address: http://www.richter.ca/en/insolvency-cases/m/montreal-maine-and-atlantic-canada-co.
Wrongful Death Claims	has the meaning ascribed thereto in Section 3.5(a) hereof.
Wrongful Death Victims	the spouse or common law partner, child, parent, and sibling of the persons deceased as a result of the Derailment.

1.2 Certain Rules of Interpretation

For the purposes of this Plan:

(a) any reference in the Plan to an Order, agreement, contract, instrument, release, exhibit or other document means such Order, agreement, contract, instrument, release, exhibit or other document as it may have been or may be validly amended, modified or supplemented;

(b) the division of the Plan into "articles" and "sections" and the insertion of a table of contents are for convenience of reference only and do not affect the construction or interpretation of the Plan, nor are the descriptive headings of "articles" and "sections" intended as complete or accurate descriptions of the content thereof;

(c) unless the context otherwise requires, words importing the singular shall include the plural and *vice versa*, and words importing any gender shall include all genders;

(d) the words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including

but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;

(e) unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean local time in Montréal, Québec and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (Montréal time) on such Business Day;

(f) unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;

(g) unless otherwise provided, any reference to a statute or other enactment of parliament or a legislature includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation; and

(h) references to a specified "article" or "section" shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specified article or section of the Plan, whereas the terms "the Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to the Plan and not to any particular "article", "section" or other portion of the Plan and include any documents supplemental hereto.

1.3 Currency

Any Claims denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon exchange rate on the Filing Date.

1.4 Successors and Assigns

The Plan shall be binding upon and shall inure to the benefit of the heirs, administrators, executors, legal personal representatives, successors and assigns of any Person named or referred to in the Plan.

1.5 Governing Law

The Plan shall be governed by and construed in accordance with the laws of the Province of Québec and the federal laws of Canada applicable therein. All questions as to the interpretation or application of the Plan and all proceedings taken in connection with the Plan and its provisions shall be subject to the jurisdiction of the CCAA Court.

1.6 Schedules

The following Schedules to the Plan are incorporated by reference into the Plan and form part of the Plan:

Schedule "A"	List of Released Parties
Schedule "B"	Settlement Agreements
Schedule "C"	Draft Canadian Approval Order
Schedule "D"	List of Existing Agreements
Schedule "E"	Distribution mechanism with respect to the Wrongful Death Claims
Schedule "F"	Distribution mechanism with respect to the Bodily Injury and Moral Damages Claims
Schedule "G"	Distribution mechanism with respect to the Property and Economic Damages Claims
Schedule "H"	XL Settlement Agreement

The Settlement Agreements, save and except for the XL Settlement Agreement, shall not be attached to the copy of the Plan served on the interested parties and filed publicly with the CCAA Court or the Bankruptcy Court, and MMAC shall apply to the CCAA Court and Bankruptcy Court to have Schedule "B" filed on a sealed and confidential basis. The Settlement Agreements, save and except for the XL Settlement Agreement, shall not otherwise be made public in order to preserve the confidentiality of the settlements and terms therein.

ARTICLE 2
PURPOSE AND EFFECT OF THE PLAN

2.1 Purpose

The purpose of the Plan is:

(a) to effect a full, final and irrevocable compromise, release, discharge, cancellation and bar of all Affected Claims against the Released Parties;

(b) to effect the distribution of the Funds for Distribution and payment of the Proven Claims as set forth in Sections 4.2 and 4.3;

The Plan is put forward in the expectation that the Creditors, when considered as a whole, will derive a greater benefit from the implementation of the Plan than they would in the event of a bankruptcy of MMAC.

ARTICLE 3
CLASSIFICATION, VOTING AND RELATED MATTERS

3.1 Class of Creditors

The Creditors shall constitute a single class for the purposes of considering and voting on this Plan.

3.2 Claims Procedure

Creditors shall prove their respective claims, vote in respect of this Plan, and receive the distributions provided for under and pursuant to this Plan in accordance with the Claims Procedure Order, the Claims Resolution Order, the Meeting Order and this Plan. Any Person having a Claim that is not a Proven Claim is bound by such Orders, including that of being precluded from receiving a distribution under this Plan, and is forever barred and estopped from asserting such Claim against the Released Parties.

3.3 Unaffected Claims

Notwithstanding anything to the contrary herein, this Plan does not compromise, release, discharge, cancel, bar or otherwise affect:

(a) the rights or claims of the Canadian Professionals and the U.S. Professionals for fees and disbursements incurred or to be incurred for services rendered in connection with or relating to the CCAA Proceeding or the Bankruptcy Case, including the implementation of this Plan and the U.S. Plan.

(b) to the extent that there is, or may be, coverage for such Claims under any policy of insurance issued by Great American or any affiliate, including, without limitation, the Great American Policy, and only to the extent such coverage is actually provided, which coverage shall be assigned to the Trustee and MMAC and without any obligation on the part of the Rail World Parties or the D&O Parties to make any payment or contribution to supplement what is actually obtained by the Trustee or MMAC from such insurance policy (i) claims by MMAC or the Trustee (and only the Trustee, MMAC, their designee, or, to the extent applicable, the Estates) against the Rail World Parties and/or the D&O Parties; and (ii) claims by the holders of Wrongful Death Claims against Rail World, Inc., provided further, that any right or recovery by such holders of any right or recovery by such holders of Wrongful Death Claims pursuant to the action authorized by this subparagraph shall be, in all respects, subordinate to the claims of the Trustee and MMAC, and their successors under the Plan, in the above policies and (iii) claims by MMAC or the Trustee against the D&O Parties for any alleged breach of fiduciary duty or any similar claim based upon the D&O parties' authorization for payments to holders of notes and warrants issued pursuant to that certain Note and Warrant Purchase Agreement dated January 8, 2003 between MMA and certain noteholders (as amended from time to time) to the extent such payments arise from the sale of certain assets of MMA to the State of Maine.

(c) claims by MMAC and the Trustee under applicable bankruptcy and non bankruptcy law to avoid and/or recover transfers from MMA, MMAC or MMA Corporation to the holders of notes and warrants issued pursuant to that certain Note and Warrant Purchase Agreement dated as of January 8, 2003 between MMA and certain noteholders (as amended from time to time) to the extent such payments arise from the distribution of proceeds from the sale of certain assets of MMA to the State of Maine.

(d) claims or causes of action of any Person, including MMAC, MMA and the Released Parties (subject to the limitations contained in their respective

Settlement Agreements), against third parties other than any of the Released Parties (subject to paragraph 3.3(e)).

(e) claims or other rights preserved by any one of the Released Parties as set forth in Schedule A.

(f) MMAC's obligations under the Plan, the Settlement Agreements, and the Approval Orders;

(g) Claims against MMAC, except any Claims of the Released Parties other than Canada. However, subject to the Approval Orders becoming Final Orders, the Attorney General of Canada (i) has undertaken to irrevocably withdraw the Proof of Claim filed on behalf of Department of Transport Canada and the Proof of Claim filed on behalf of the Department of Public Safety and Emergency Preparedness, (ii) has agreed to the reallocation in favor of the Creditors of any and all dividends payable pursuant to this Plan or the U.S. Plan on the Proof of Claim filed on behalf of Canada Economic Development for Quebec Regions, as set forth in Section 4.3, and (iii) has agreed not to file any additional Proof of Claim under the CCAA Proceeding or the Bankruptcy Case;

(h) any liability or obligation of and claim against the Third Party Defendants, insofar as they are not Released Parties, of whatever nature for or in connection with the Derailment, including but not limited to the Class Action and the Cook County Actions;

(i) any Person for fraud or criminal and quasi-criminal charges filed or that may be filed and, for greater certainty, for any fine or penalty arising from any such charges;

(j) any claims that any of the Rail World Parties and the D&O Parties may have to seek recovery from any of their insurers for any attorneys' fees, expenses and costs they have incurred prior to the Approval Date.

(k) claims that fall under Section 5.1(2) of the CCAA, except that, in exchange for the consideration provided by or on behalf of the D&O Parties such D&O Parties shall benefit from the Injunction and Release with respect to any and all Claims related to the Derailment, to the exclusion of the Claims set forth in paragraph 3.3(b).

All of the foregoing rights and claims set out in this Section 3.3, inclusive, are collectively referred to as the "**Unaffected Claims**" and any one of them is an "**Unaffected Claim**".

3.4 Treatment of Creditors

The Creditors shall receive the treatment provided for in this Plan on account of their Claims and, on the Plan Implementation Date, the Affected Claims will be compromised, released and otherwise extinguished against the Released Parties in accordance with the terms of this Plan.

3.5 Voting Rights for Creditors

Subject to this Plan, the Claims Procedure Order, the Claims Resolution Order and the Meeting Order, each Creditor shall be entitled to vote and for voting purposes each of such Claims shall be valued at an amount that is equal to the Creditor's Proven Claim, the whole subject to the following:

(a) the aggregate of the votes of all Wrongful Death Victims having a Proven Claim for damages resulting from the death of a person as a consequence of the Derailment (for greater certainty, those Claims that fall under Schedule 1 of the Proof of Claim and were recognized as such or that were filed in the Bankruptcy Case) (collectively, the "**Wrongful Death Claims**" and, individually, a "**Wrongful Death Claim**") shall represent no more than 22.2% in value of all votes cast by Creditors;

(b) the aggregate of the votes of all Creditors having a Proven Claim relating to the Derailment for damages resulting from bodily injuries suffered by themselves or another person and, without limitation, all claims for moral damages (for greater certainty, those Claims that fall under Schedules 2 and 3(a) of the Proof of Claim and were recognized as such or determined to be Bodily Injury and Moral Damages Claims or that were filed in the Bankruptcy Case) (collectively, the "**Bodily Injury and Moral Damages Claims**" and, individually, a "**Bodily Injury and Moral Damages Claim**") shall represent no more than 11.1% in value of all votes cast by Creditors;

(c) the aggregate of the votes of all Creditors having a Proven Claim relating to the Derailment for damages suffered by an individual or a business not resulting from bodily injuries or death of a person (for greater certainty, those Claims that fall under Schedules 3(a) and 3(b) of the Proof of Claim and were recognized as such or that were filed in the Bankruptcy Case) (collectively, the "**Property and Economic Damages Claims**" and, individually, a "**Property and Economic Damages Claim**") shall represent no more than 8.3% in value of all votes cast by Creditors;

(d) the aggregate of the votes of all Creditors having a Proven Claim in their capacity as subrogated insurers for claims directly resulting from the Derailment (for greater certainty, those Claims that fall under Schedule 4 of the Proof of Claim and were recognized as such) (collectively, the "**Subrogated Insurer Claims**" and, individually, a "**Subrogated Insurer Claim**") shall represent no more than 3.8% in value of all votes cast by Creditors;

(e) the aggregate of the votes of all government entities or municipalities having a Proven Claim relating to the Derailment (for greater certainty, those claims that fall under Schedule 5 of the Proof of Claim and were recognized as such) (collectively, the "**Government Claims**" and, individually, a "**Government Claim**") shall represent no more than 48.5% in value of all votes cast by Creditors;

(f) Creditors having a Proven Claim relating to the Derailment for contribution or indemnity (for greater certainty, those claims that fall under Schedule 6 of the Proof of Claim and were recognized as such) (collectively, the "**Indemnity**

Claims" and, individually, an "**Indemnity Claim**") shall represent 0% in value of all votes cast by Creditors.

