

CANADA

SUPERIOR COURT
(Class Action)

PROVINCE OF QUEBEC
DISTRICT OF MÉGANTIC

N°: 480-06-000001-132

GUY OUELLET

and

SERGE JACQUES

and

LOUIS-SERGES PARENT

**Petitioners/Plaintiffs/Class
Representatives**

v.

CANADIAN PACIFIC RAILWAY COMPANY

Defendant

and

RAIL WORLD, INC.

and

RAIL WORLD HOLDINGS, LLC

and

**MONTREAL MAINE & ATLANTIC RAILWAY
LTD.**

and

EARLSTON ASSOCIATES L.P.

and

PEA VINE CORPORATION

and

**MONTREAL, MAINE & ATLANTIC
CORPORATION**

and

**MONTREAL, MAINE & ATLANTIC CANADA
COMPANY**

and

EDWARD BURKHARDT

and

ROBERT GRINDROD

and

GAINOR RYAN

and

DONALD GARDNER, JR.

and

JOE MCGONIGLE

and

CATHY ALDANA

and

THOMAS HARDING

and

IRVING OIL LIMITED

and

IRVING OIL COMMERCIAL G.P

and

WORLD FUEL SERVICES CORP.
and

WORLD FUEL SERVICES, INC.

and

WORLD FUEL SERVICES CANADA, INC.

and

DPTS MARKETING LLC

and

**DAKOTA PETROLEUM TRANSPORT
SOLUTIONS, LLC**

and

WESTERN PETROLEUM COMPANY

and

PETROLEUM TRANSPORT SOLUTIONS, LLC

and

STROBEL STAROSTKA TRANSFER, LLC

and

MARATHON OIL COMPANY

and

SLAWSON EXPLORATION COMPANY, INC.
and

ARROW MIDSTREAM HOLDINGS, LLC
and

DEVLAR ENERGY MARKETING, LLC

and

OASIS PETROLEUM INC.

and

OASIS PETROLEUM LLC

and

QEP RESOURCES, INC.

and

UNION TANK CAR COMPANY

and

TRINITY RAIL LEASING 2012 LLC

and

GENERAL ELECTRIC RAILCAR SERVICES CORPORATION

and

THE CIT GROUP/EQUIPMENT FINANCING, INC.

and

ATTORNEY GENERAL OF CANADA,
representing the Federal Government of
Canada

and

XL INSURANCE COMPANY LIMITED

and

XL GROUP PLC

Mises-en-cause

MOTION FOR A CLASS ACTION ORDER AS PER THE COURT APPROVED

**AMENDED PLAN OF COMPROMISE AND ARRANGEMENT OF MONTREAL, MAINE
& ATLANTIC CANADA CO.**

(Articles 2, 20, 46, 1045, 1051 C.C.P., and section 17 of the
Companies' Creditors Arrangement Act, R.S.C. 1985, c. C 36)