(g) Creditors having filed a Proof of Claim for damages unrelated to the Derailment (for greater certainty, those claims that fall under Schedule 7 of the Proof of Claim and were recognized as such) (collectively, the "**Non-Derailment Claims**" and, individually, a "**Non-Derailment Claim**") shall represent no more than 6.1% in value of all votes cast by Creditors.

3.6 Interest

Interest shall not accrue or be paid on any Claim from and after the Filing Date.

3.7 Duplicate Claims

A Creditor who has a Claim against more than one of MMAC, MMA or the Released Parties or has filed or is deemed to have filed claims both in the Bankruptcy Case and the CCAA Proceeding, in respect of the same debt or obligation, shall only be entitled to assert one Claim in respect of such debt or obligation, and any duplicate Claim filed by such Creditor will be disallowed for voting and distribution purposes under this Plan and the U.S. Plan so that only a single Claim remains under which said Creditors can exercise distribution rights.

ARTICLE 4
DISTRIBUTIONS

4.1 Contributions to the Indemnity Fund

Each of the Released Parties shall deliver to the Monitor the monies necessary to fully fund that amount of the Indemnity Fund which it is obligated to pay pursuant to the Settlement Agreements within such delay as has been agreed to pursuant to the Settlement Agreements and in any event within no more than 30 days after they have received written notice from the Monitor and the Trustee certifying that the Approval Orders become Final Orders, and such monies shall be held by the Monitor in trust in one or more interest bearing accounts and distributed by the Monitor in accordance with the terms of this Plan. Should this Plan be terminated for any reason in accordance with Section 6.3 or 8.3, such monies shall be returned by the Monitor, with any interest earned thereon, forthwith to the respective parties having contributed such monies. For greater certainty, any contributions to the Indemnity Fund received by the Monitor that are in U.S. Dollars shall be held by the Monitor in trust in U.S. Dollars and converted into Canadian Dollars on the Plan Implementation Date (save and except the portion to be remitted to the Trustee pursuant to Section 4.2(a)) and any contributions to the Indemnity Fund received by the Monitor that are in Canadian Dollars shall be held by the Monitor in trust in Canadian Dollars and not converted into U.S. Dollars.

4.2 Distribution to Creditors

The following Creditors having Proven Claims shall be entitled to distribution under this Plan as follows:

(a) Creditors having Wrongful Death Claims shall, in the aggregate, receive 24.1% of the Funds for Distribution in full and final satisfaction of their Proven Claims as against the Released Parties. This amount will be remitted by the Monitor to the Trustee to fund a trust dedicated to the distribution to the Creditors having Wrongful Death Claims in accordance with the mechanism set forth in Schedule E hereto.

(b) Creditors having Bodily Injury and Moral Damages Claims shall, in the aggregate, receive 10.4% of the Funds for Distribution in full and final satisfaction of their Proven Claims as against the Released Parties. This amount will be distributed by the Monitor in accordance with the mechanism set forth in Schedule F hereto.

(c) Creditors having Property and Economic Damages Claims shall, in the aggregate, receive 9.0% of the Funds for Distribution in full and final satisfaction of their Proven Claims as against the Released Parties. This amount will be distributed by the Monitor in accordance with the mechanism set forth in Schedule G hereto.

(d) Creditors having Subrogated Insurer Claims shall, in the aggregate, receive 4.1% of the Funds for Distribution in full and final satisfaction of their Proven Claims as against the Released Parties. This amount will be distributed by the Monitor on a *pro rata* basis amongst the Creditors having Subrogated Insurer Claims.

(e) Creditors having Government Claims shall, in the aggregate, receive 52.4% of the Funds for Distribution in full and final satisfaction of their Proven Claims as against the Released Parties. This amount will be distributed by the Monitor on a *pro rata* basis amongst the Province, the City of Lac-Mégantic, the Attorney General of Canada (on behalf of Canada Economic Development for Quebec Regions) and the Commission de la Santé et de la Sécurité au Travail (CSST). For the purpose of this Plan, the Proven Claims of the Province, the City of Lac-Mégantic, the Federal Government of Canada (Economic Development of Canada, Quebec Regions) and the Commission de la Santé et de la Sécurité au Travail (CSST) are evaluated and established as follows:

(i) Province: CAD$409,313,000 (or ~~94~~89.9% of the Government Claims)

(ii) The City of Lac-Mégantic: ~~CAD$5,000,000~~CAD$20,000,000 (or 4.4% of the Government Claims)

(iii) The Attorney General of Canada (on behalf of Canada Economic Development for Quebec Regions): CAD$21,000,000 (or ~~4.8%~~4.6% of the Government Claims)

(iv) CSST: CAD$~~313,775~~4,915,257 (or ~~0.1%~~1.1% of the Government Claims)

For greater certainty, Creditors having Indemnity Claims and Non-Derailment Claims shall not be entitled to distribution under this Plan or the U.S. Plan in relation to the Indemnity Fund and shall have no right to any portion of the Funds for Distribution. However, the Creditors having Non-Derailment Claims against MMAC will be entitled to

distribution under the U.S. Plan, in accordance with its terms from any available net proceeds of the liquidation of MMA's assets.

Notwithstanding the foregoing, in the event that, following the review of the Property and Economic Damages Claims pursuant to the Claims Resolution Order, the aggregate value of the Property and Economic Damages Claims is reduced below $75 million, the distribution related to the difference between the amount of $75 million and the revised aggregate value of these claims ("Economic Savings") will be allocated ~~on a pro-rata basis to the value of the claims in the other categories described in Sections 4.2 (a) (b) (d) and (e)~~ as follows:

i. Firstly, an amount of up to $884,000 to permit a payment of up to $17,000 to each of the grandparents and grandchildren of the deceased, in which case the grandparents and grandchildren will be removed from Schedule "F" and included in paragraph 7 of Schedule "E";

ii. Secondly, an amount of Economic Savings to permit the increase of the overall carve-out for parents, siblings, grandparents and grandchildren to increase from 5% up to the equivalent of 12.5%;

iii. Thirdly, on a pro-rata basis, to the value of the claims in the other categories described in Sections 4.2 (a) (b) (d) and (e).

For greater certainty, the total allocation of Economic Savings to increase the allocation to parents, siblings, grandparents and grandchildren to 12.5% in the wrongful death category shall not exceed $5.1 million.

4.3 Additional Distributions to Creditors

With the agreement of the Province and the Federal Government of Canada (Economic Development of Canada, Quebec Region), any and all amounts payable pursuant to this Plan:

(a) to the Province out of the XL Indemnity Payment (estimated at CAD~~$13,735,000~~13,383,000);

(b) to the Attorney General of Canada (on behalf of Canada Economic Development for Quebec Regions) (estimated at CAD~~$6,936,000~~9,909,589);

(collectively, the "**Reallocated Dividends**")

will be distributed to the Creditors having Proven Claims in respect of (i) Wrongful Death Claims, (ii) Bodily Injury and Moral Damages Claims and (iii) Property and Economic Damages Claims in accordance with the percentages set forth in subsection 4.2 (a) (b) and (c) hereof, namely:

(i) 53.3% of the Reallocated Dividends will be distributed to the Creditors having Wrongful Death Claims;

(ii) 26.7% of the Reallocated Dividends will be distributed to Creditors having Bodily Injury and Moral Damages Claims; and

(iii) 20.0% of the Reallocated Dividends will be distributed to Creditors having Property and Economic Damages Claims.

4.4 Timing of Distributions to Creditors

The Monitor shall hold the Settlement Funds in trust pending distribution thereof in accordance with the terms of this Plan and the Settlement Agreements, as applicable. Within 45 calendar days following the Plan Implementation Date, and receipt by the Monitor of any applicable tax ruling or clearance certificate, the Monitor shall make distributions to or on behalf of Creditors (including, without limitation, to the Trustee in accordance with Section 4.2(a) or to the Creditors' Representative Counsel in accordance with Section 4.5, to be held by such Representative Counsel in trust for such Creditors) in accordance with the terms of this Plan.

4.5 Delivery of Distributions to Creditors

Distributions to Creditors shall be made in accordance with the terms of this Plan, as applicable, by the Monitor: (A) at the addresses set forth in the Proofs of Claim filed by such Creditors in accordance with the Claims Procedure Order; (B) if applicable, at the addresses set forth in any written notices of address change delivered to the Monitor after the date on which any corresponding proof of claim was filed, provided such notice is received by the Monitor at least five (5) Business Days prior to the Plan Implementation Date; or (C) if applicable, and to the extent differing from the foregoing, at the address of such Creditors' respective legal representatives (the "**Representative Counsel**"), in trust for such Creditors, subject to the receipt by the Monitor at least five (5) business days prior to the Plan Implementation Date of a written instruction to that effect from said Creditors, it being understood that the class members in the Class Action, to the extent they have not sent an Opt-Out Notice (as these terms are defined in the Representation Order) within the prescribed delay, shall be deemed represented by the Class Counsel (as these terms are defined in the Representation Order) and said Class Counsel shall be considered as Representative Counsel duly authorized to receive the above-mentioned distribution in trust for all such class members. For greater certainty, and without limiting the foregoing:

(i) With respect to the distributions to be made under this Plan to Representative Counsel, any disputes among the Creditors they represent and Representative Counsel with respect to the timing, allocation, quantum or other terms of the payment of the monies in question by Representative Counsel to and among those Creditors shall have no bearing or effect on the releases set out in the Settlement Agreements or this Plan, including, without limitation, the releases and injunctions in favour of the Released Parties (whether pursuant to the Settlement Agreements, the Plan, the U.S. Plan, the Approval Orders, or otherwise); and

(ii) this Plan shall be effective and binding as and when set out in Section 6.2, and the fact that one or more of the Representative Counsel may be required or elect to commence or pursue further steps or proceedings or to otherwise resolve additional matters, issues or things

subsequent to the Plan Implementation Date in order to be lawfully entitled to make distributions to the Creditors they represent (including, without limitation, obtaining the approval by any Court of the payment of their respective professional fees and disbursements from the distributions in question) shall have no bearing or effect on the Settlement Agreements, this Plan, the U.S. Plan, or the Approval Orders, irrespective of the timing and outcome of such further steps and proceedings.

4.6 Allocation of Distributions

All distributions made to Creditors in respect of Proven Claims pursuant to this Plan shall be applied first in payment of the outstanding principal amount of the Proven Claim and only after the principal portion of any such Proven Claim is satisfied in full, to any portion of such Proven Claim comprising accrued and unpaid interest (but solely to the extent that interest is an allowable portion of such Proven Claim pursuant to this Plan or otherwise). In the event that the principal amount of all Proven Claims has been paid in full, each Creditor shall, at the request of the Monitor, be responsible for providing a representation and warranty with respect to its residency for purposes of the *Income Tax Act* (Canada). If any Creditor fails to provide satisfactory evidence that it is a resident of Canada for purposes of the *Income Tax Act* (Canada), then the Monitor shall have the right to:

(i) assume and otherwise consider such Creditor to be a non-resident of Canada for the purposes of the *Income Tax Act* (Canada); and

(ii) withhold any non-resident withholding tax that would be imposed under the *Income Tax Act* (Canada) based on such assumption from any amounts payable to such Creditor under this Plan,

until such time as such Creditor provides satisfactory evidence to the contrary to the Monitor, unless the non-resident withholding tax has already been remitted to the Canada Revenue Agency. For greater certainty, the distributions to be made pursuant to this Plan to Creditors having Proven Claims do not include, and are not intended to include, any amounts on account of interest on such Claims.

4.7 Transfer of Claims; Record Date for Distributions

Claims may be sold, transferred or assigned at any time by the holder thereof, whether prior or subsequent to the Plan Implementation Date, provided that:

(i) Neither MMAC nor the Monitor shall be obligated to deal with or to recognize the purchaser, transferee or assignee of the Claim as the Creditor in respect thereof unless and until written notice of the sale, transfer or assignment is provided to the Monitor, such notice to be in form and substance satisfactory to the Monitor, acting reasonably within five (5) Business Days prior to the Plan Implementation Date

(ii) only holders of record of Claims as at the date of the Meeting Order shall be entitled to attend, vote or otherwise participate at such meeting of Creditors; provided, however, that: (A) for the purposes of determining whether this Plan has been approved by a majority in number of the

Creditors only the vote of the transferor or the transferee, whichever holds the highest dollar value of such Claims will be counted, and, if such value shall be equal, only the vote of the transferee will be counted; and (B) if a Claim has been transferred to more than one transferee, for purposes of determining whether this Plan has been approved by a majority in number of the Creditors, only the vote of the transferee with the highest value of such Claim will be counted; and

(iii) only holders of record of Claims as at five (5) Business Days prior to the Plan Implementation Date shall have the right to participate in the corresponding distribution provided for under Section 4.2 of this Plan.

ARTICLE 5
RELEASES AND INJUNCTIONS

5.1 Plan Releases and Injunctions

All Affected Claims shall be fully, finally, absolutely, unconditionally, completely, irrevocably and forever compromised, remised, released, discharged, cancelled and barred on the Plan Implementation Date as against the Released Parties.

All Persons (regardless of whether or not such Persons are Creditors or Claimants) shall be permanently and forever barred, estopped, stayed and enjoined from (i) pursuing any Claim, directly or indirectly, against the Released Parties, (ii) continuing or commencing, directly or indirectly, any action or other proceeding with respect to any Claim against the Released Parties, or with respect to any claim that, with the exception of any claims preserved pursuant to Section 5.3 hereof against any Third Party Defendants that are not also Released Parties, could give rise to a Claim against the Released Parties whether through a cross-claim, third-party claim, warranty claim, recursory claim, subrogation claim, forced intervention or otherwise, (iii) seeking the enforcement, levy, attachment, collection, contribution or recovery of or from any judgment, award, decree, or order against the Released Parties or property of the Released Parties with respect to any Claim, (iv) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any lien or encumbrance of any kind against the Released Parties or the property of the Released Parties with respect to any Claim, (v) acting or proceeding in any manner, in any place whatsoever, that does not conform to or comply with the provisions of the Approval Orders to the full extent permitted by applicable law, (vi) asserting any right of setoff, compensation, subrogation, contribution, indemnity, claim or action in warranty or forced intervention, recoupment or avoidance of any kind against any obligations due to the Released Parties with respect to any Claim or asserting any right of assignment of or subrogation against any obligation due by any of the Released Parties with respect to any Claim, and (vii) taking any actions to interfere with the Implementation or consummation of this Plan; provided, however, that the foregoing shall not apply to the enforcement of any obligations under the Plan.

Notwithstanding the foregoing, the Plan Releases and Injunctions as provided in this Section 5.1 (i) shall have no effect on the rights and obligations provided by the "*Entente d'assistance financière découlant du sinistre survenu dans la ville de Lac-Mégantic*" signed on February 19, 2014 between Canada and the Province, (ii) shall not extend to

and shall not be construed as extending to any Unaffected Claims.

5.2 Timing of Releases and Injunctions

All releases and injunctions set forth in this Article 5 shall become effective on the Plan Implementation Date at the Effective Time.

5.3 Claims against Third Party Defendants

~~Any~~Notwithstanding anything to the contrary herein, any Claim of any Person, including MMAC and MMA, against the Third Party Defendants that are not also Released Parties: (a) is unaffected by this Plan; (b) is not discharged, released, cancelled or barred pursuant to this Plan; (c) shall be permitted to continue as against said Third Party Defendants; (d) shall not be limited or restricted by this Plan in any manner as to quantum to the extent that there is no double recovery as a result of the indemnification received by the Creditors or Claimants pursuant to this Plan; and (e) does not constitute an Affected Claim under this Plan. For greater certainty, and notwithstanding anything else contained herein, in the event that a Claim is asserted by any Person, including MMAC and MMA, against any Third Party Defendants that are not also Released Parties any and all right(s) of such Third Party Defendants to claim over, claim against or otherwise assert or pursue any rights or any Claim against any of the Released Parties at any time, shall be released and discharged and forever barred pursuant to the terms of this Plan and the Approval Orders.

ARTICLE 6
CONDITIONS PRECEDENT AND IMPLEMENTATION

6.1 Conditions Precedent to Implementation of Plan

The implementation of this Plan shall be conditional upon the fulfillment, or waiver (strictly with respect to Sections 6.1(e) and (f)), of the following conditions on or before the Plan Implementation Date:

(a) Entry of the Canadian Approval Order

The Canadian Approval shall have been granted by the CCAA Court, including the granting by the CCAA Court of its approval of the compromises, releases and injunctions contained in and effected by this Plan.

(b) Confirmation by the Trustee of the entry of the U.S. Approval Order

The Trustee shall have confirmed in writing to the Monitor that the U.S. Approval Order has been granted by the Bankruptcy Court, including the granting by the Bankruptcy Court of its approval of the compromises, releases and injunctions contained in and effected by this Plan.

(c) Entry of the Class Action Order

The Class Action Order shall have been granted by the Superior Court, Province of Quebec.

(d) Expiry of Appeal Periods

The Canadian Approval Order and the Class Action Order shall have become Final Orders and the Trustee shall have confirmed in writing to the Monitor that the U.S. Approval Order has become a Final Order.

(e) Contributions

Each of the Released Parties shall have paid to the Monitor the amounts payable by it pursuant to its Settlement Agreement, in accordance with the terms of the Settlement Agreements.

(f) Completion of Necessary Documentation

MMAC, the Monitor and the Trustee, as applicable, shall have obtained the execution and delivery by all relevant Persons of all agreements, settlements, resolutions, indentures, releases, documents and other instruments that are necessary to be executed and delivered to implement and give effect to all material terms and provisions of this Plan and the Settlement Agreements.

6.2 Monitor's Certificate

Upon the satisfaction of the conditions set out in Section 6.1 hereof, the Monitor shall file with the CCAA Court in the CCAA Proceeding and with the Trustee a certificate that states that all conditions precedent set out in Section 6.1 of this Plan have been satisfied and that the Plan Implementation Date has occurred.

6.3 Termination of Plan for Failure to Become Effective

If the Plan Implementation Date shall not have occurred on or before the Plan Termination Date, then, subject to further Order of the CCAA Court and the Bankruptcy Court, as applicable, this Plan shall automatically terminate and be of no further force or effect; provided that this Plan shall not automatically terminate pursuant to this section if the sole basis for the non-occurrence of the Plan Implementation Date is the pendency of any appeal or application for leave to appeal with respect to the Approval Orders.

ARTICLE 7
ADMINISTRATION CHARGE

7.1 Administration Charge and Administration Charge Reserve

The Settlement Funds, to the exclusion of the XL Indemnity Payment, up to a maximum of CAD$20 million, plus any applicable sales taxes for the Canadian Professionals (the "**Administration Charge Reserve**"), shall upon the Effective Time on the Plan Implementation Date be subject to an administration charge in favour of the Canadian Professionals and shall constitute a carveout in favour of the U.S. Professionals in order

to secure the payment of the fees, disbursements and entitlements owed or to be owed to them for the services rendered by them in connection with or relating to the CCAA Proceeding and the Bankruptcy Case (the "**Administration Charge**"). 60% of the Administration Charge Reserve shall be for the benefit of the Canadian Professionals and 40% shall be for the benefit of the U.S. Professionals. These funds shall be distributed to the Canadian Professionals pursuant to an order of the CCAA Court and to the U.S. Professionals pursuant to an order of the Bankruptcy Court. The Administration Charge shall rank in priority to any and all other hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances, security or rights of whatever nature or kind or deemed trusts affecting the Settlement Funds, if any. The Administration Charge and the Administration Charge Reserve are established on the basis of incurred fees and disbursements as well as on an estimate of fees, disbursements and entitlements for which the Canadian Professionals and the U.S. Professionals could seek Court approval and are based on the Settlement Funds as presently constituted. The balance of the Administration Charge Reserve, if any, after payment of all fees, disbursements and entitlements of the Canadian Professionals and U.S. Professionals, shall form part of the Indemnity Fund, for distribution in accordance with the Plan.

ARTICLE 8
GENERAL

8.1 Binding Effect

On the Plan Implementation Date:

(a) the Plan will become effective at the Effective Time;

(b) the Plan shall be final and binding in accordance with its terms for all purposes on all Persons named or referred to in, or subject to the Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns; and

(c) each Person named or referred to in, or subject to, the Plan will be deemed to have consented and agreed to all of the provisions of the Plan, in its entirety and shall be deemed to have executed and delivered all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

8.2 Deeming Provisions

In the Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

8.3 Non-Consummation

If the Approval Orders are not issued or if the Plan Implementation Date does not occur before the Plan Termination Date, (a) the Plan shall be null and void in all respects, (b) any settlement or compromise embodied in the Plan or any Settlement Agreement, including the fixing or limiting to an amount certain any Claim, and any document or agreement executed pursuant to the Plan shall be deemed null and void, and (c) nothing contained in the Plan, and no acts taken in preparation for consummation of the Plan,

shall (i) constitute or be deemed to constitute a waiver or release of any Claims by or against the Released Parties or any other Person; (ii) prejudice in any manner the rights of the Released Parties or any other Person in any further proceedings involving MMAC and/or the Derailment; or (iii) constitute an admission of any sort by the Released Parties or any other Person.

8.4 Plan Amendment

MMAC reserves the right, at any time prior to the Plan Implementation Date, to amend, modify and/or supplement this Plan, provided that:

(i) any amendment, modification or supplement to Articles 5 and 6 (including any defined terms contained therein) as well as any amendment, modification or supplement made to any other Article which affects the rights of Released Parties under their respective Settlement Agreement(s), may be made only with the written consent of the Released Parties or the affected Released Party, as the case may be, which can be provided at their sole discretion.

(ii) any such amendment, modification or supplement must be contained in a written document that is filed with and approved by the CCAA Court, and must be discussed in advance with, and not objected to by the Released Parties and, if made following the Meeting, communicated to such of the Creditors and in such manner, if any, as may be ordered by the CCAA Court;

(iii) any amendment, modification or supplement may be made unilaterally by MMAC following the Approval Orders, provided that it concerns a matter which, in the opinion of MMAC and the Monitor, acting reasonably, is of an administrative nature required to better give effect to the implementation of this Plan and to the Approval Orders and is not adverse to the financial or economic interests of the Creditors or the Released Parties; and

(iv) any supplementary plan or plans of compromise or arrangement filed with the CCAA Court by MMAC and, if required by this Section 8.4, approved by the CCAA Court shall, for all purposes, be and be deemed to be a part of and incorporated in this Plan.

8.5 Severability

In the event that any provision in this Plan (other than Articles 5 and 6 and all defined terms contained therein or any other provision herein that would materially adversely affect the rights of any of the Released Parties under their respective Settlement Agreement(s), or requires any Released Party to pay more than the sum set forth in their respective Settlement Agreement(s)) is held by the CCAA Court to be invalid, void or unenforceable, the CCAA Court shall, following due notice to the parties in interest and a hearing on the issue, have the power to alter and interpret such term or provision to make it valid and enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered and interpreted.

Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Canadian Approval Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable pursuant to its terms, as same may be recognized, enforced and given effect by the U.S. Approval Order.

8.6 Paramountcy

From and after the Plan Implementation Date, any conflict between: (A) this Plan; and (B) any information summary in respect of this Plan, or the covenants, warranties, representations; terms, conditions, provisions or obligations, express or implied, of any contract, mortgage, security agreement, indenture, loan agreement, commitment letter, document or agreement, written or oral, and any and all amendments and supplements thereto existing between MMAC and any Creditor, Released Party or other Person as at the Plan Implementation Date will be deemed to be governed by the terms, conditions and provisions of this Plan and the Approval Orders, which shall take precedence and priority. Notwithstanding the foregoing, the rights and duties of the parties under each of the Settlement AgreementAgreements are set forth in and shall be governed by thesaid Settlement AgreementAgreements. More particularly, the Plan Releases and Injunctions shall be in addition to and are intended to supplement any releases included in the Settlement Agreements as between the parties to such Settlement Agreements. In the event of any inconsistency between this Plan or the Approval Orders and thea Settlement AgreementAgreements, the terms of said Settlement AgreementAgreements will apply with respect to the rights and obligations of the parties thereto, as between themselves.

8.7 Responsibilities of the Monitor

The Monitor is acting in its capacity as Monitor in the CCAA Proceeding, and the Monitor will not be responsible or liable for any obligations of MMAC hereunder. The Monitor will have only those powers granted to it by this Plan, by the CCAA and by any Order of the CCAA Court in the CCAA Proceeding, including the Initial Order.

8.8 Unclaimed Distributions

If any Person entitled to a cash distribution pursuant to this Plan cannot be located on the Plan Implementation Date or at any time thereafter or otherwise fails to claim his/her/its distribution hereunder, then such cash or cash equivalent instruments shall be set aside and held in a segregated, non-interest-bearing account to be maintained by the Monitor on behalf of such Person. If such Person is located within six (6) months of the Plan Implementation Date, such cash (less the allocable portion of taxes (including withholding taxes), if any, paid by MMAC on account of such Person) and proceeds thereof, shall be paid or distributed to such Person. If such Person cannot be located within six (6) months of the Plan Implementation Date, any such cash, and interest and proceeds thereon, shall be remitted by the Monitor to a charitable association of its choice (if possible, in the Monitor's sole appreciation, dedicated to providing assistance to the victims of the Derailment), and such Person shall be deemed to have released its claim to such monies; provided, however, that nothing contained in this Plan shall require MMAC or the Monitor to attempt to locate such Person. Any distribution cheques

that have not been negotiated within three (3) months of issuance shall be cancelled by the Monitor, and any right or entitlement to such distribution shall be treated as an unclaimed cash or distribution pursuant to this Section 8.8.

8.9 Notices

Any notice or other communication to be delivered hereunder must be in writing and reference the Plan and may, subject as hereinafter provided, be made or given by personal delivery, ordinary mail or by facsimile or email addressed to the respective parties as follows:

(a) If to MMAC

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

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

(b) If to the Monitor:

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

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

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

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

(c) If to the Trustee:

Robert J. Keach, Esq. (rkeach@bernsteinshur.com)
Bernstein Shur Sawyer & Nelson
100 Middle Street
P.O. Box 9729
Portland, ME 04104-5029
Fax: 207-774-1127

or to such other address as any party may from time to time notify the others in accordance with this section. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if

delivered, or on the day of faxing or emailing, provided that such day in either event is a Business Day and the communication is so delivered, faxed or emailed before 5:00 p.m. (Montréal time) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

8.10 Further Assurances

MMAC and any other Person named or referred to in the Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of the Plan and to give effect to the transactions contemplated herein.

8.11 No Preference

Sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 shall not apply to this Plan, save and except insofar as they may allow for the preservation or enforcement of (i) any claim brought or that could be brought in the future by the Trustee or MMAC (and only the Trustee, MMAC, their designee, or, to the extent applicable, the Estates) against the Rail World Parties and/or the D&O Parties but only to the extent that there is, or may be, insurance coverage for such claims under any policy of insurance issued by Great American, including, without limitation, the Great American Policy, and (ii) claims by the Trustee or MMAC (and only the Trustee, MMAC, their designee, or, to the extent applicable, the Estates) under applicable bankruptcy and non-bankruptcy law to avoid and/or recover transfers from MMA, MMAC or Montreal, Maine & Atlantic Corporation to the holders of notes and warrants issued pursuant to that certain Note and Warrant Purchase Agreement dated as of January 8, 2003 between MMA and certain noteholders (as amended from time to time) to the extent any such transfers arise from the distribution of proceeds from the sale of certain assets of MMA to the State of Maine, including any claims by or on behalf of the Trustee or the Estates against any of the D&O Parties for any alleged breach of fiduciary duty or any similar claim based upon the D&O Parties' authorization for payment of such notes, but any such breach of fiduciary duty or any similar claim shall be limited to recovery from the insurer under any policy of insurance issued by Great American, including, without limitation, the Great American Policy.

8.12 No Admission

Notwithstanding anything herein to the contrary, nothing contained in this Plan shall be deemed as an admission by the Released Parties with respect to any matter set forth herein including, without limitation, liability on any Claim.

DATED as of the ~~31st~~8th day of ~~March~~June, 2015

EXHIBIT B – Part 2

Schedule "A" List of Released Parties

PLAN OF COMPROMISE AND ARRANGEMENT

concerning, affecting and involving

MONTREAL, MAINE & ATLANTIC CANADA CO.

SCHEDULE A TO THE PLAN OF COMPROMISE AND ARRANGEMENT OF MONTREAL, MAINE & ATLANTIC CANADA CO.
List of Released Parties

The list below consists of the parties who have executed settlement agreements with Montreal Maine & Atlantic Canada Co. ("MMAC") and Robert J. Keach in his capacity as Chapter 11 Trustee of Montreal, Maine & Atlantic Railway Ltd. (the "Trustee"); Nothing in this list shall supersede, effect, modify or amend any such settlement agreement and to the extent of any conflict between the descriptions in this list and any such settlement agreement, the settlement agreement shall govern. All such settlement agreements are subject to court approval and other conditions, and the inclusion of any person or entity on this list does not create or imply the release of such person or entity from any claim; in all respects, the settlement agreements, and the court orders pertaining to the settlement agreements, shall govern. The term "Affiliate" used in this Schedule "A" means with respect to any entity, all other entities directly or indirectly controlling, controlled by, or under direct or indirect common control with such entity. The other capitalized terms used herein have the meaning ascribed to them in the Plan. The Released Parties are as follows:

1. **Devlar Energy Marketing LLC together with their parents Lario Oil & Gas Company and Devo Trading & Consulting Company (collectively "Devlar"),** as well as their subsidiaries, Affiliates and each of their former and current respective employees, officers and directors, successors and permitted assignees, attorneys and insurers, (including St. Paul Fire and Marine Insurance Company and its direct and indirect parents, subsidiaries and Affiliates), but only to the extent of coverage afforded to Devlar by such insurers in relation to the Derailment.

2. **Oasis Petroleum Inc. and Oasis Petroleum LLC (jointly, "Oasis"),** together with their parents, subsidiaries, Affiliates and each of their former and current respective employees, officers and directors, successors and permitted assignees, attorneys and insurers (including St. Paul Fire and Marine Insurance Company and its direct and indirect parents, subsidiaries and affiliates) but only to the extent of coverage afforded to Oasis by such insurers in relation to the Derailment, as well as the entities identified in

Schedule 2 hereto but strictly as non-operating working interest owners or joint venturers in the specific Oasis-operated wells that produced oil that was provided and supplied by Oasis that was transported in the train involved in the Derailment.

3. **Inland Oil & Gas Corporation, Whiting Petroleum Corporation, Enerplus Resources (USA) Corporation, Halcón Resources Corporation, Tracker Resources, Kodiak Oil & Gas Corp. (now known as Whiting Canadian Holding Company, ULC) and Golden Eye Resources LLC**, together with each of their respective parents, subsidiaries, Affiliates, and each of their former and current respective employees, officers, directors, successors and permitted assignees and attorneys, but strictly as non-operating working interest owners or joint venturers in any wells that produced oil that was provided, supplied and transported in the train involved in the Derailment.

4. **Arrow Midstream Holdings CCC**. ("**Arrow**") together with its parents, subsidiaries, Affiliates, successors, officers, directors, principals, employees, attorneys, accountants, representatives, and insurers. For the avoidance of doubt, Arrow shall include its current parent Crestwood Midstream Partners LP; and insurers mean only those insurers who have issued liability insurance policies to or in favor of Arrow actually or potentially providing insurance for Claims against Arrow arising from or relating to the Derailment, including without limitation, Commerce and Industry Insurance Company under policy no. 3023278 and National Union Fire Insurance Company of Pittsburg, Pa. under policy no. 41131539.

5. **Marathon Oil Company ("Marathon")**, together with its parent, subsidiaries, successors and assigns, Affiliates, officers, directors, principals, employees, attorneys, accountants, representatives, insurers (to the extent strictly limited to coverage afforded to Marathon in relation to the Derailment), as well as the entities identified in schedule 5 attached hereto, but strictly as non-operating working interest owners or joint venturers in the specific Marathon-operated wells that produced and supplied oil that was transported on the train involved in the Derailment. For the avoidance of doubt, insurers, as used in this definition, shall include all insurers that issued liability policies to or for the benefit of Marathon and that actually or potentially provided coverage for Claims relating to or

arising from the Derailment, including, but not limited to, Yorktown Assurance Corporation policy number XSL-7-2013 and Old Maine Assurance Ltd. (reinsurance Agreement).

6. **QEP Resources, Inc. ("QEP")**, together with its parents, subsidiaries, Affiliates, successors and assigns, officers, directors, principals, employees, attorneys, accountants, representatives, insurers (to the extent strictly limited to coverage afforded to QEP in relation to the Derailment), as well as those entities identified in schedule 6 attached hereto, but strictly as non-operating working interest owners or joint venturers in the specific QEP-operated wells that produced and supplied oil that was transported on the train involved in the Derailment. For the avoidance of doubt, insurers, as used in this definition, shall include all insurers that issued liability policies to or for the benefit of QEP and that actually or potentially provided coverage for Claims relating to or arising from the Derailment, including, but not be limited to, National Union Fire Insurance Company of Pittsburgh, Pa. (policy number 194-99-62); American Guarantee & Liability Insurance Company (policy number UMB6692611-02).

7. **Slawson Exploration Company, Inc. ("Slawson")**, together with its parents, subsidiaries, Affiliates, successors and assigns, officers, directors, principals, employees, attorneys, accountants, representatives, insurers (to the extent strictly limited to coverage afforded to Slawson in relation to the Derailment), as well as those entities identified on schedule 7 attached hereto, but strictly as non-operating working interest owners in the specific Slawson-operated wells that produced oil that was transported on the train involved in the Derailment. For the avoidance of doubt, insurers, as used in this definition, shall include all insurers that issued liability policies to or for the benefit of Slawson and that actually or potentially provided coverage for Claims relating to or arising from the Derailment, including, but not be limited to, Federal Insurance Company (policy 3579 09 19 and 7981 72 74), Arch Specialty Insurance Company (policy EE00039761 03), and AIG (policy BE031941993).

8. **Indian Harbor Insurance Company, XL Insurance, XL Group plc and their Affiliates** (strictly as insurers of MMA and MMAC).

9. **Edward A. Burkhardt, Larry Parsons, Steven J. Lee, Stephen Archer, Robert C. Grindrod, Joseph C. McGonigle, Gaynor Ryan, Donald Gardner, Jr., Fred Yocum, Yves Bourdon and James Howard, in their capacity as directors and officers of MMA and MMAC, Montreal, Maine & Atlantic Corporation and/or LMS Acquisition Corporation (the "D&O Parties").**

10. **Hartford Casualty Insurance Company, together with its parents, subsidiaires, Affiliates, officers and directors** (strictly as insurer of Rail World, Inc.).

11. **Chubb & Son, a division of Federal Insurance Company** (strictly as insurers of Rail World, Inc. and Rail World Holdings, LLC).

12. **Rail World Holdings LLC; Rail World, Inc.; Rail World Locomotive Leasing LLC; The San Luis Central R.R. Co.; Pea Vine Corporation; LMS Acquisition Corporation; MMA Corporation; Earlston Associates L.P.,** and each of the shareholders, directors, officers or members or partners of the foregoing, to the extent they are not D&O Parties (the "**Rail World Parties**"). For the avoidance of doubt, (i) Rail World Parties also includes Edward A. Burkhardt, solely in his capacity as director, officer and/shareholder of certain of the Rail World Parties; and (ii) the inclusion of the above entities within the definition of "Rail World Parties", except for the purpose of the settlement agreement executed with MMAC and the Trustee, shall not be construed to create or acknowledge an affiliation between or among any of the Rail World Parties.

13. **General Electric Railcar Services Corporation, General Electric Company** and each of its and their respective parents, Affiliates, subsidiaries, limited liability companies, special purpose vehicles, partnerships, joint ventures, and other related business entities, and each of its and their respective current or former parents, Affiliates, subsidiaries, limited liability companies, special purpose vehicles, partnerships, joint ventures, other related business entities, principals, partners, shareholders, officers, directors, managers, partners, employees, agents, insurers, attorneys, accountants, financial advisors, investment bankers, consultants, any other professionals, any other representatives or advisors, and any and all persons who control any of these, as well as any predecessors-

in-interest of, or any assignors or vendors of any equipment involved in the Derailment to, any of the foregoing entities and any of the successors and assigns of any of the foregoing entities.

14. **Trinity Industries, Inc., Trinity Industries Leasing Company, Trinity Tank Car, Inc., and Trinity Rail Leasing 2012 LLC, Trinity Rail Group LLC, RIV 2013 Rail Holdings LLC, and Trinity Rail Leasing Warehouse Trust**, inclusive of each of their respective predecessors, agents, servants, employees, shareholders, officers, directors, attorneys, representatives, successors, assigns, parents, subsidiaries, Affiliates, limited liability companies, insurers, and reinsurers (but strictly to the extent of coverage afforded to the such parties by said insurers and reinsurers), including but not limited to whether such entities are in the business of leasing, manufacturing, servicing or administrating rail cars.

15. **Union Tank Car Company, the UTLX International Division of UTCC, The Marmon Group LLC and Procor Limited (the "UTCC Parties")**, and each of their respective predecessors, servants, employees, owners, members (strictly with respect to The Marmon Group LLC), shareholders, officers, directors, partners, associates, attorneys, representatives, successors, assigns, subsidiaries, Affiliates, and parent companies, insurers, and reinsurers listed in schedule 15 attached hereto, but strictly to the extent of coverage afforded to the UTCC Parties by said insurers and reinsurers, regardless of whether such entities are or were in the business of leasing, manufacturing, servicing, or administering rail car leases or otherwise.

16. **First Union Rail Corporation ("First Union")**, together with its parents, subsidiaries, Affiliates, officers, directors, predecessors, successors, assigns, servants, employees, shareholders, attorneys, representatives and insurers and reinsurers (strictly to the extent limited to coverage afforded to First Union, and including, but not limited to, Lexington Insurance Company (including pursuant to the Pollution Legal Liability Select Policy no. PL52675034 and Stand Alone Excess Liability Policy no. 018403252) and Superior Guaranty Insurance Company (including pursuant to Excess Liability Policy no. 404-1XSCI13)).

17. **CIT Group, Inc.**, and its Affiliates, Federal Insurance Company solely in its capacity as an insurer of CIT Group, Inc. and its Affiliates and not in any other capacity, and Arch Insurance Group solely in its capacity as an insurer of CIT Group, Inc. and its Affiliates, and not in any other capacity.

18. **ConocoPhillips Company ("ConocoPhillips")**, together with its subsidiaries, Affiliates, and each of their former and current respective employees, officers and directors, successors and permitted assignees, attorneys, and insurers (and the insurers direct and indirect parents, subsidiaries and Affiliates), but with regards to such insurers, only to the extent of coverage provided to ConocoPhillips by such insurers in relation to the Derailment, as well as those entities identified in Schedule 18 hereto, but strictly as non-operating working interest owners in the specific ConocoPhillips operated wells that produced and supplied oil that was transported on the train involved in the Derailment.

19. **Shell Oil Company and Shell Trading (US) Company,** together with their subsidiaries, Affiliates, and each of their former and current respective employees, officers and directors, successors and permitted assignees, attorneys, and insurers (and the insurers' direct and indirect parents, subsidiaries and Affiliates), but with regards to such insurers, only to the extent of coverage provided to Shell Oil Company and Shell Trading (US) Company, by such insurers in relation to the Derailment.

20. **Incorr Energy Group LLC ("Incorr")**, together with its subsidiaires, Affiliates and each of their former and current respective employees, officers and directors, successors and permitted assignees, attorneys and insurers but only with respect to coverage afforded by such insurers to Incorr in relation to the Derailment.

21. **Enserco Energy, LLC**, together with its parent, subsidiaries, Affiliates, and each of their former and current respective employees, officers and directors, successors and permitted assignees, attorneys, and insurers (and the insurers' direct and indirect parents, subsidiaries and Affiliates), but with regards to such insurers, only to the extent of coverage provided to Enserco Energy, LLC, by such insurers in relation to the Derailment.

22. **The Attorney General of Canada, the Government of Canada, Her Majesty the Queen in Right of Canada and the departments, crown corporations and agencies including the Canadian Transportation Agency, and including all past, present and future Ministers, officers, employees, representatives, servants, agents, parent, subsidiary and affiliated crown corporations and agencies, and their respective estates, successors and assigns.**

23. **(i) Irving Oil Limited, Irving Oil Company, Limited, Irving Oil Operations General Partner Limited and Irving Oil Commercial G.P.**, (ii) any of their Affiliates (as defined in the settlement agreement), (iii) any predecessors, successors and assigns of any of the foregoing Persons named in clauses (i) and (ii) of this paragraph 23, and (iv) any directors, officers, agents and/or employees of any of the foregoing Persons named in clauses (i), (ii) and (iii) of this paragraph 23 (the "**Irving Parties**"), and the insurers listed in Schedule 23 attached hereto, but only in their respective capacities as insurers of the Irving Parties under the insurance policies listed by policy numbers in said Schedule 23 (the "**Irving Insurers**"). Notwithstanding the foregoing or anything else in this list and the Plan, the claims (including the Claims) and/or other rights that the Irving Parties have (or may have) against their insurers (including but not limited to the Irving Insurers) or any one or more of them under any applicable policies, at law, in equity or otherwise, are fully preserved and said insurers (including but not limited to the Irving Insurers) are not Released Parties in connection with said claims and/or other rights of the Irving Parties.

24. **(i) World Fuel Services Corporation, World Fuel Services, Inc., World Fuel Services Canada, Inc., Petroleum Transport Solutions, LLC, Western Petroleum Company, Strobel Starostka Transfer LLC ("SST"), Dakota Plains Marketing LLC, Dakota Plains Holdings, Inc., DPTS Marketing Inc., Dakota Plains Transloading LLC, Dakota Petroleum Transport Solutions LLC (the "World Fuel Parties"),** (ii) any of their Affiliates, (iii) any predecessors, successors and assigns of any of the foregoing Persons named in clauses (i) and (ii) of this paragraph 24, and (iv) any directors, officers, agents and/or employees of any of the foregoing Persons named in clauses (i), (ii) and (iii) of this paragraph 24. and the insurers listed in schedule 24 attached hereto, but only

in their respective capacities as insurers under the insurance policies listed by policy number in said schedule 24 (the "**World Fuel Insurers**"). Notwithstanding the foregoing or anything else in this list and the Plan, the claims (including the Claims) and/or other rights that the World Fuel Parties have (or may have) against their insurers (including but not limited to the World Fuel Insurers), SST or its insurers, or any one or more of them under any applicable policies, at law, in equity or otherwise, are fully preserved and SST, as well as said insurers (including but not limited to the World Fuel Insurers) are not Released Parties in connection with said Claims and/or other rights of the World Fuel Parties.

25. **The SMBC Parties, namely: SMBC Rail Services, LLC f/k/a Flagship Rail Services, LLC, and its respective predecessors, servants, employees, independent contractors, owners, shareholders, officers, directors, associates, attorneys, accountants, representatives, successors, assigns, agents, subsidiaries, affiliates, and parent companies, and including without limitation Sumitomo Mitsui Financial Group, Inc., Sumitomo Mitsui Finance & Leasing Company, Limited, Sumitomo Mitsui Banking Corporation of Canada, Sumitomo Mitsui Banking Corporation, SMBC Capital Markets, Inc., SMBC Leasing and Finance, Inc., SMBC Nikko Securities America, Inc., JRI America, Inc., Manufacturers Bank, SMBC Global Foundation, Inc., SMBC Financial Services, Inc., SMBC Cayman LC Limited, SMBC Capital Partners LLC, SMBC Leasing Investment LLC, SMBC Marine Finance, Inc., Sakura Preferred Capital (Cayman), Limited, TLP Rail Trust I, FRS I, LLC, and FR Holdings, LLC and its subsidiaries. "SMBC Parties" also means TLP Rail Trust I, a Delaware Statutory Trust, SMBC Rail Services, LLC, as the owner participant and beneficiary of TLP Rail Trust I, and Wilmington Trust Company, Trustee of TLP Rail Trust I.** "SMBC Parties" also means Liberty Mutual Holding Company; Inc. and its subsidiaries and affiliates, Liberty Mutual Group Inc., Liberty Mutual Insurance Company, Liberty Insurance Underwriters Inc., Liberty Surplus Insurance Corporation, and Liberty International Underwriters (collectively, "**Liberty**") and any reinsurers that Liberty has any policy, agreement, contract, or treaty with that

relates in any way to any of the SMBC Parties or any insurance policy issued by Liberty to any of the SMBC Parties.

Notwithstanding the foregoing or anything else in this list, and without implying or providing any limitation, the term "Settling Defendants" as used herein or above does not include, and shall not be deemed to include Canadian Pacific Railway Company ~~and (b) SMBC Rail Services, LLC, (b) World Fuel Services Corporation, (c) World Fuel Services, Inc., (d) World Fuel Services, Canada, Inc., (e) Petroleum Transport Solutions, LLC, (f) Western Petroleum Co., (g) Strobel Starostka Transfer LLC, (h) Dakota Plains Marketing LLC, (i) Dakota Plains Holdings, Inc., (j) DPTS Marketing Inc., (k) Dakota Plains Transloading LLC, (l) Dakota Petroleum Transport Solution LLC~~.

VERSION ANGLAISE SEULEMENT

SCHEDULE 2
LIST OF NON-OPERATING WORKING INTEREST OWNERS OR JOINT VENTURERS IN OASIS OPERATED WELLS

Whiting Oil And Gas Corporation;
Hess Corporation;
Hess Bakken Investments II LLC
Continental Resources Inc;
Sinclair Oil And Gas Company;
Conoco Phillips Company;
Black Bear Resources, LLLP;
Castlerock Resources Inc;
Deep Creek Exploration;
Enerplus Resources Usa Corporation;
Fidelity E&P Company:
Fidelity Exploration &Production Co;
Inland Oil & Gas Corporation;
Jake Energy Inc.;
Kerogen Resources Inc;
Lilley & Company;
Lilley And Associates LLC;
Linn Energy Holdings LLC;
Lone Rider Trading Company;
Mayhem Oil And Gas Inc;
Missouri River Royalty Corp;
Nj Petroleum LLC;
Northern Energy Corporation;
Northern Oil & Gas Inc;
O.T. Cross Oil LLC;
Ottertail Land & Permit Services;
Penroc Oil Corporation;
Reef 2011 Private Drilling Fund LP;
Shakti Energy LLC;
Slawson Exploration Company Inc;
Statoil Oil & Gas LP;
WHC Exploration LLC;

VERSION ANGLAISE SEULEMENT

SCHEDULE 5

LIST OF NON-OPERATING WORKING INTEREST OWNERS OR JOINT VENTURERS IN MARATHON OPERATED WELLS

ALAMEDA ENERGY INC
ARTHUR FRANK LONG JR
BEARTOOTH RIDGE RESOURCES
CARL W STERUD JR
CHUGASH EXPLORATION LP
CONDOR PETROLEUM INC
CONTINENTAL RESOURCES INC
DISPUTED STATE-TRIBAL INTEREST
ENDEAVOR ENERGY RESOURCES LP
ENERPLUS RESOURCES CORPORATION
ESTATE OF KARL WILLIAM STERUD
ESTATE OF WALLACE HICKEL
EVERTSON ENERGY PARTNERS LLC
GADECO LLC
GOLDENEYE RESOURCES LLC
HALCON WILLISTON I LLC
HESS BAKKEN INVESTMENTS II LLC
ILAJEAN REAMS
JENNIFER BYSTROM
JOSEPHINE ANN KJONAAS
KOOTENAI RESOURCE CORP
LA PETROLEUM INC
LGFE-M LP
LINDA ELWOOD
LOUIS WALTER LONG
MARCIN PRODUCTION LLC
MICHAEL HARVEY STERUD
MISSOURI RIVER ROYALTY CORPORATION
MONTANA OIL PROPERTIES INC
MONTE TEDDY LONG
NATURAL RESOURCE PARTNERS LP
NORTHERN ENERGY CORP
NORTHERN OIL AND GAS INC
PETROGULF CORP
QEP ENERGY COMPANY
RAINBOW ENERGY MARKETING CORP
RONALD KNIGHT
S REGER FAMILY INC

VERSION ANGLAISE SEULEMENT

SLAWSON EXPLORATION COMPANY INC
SLAWSON RESOURCES COMPANY
SPOTTED HAWK DEVELOPMENT LLC
STEWART GEOLOGICAL INC
TDB RESOURCES LP
USG PROPERTIES BAKKEN II LLC
VERSA ENERGY LLC
VITESSE ENERGY LLC
VITESSE OIL LLC
W NORTH FUND II LP
ZAGOIL COMPANY LLC

VERSION ANGLAISE SEULEMENT

SCHEDULE 6

LIST OF NON-OPERATING WORKING INTEREST OWNERS OR JOINT VENTURERS IN QEP OPERATED WELLS

3LAND INC
ACTION REALTORS INC
ADELE L. SKODA
AMERADA HESS CORPORATION
ANDREW J HORVAT REVOCABLE TRUST
ARMSTRONG CHILDREN'S TRUST
ARMSTRONG MINERALS, LLC
AVALON NORTH LLC
BADLANDS HOLDING COMPANY
BANDED ROCK LLC
BIG PRAIRIE INVESTMENTS, LLC
BLACK STONE ENERGY COMPANY, LLC
BORGOIL RESOURCES, LLP
BRUCE P. IVERSON
BURLINGTON RESOURCES OIL & GAS
BXP PARTNERS III, LP
CHUGASH EXPLORATION LP
CONTINENTAL RESOURCES INC
COPPERHEAD CORPORATION
CRESCENT ENERGY, INC.
CRS MINERALS LLC
DAKOTA WEST LLC
DALE LEASE ACQUISITIONS 2011-B LP
DAVIS EXPLORATION
DEBRA KAY TORNBERG
DEEP CREEK EXPLORATION LLC
DEVON ENERGY PRODUCTION CO. LP
DIAMOND EXPLORATION INC
DORCHESTER MINERALS LP
DUANE A. IVERSON
E. W. BOWLES
ENDEAVOR ENERGY RESOURCES LP
ENERPLUS RESOURCES (USA)
ESTATE OF ROBERT J MCCANN JR
EZ OIL, LLC

FORESTAR PETROLEUM GROUP
GAEDEKE WILLISTON BASIN HOLDINGS
GARY LEE MCCORMICK
GREEN RIVER ENERGY LLC
HALCON RESOURCES CORP COMPANY
HESS BAKKEN INVESTMENTS II LLC
HESS CORPORATION
INTERNATIONAL PETROLEUM CORPORATION
INTERNOS, INC.
J KAMP OIL LLC
JEFF GARSKE
JERALDINE BJORNSON
JJS WORKING INTERESTS LLC
JOEL ALM
JOHN B. BJORNSON
JT ENERGY, LLC
JTT OIL LLC
JUNE ANN GREENBERG
KENNETH STEVENSON
KODIAK OIL & GAS (USA) INC
L LOWRY MAYS
LANDSOUTH PROPERTIES, LLC
LEE MCCORMICK MARITAL TRUST
LEGION LAND & EXPLORATION CORP
LELAND STENEHJEM, JR.
LGFE-M L.P.
LINDSEY K MULLENIX
LMAC, LLC
LONE RIDER TRADING COMPANY
LONETREE ENERGY & ASSOCIATES
M & M ENERGY INC
MADDOX FAMILY TRUST
MARATHON OIL COMPANY
MBI OIL & GAS LLC
MCBRIDE OIL & GAS CORPORATION
MILBURN INVESTMENTS, LLC
MISSOURI RIVER ROYALTY COMPANY
MUREX PETROLEUM CORPORATION
NORTHERN ENERGY CORPORATION

NORTHERN OIL AND GAS, INC.
NORTHLAND ROYALTY CORPORATION
NOWITZKI OIL & GAS LP
O. A. HANSON
OPINOR ANNA PTY KAISER FUND
PETROGLYPH ENERGY
PETROVAUGHN INC.
PHILIP R. BISHOP
PRADERA DEL NORTE, INC.
RALPH MADDOX FAMILY TRUST
RAVEN OIL PROPERTIES INC
REEF 2011 PRIVATE DRILLING FUND LP
ROBERT J. MCCORMICK
ROBERT POST JOHNSON
SCOTT ENERGY, LLC
SCOTT K. BJORNSON
SCOTT WARD
SIDNEY K. LEACH
SIERRA RESOURCES INC
SINCLAIR OIL & GAS COMPANY
SIXTY NINE OIL & GAS LP
SKLARCO LLC
SLAWSON EXPLORATION CO INC
SM ENERGY COMPANY
SOUTH FORK EXPLORATION, LLC
SPOTTED HAWK DEVELOPMENT LLC
SRP ENTERPRISES, INC.
STEVEN H HARRIS FAMILY LIMITED
STUBER MINERAL RESOURCES LLC
SUNDHEIM OIL CORPORATION
SUSAN D STENEHJEM
THE ERICKSON FAMILY TRUST
THE MILLENNIUM CORPORATION
THE TRIPLE T INC.
TIMOTHY J. RITTER
TL & JH KAISER SUPERANNUATION
TURMOIL INC
TWIN CITY TECHNICAL, LLC
USG PROPERTIES BAKKEN II LLC

VERSION ANGLAISE SEULEMENT

VINNIE CORP
VINTAGE OIL & GAS, LLC
VIVIAN MCCORMICK WARREN
WESTERN ENERGY CORPORATION
WILLIAM G SEAL ESTATE
WOLF ENERGY LLC
XTO ENERGY INC
XTO OFFSHORE INC
ZACHARY D VANOVER

VERSION ANGLAISE SEULEMENT

SCHEDULE 7

LIST OF NON OPERATING WORKING INTEREST OWNERS OR JOINT VENTURERS IN SLAWSON OPERATED WELLS

A.G. Andrikopoulos Resources, Inc.
Abercrombie Energy, Inc.
Alameda Energy, Inc.
Anthony J. Klein
Bakken HBT II, LP
Beartooth Ridge Resources, Inc.
Beck Sherven Legion Post #290
Benjamin Kirkaldie
BigSky Oil & Gas, LLC
Bob Featherer LLC
Brendall Energy, LLC
Burlington Northern & Sante Fe
C King Oil
Cedar Creek Wolverine, LLC
Centaur Consulting, LLC
Chugash Exploration, LP
Comanche Exploration Company
Continental Resources, Inc.
Craig A. Slawson
D. Sumner Chase, III 2001 Irr. Trust
David L. Hilleren
David W. Strickler Trust
Davis Exploration, LLC
Deep Blue, LLC
Dogwood Hill Farms, LLC
DS&S Chase, LLC
Enerplus Resources (USA) Corp
Formation Energy LP
Frederic Putnam
Gadeco, LLC

Gaedeke Williston Basin, Ltd.
Gasco Limited Partnership
GHG Partners, LLC
Great Plains Oil Properties, LLC
Greenhead Energy, Inc.
Gulfport Energy Corporation
HRC Energy, LLC
Huston Energy Corporation
Icenine Properties, LLC
Inland Oil and Gas Corporation
James H Bragg
John Schell
Kenneth Lyson and Claudia G. Lyson
Kodiak Oil & Gas (USA), Inc.
Kootenai Resources Corporation
L D Davis & Marilyn Davis, JTS
Lario Oil and Gas Company
Linn Energy Holdings, LLC
Marcin Production, LLC
Mark Lee
Marshall & Winston, Inc.
Mary Newman
Melbby Gas III, LLC
Missouri River Royalty Corporation
Montana Oil Properties, Inc.
MRG Holdings, LLC
Mwiley Resources, Inc.
Nadel and Gussman Bakken, LLC
Northern Oil and Gas, Inc.
Oxy USA, Inc.
Pegasus Group Inc.
Petro-Huston, LLC
Petroshale (US) Inc.
Pine Oil Co.

Pine Petroleum, Inc.
Piscato Oil, LLC
Polish Oil & Gas, Inc.
Raymond Resources Inc.
Riley Resources, Inc.
Robert A. Erickson & Cleo
S. Reger Family, Inc.
Sheringham Corporation
Slawson Resources Co.
Statoil Oil & Gas, LP
Stewart Geological, Inc.
Stuart F. Chase
Stuart F. Chase 2001 Irr. Trust
Thomas Lambert
Todd Slawson
Todd Slawson Trust
Tracker Resource Development III, LLC
U S Energy Development Corporation
USG Properties Bakken II, LLC
Vitesse Energy, LLC
Vitesse Oil, LLC
W B Oil LLC
Whiting Oil and Gas
Windsor Dakota, LLC
Zagoil Company, LLC

VERSION ANGLAISE SEULEMENT

SCHEDULE 15

LIST OF UTCC'S INSURERS AND REINSURERS

Canadian Insurance Companies

ACE INA Insurance

Chartis Insurance Company of Canada (n/k/a AIG Insurance Company of Canada)

Westport Insurance Corporation

U.S. Insurance Companies

ACE American Insurance Company

American Zurich Insurance Company

Lexington Insurance Company

North American Capacity Insurance Company

Starr Indemnity & Liability Company

Bermudian Insurance Companies

ACE Bermuda Insurance Ltd.

Allied World Assurance Company Ltd.

Argo Re Ltd.

Chartis Excess Limited (n/k/a American International Reinsurance Company Ltd.)

Chubb Atlantic Indemnity Ltd.

Hanseatic Insurance Company (Bermuda) Limited

Iron-Starr Excess Agency Ltd. / Ironshore Insurance Ltd. / Starr Insurance & Reinsurance Limited

Starr Insurance & Reinsurance Limited

XL Insurance (Bermuda) Ltd.

VERSION ANGLAISE SEULEMENT

SCHEDULE 18

LIST OF NON-OPERATING INTEREST OWNERS OR JOINT VENTURERS IN BURLINGTON RESOURCES OIL & GAS COMPANY LP (A WHOLLY OWNED SUBSIDIARY OF CONOCOPHILLIPS) OPERATED WELLS

Continental Resources Inc.

Hess Corporation

Hess Bakken Investment II, LLC

JAG Oil Limited Partnership

Linn Energy Holdings LLC

Newfield Production Company

Northern Oil & Gas, Inc.

Twin City Technical LLC

WM ND Energy Resources II, LLC

QEP Energy Co.

Questar Exploration & Production Co.

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SCHEDULE 23

LIST OF IRVING INSURERS

1. ACE INA Insurance
   - CGL 523952
   - XBC 602712
2. Zurich Insurance plc, UK Branch
   - B0509E1149413
   - B0509E1181313
3. Zurich Insurance Company Ltd
   - 8840960
   - 8838799
4. AEGIS, Syndicate AES 1225
   - B0509E1149413
5. Mitsui Sumitomo, Insurance Corporate Capital, Limited as sole member of Syndicate, 3210 at Lloyds
   - B0509E1181113
6. QBE Casualty Syndicate 386
   - B0509E1181113
7. QBE Syndicate 1886
   - B0509E1181113
8. Underwriters at Lloyd's and Lloyd's Syndicates, Subscribing to Policy No. B0509HM231013, including the following
   - AEGIS Syndicate AES 1225
   - Syndicate CNP 4444
   - Syndicate MKL 3000
   - Syndicate HIS 33
   - Syndicate LIB 4472
   - Syndicate ANV 1861
   - Syndicate MFM 2468
   - Syndicate AUW 609
   - Syndicate TUL 1301

VERSION ANGLAISE SEULEMENT

- Syndicate SKD 1897
- Syndicate AML 2001
- Syndicate NAV 1221
- Syndicate TRV 5000

9. XL Insurance (Bermuda) Ltd.
   - XLUMB-742875
10. Oil Casualty Insurance, Ltd.
    - U920303-0313
11. Argo Re Ltd.
    - ARGO-CAS-OR-000227.1
12. Chubb Atlantic Indemnity Ltd.
    - 3310-17-91
13. Zurich Insurance Company Ltd
    - 8838799
14. Iron-Starr Excess Agency Ltd.
    - 1S0000822
15. AIG Excess Liability Insurance International Limited
    - 1657346
16. ACE Bermuda Insurance Ltd.
    - 1OC-1338/5
17. Liberty Mutual Insurance Company
    - XSTO-631084-013
18. ACE Underwriting Agencies Limited, as managing agency of Syndicate 2488 at Lloyd's, and ACE European Group Limited
    - B0509EI181413

SCHEDULE 24

LIST OF WORLD FUEL INSURERS (Subject to Note 1 below)

1. Zurich American Insurance Company ("Zurich"). Zurich is included in Schedule A only with respect to its indemnity limits, and not with respect to its obligation to defend or pay defense costs to the World Fuel Parties. Zurich is included on Schedule A solely with respect to the following policies:

    - Zurich American Insurance Company Policy GLO 5955601-00 (eff. 07/01/2013 – 07/01/2014); and
    - Zurich American Insurance Company Policy ZE 5761197-00 (eff. 07/01/2013 – 07/01/2014)

2. Federal Insurance Company (GL) ("Federal (GL)"). Federal (GL) is included in Schedule A only with respect to its indemnity limits, and not with respect to its obligation to defend or pay defense costs to the World Fuel Parties. Federal (GL) is included on Schedule A solely with respect to the following policy:

    - Federal Insurance Company Policy 3597-82-72 NHO (eff. 11/07/2012 – 11/07/2013)

3. Alterra Excess & Surplus Insurance Company ("Alterra"). Alterra is included on Schedule A solely with respect to the following policy:

    - Alterra Excess & Surplus Insurance Company Policy MAX3EC50000211 (eff. 11/07/2012 – 11/07/2013)

4. ACE Property and Casualty Insurance Company ("ACE"). Ace is included on Schedule A solely with respect to the following policy:

    - ACE Property and Casualty Insurance Company Policy XOO G27047026 (eff. 07/01/2013 – 07/01/2014)

5. Ironshore Specialty Insurance Company ("Ironshore"). Ironshore is included on Schedule A solely with respect to the following policy:

    - Ironshore Specialty Insurance Company Policy 001709800 (eff. 07/01/2013 – 07/01/2014)

6. *XL Insurance America, Inc. ("XL"). XL is included on Schedule A solely with respect to the following policy:

    - XL Insurance America, Inc. Policy US00065550LI13A (eff. 07/01/2013 – 07/01/2014)]
    - * settlement subject to determination of WFS's ultimate derailment liability

VERSION ANGLAISE SEULEMENT

7. Federal Insurance Company and Chubb Custom Insurance Company (Pollution) ("collectively, Chubb"). Chubb is included on Schedule A solely with respect to the following policies:

    - Federal Insurance Company Policy 37313421 (eff. 10/1/2010 – 10/1/2020);
    - Chubb Custom Insurance Company Policy 37313810 (eff. 4/17/2012 – 4/17/2017); and
    - Chubb Custom Insurance Company Policy 37313496 (eff. 12/31/2010 – 12/31/2020)

8. Lexington Insurance Company and Chartis Specialty Insurance Company (collectively, "AIG"). AIG is included on Schedule A solely with respect to the following policies:

    - Lexington Insurance Company Policy PLS 5652718 (eff. 06/01/11 – 07/01/14);
    - Chartis Specialty Insurance Company Policy PLS 1951951 (eff. 07/01/11 – 07/01/14); and
    - Chartis Specialty Insurance Company PLS 18809548 (eff. 05/11/12 – 05/11/15)

9. Crum and Forster Specialty Insurance Company ("Crum & Forster"). Crum & Forster is included on Schedule A solely with respect to the following policies:

    - Crum & Forster Specialty Insurance Company Policy EPK 101162 (eff. 03/16/13-03/16/14); and
    - Crum & Forster Specialty Insurance Company Policy EFX 100400 (eff. 03/16/13-03/16/14)]

Note 1. Notwithstanding anything above or elsewhere in the Plan or the U.S. Plan, no insurer shall be included in this Schedule 24 or as a Released Party in the Plan or the U.S. Plan, or otherwise obtain the benefits of the Plan or the U.S. Plan, unless and until that insurer enters into a separate settlement agreement with the World Fuel Parties (mutually acceptable to the World Fuel Parties and that insurer) relating to insurance coverage for the Derailment. Any such separate settlement agreement between the World Fuel Parties and an insurer shall be specifically subject to the terms and conditions thereof, notwithstanding anything to the contrary in the Plan, the U.S. Plan, or the Approval Orders. The releases set forth in the Plan, the U.S. Plan, and the Approval Orders are not intended to, and shall not, extend to or otherwise release or discharge any Claims, rights, privileges, or benefits held by the World Fuel Parties against the World Fuel Insurers or any other insurer of the World Fuel Parties, which shall be governed by such separate settlement agreement between the World Fuel Parties and such World Fuel Insurer or other insurer of the World Fuel Parties.

Schedule "E" Distribution mechanism with respect to the Wrongful Death Claims

PLAN OF COMPROMISE AND ARRANGEMENT

concerning, affecting and involving

MONTREAL, MAINE & ATLANTIC CANADA CO.

Montreal Maine & Atlantic Canada Co.
Schedule E
Distribution Mechanism with Respect to the Wrongful Death Claims

Points Allocation Matrix		
Criteria	**Points per Criteria**	
1. Age of the decedents	**Age of Decedent** • Less than 18 • 18 to less than 26 • 26 to less than 60 • 60 to less than 66 • 66 and greater	**Points** • 3 • 8 • 10 • 8 • 3
2. If decedent survived by children	**Age of Surviving Children** • Less than 21 • 21 to less than 31 • 31 to less than 51 • 51 and greater	**Points** • 15 • 7 • 5 • 3
3. If decedent is survived by a spouse	**Annual Income of Decedent** • Less than $20,000 • $20,000 to less than $50,000 • $50,000 to less than $75,000 • $75,000 to less than $100,000 • $100,000 and greater	**Points** • 12.50 • 15.00 • 16.25 • 17.50 • 18.75
4. If decedent is survived by a spouse but no children	• If parents, 5 additional points • If no parents, but siblings, then 2.5 points per sibling to a maximum of 7.5 points	
5. If decedent is not survived by a spouse or child and the decedent is a minor	• 10 points for each surviving parent and • 5 points for each surviving sibling	
6. If decedent is not survived by a spouse or child and the decedent is not a minor	• 5 points for each surviving parent and • 2.5 points for each surviving sibling	
7. If decedent is survived by a child	• Set aside of 5% to parents and siblings with a potential reallocation to ensure a minimum payment of $25,000 to each parent and sibling	

Montreal Maine & Atlantic Canada Co.
Schedule E
Distribution Mechanism with Respect to the Wrongful Death Claims

Victim	Total Points	Allocation %	Estimated Potential Distribution
1	68	4.83%	$ 5,374,000
2	23	1.65%	1,830,000
3	32	2.29%	2,548,000
4	20	1.43%	1,592,000
5	15	1.07%	1,194,000
6	20	1.43%	1,592,000
7	6	0.43%	478,000
8	38	2.68%	2,985,000
9	28	1.97%	2,189,000
10	14	1.00%	1,115,000
11	23	1.65%	1,831,000
12	16	1.15%	1,274,000
13	20	1.43%	1,592,000
14	28	1.97%	2,189,000
15	40	2.86%	3,185,000
16	52	3.69%	4,100,000
17	28	1.97%	2,189,000
18	25	1.79%	1,990,000
19	23	1.65%	1,830,000
20	40	2.86%	3,185,000
21	17	1.22%	1,353,000
22	18	1.29%	1,433,000
23	25	1.79%	1,990,000
24	21	1.47%	1,632,000
25	23	1.65%	1,831,000
26	55	3.94%	4,379,000
27	25	1.79%	1,990,000
28	53	3.76%	4,180,000
29	40	2.86%	3,185,000
30	31	2.18%	2,428,000
31	20	1.43%	1,592,000
32	23	1.65%	1,830,000
33	25	1.79%	1,990,000
34	40	2.86%	3,185,000
35	13	0.93%	1,035,000
36	13	0.93%	1,035,000
37	45	3.19%	3,543,000
38	21	1.47%	1,632,000
39	25	1.79%	1,990,000
40	30	2.15%	2,388,000
41	23	1.61%	1,791,000
42	41	2.95%	3,284,000
43	40	2.86%	3,185,000
44	40	2.86%	3,185,000
45	13	0.93%	1,035,000
46	53	3.76%	4,180,000
47	31	2.24%	2,488,000
48	40	2.86%	3,185,000
	1,397	100.0%	$ 111,216,000

The above amounts are prior to any fees that may be claimed by the claimants attorneys or the Class Representatives, as applicable.

(all amounts are in Canadian dollars)

Schedule "F" Distribution mechanism with respect to the Bodily Injury and Moral Damages Claims

PLAN OF COMPROMISE AND ARRANGEMENT

concerning, affecting and involving

MONTREAL, MAINE & ATLANTIC CANADA CO.

Montreal, Maine & Atlantic Canada Co.
Schedule F
Distribution Mechanism with Respect to the Moral Damage Claims

	Points	Estimated # of claimants	Total points	%	Estimated Distribution	Distribution per claim
Trouble & Inconvenience	5.0	3,700	18,500	24.9%	$ 11,677,000	$ 3,160
Evacuations						
Per day of displacement	1.0	1,850	10,370	14.0%	6,545,000	630
Maximum	30.0					par jour
Red Zone/Yellow Zone	50.0	140	7,000	9.4%	4,418,000	31,560
Grandparents and grandchildren	15.0	50	750	1.0%	473,000	9,460
Post Traumatic Stress - short term (note 2)	50.0	250	12,500	16.8%	7,890,000	31,560
Post Traumatic Stress - long term (note 2)	100.0	250	25,000	33.7%	15,780,000	63,120
Bodily Injury	50.0	2	100	0.1%	63,000	31,500
Buffer (note 3)					2,000,000	
Total (notes 1 & 4)			74,220	100%	$ 48,846,000	

The above amounts are prior to any fees that may be claimed by the claimants' attorneys or the Class Representatives, as applicable.

Note 1: This is a cumulative calculation, whereby one claimant can fall into more than one category, however wrongful death claimants cannot claim for post traumatic stress.

Note 2: For those who have been given a medical diagnosis of post traumatic stress, a depressive disorder, an anxiety disorder and/or otherwise remain under medical care for mental health issues arising from the disaster and for those who were present in the red zone at the time of the derailment. In order to qualify in this category and to determine if you qualify for short term or long term post traumatic stress further details will be required by the Monitor.

Note 3: To be used for any increase in the post traumatic stress category (if any) and thereafter any unused portion will be distributed to all the other categories of moral damages on a pro rata basis.

Note 4: The final amounts may vary depending on further information received by the Monitor by August 31, 2015.

(all amounts are in Canadian dollars)

Notice Recipients

District/Off: 0100−2 User: kford Date Created: 8/26/2015
Case: 15−20518 Form ID: pdf900 Total: 42

Recipients submitted to the BNC (Bankruptcy Noticing Center) without an address:

intp Devlar Energy Marketing, LLC

TOTAL: 1

Recipients of Notice of Electronic Filing:

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Recipients submitted to the BNC (Bankruptcy Noticing Center):

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cr	United States of America c/o Matthew J. Troy Department of Justice Civil Division POB 875 Ben Franklin Station Washington, DC 22180
cr	Estates of Marie Alliance, et als Gross, Minsky & Mogul, P.A. c/o George W. Kurr, Jr., Esq. PO Box 917 Bangor, ME 04402−0917
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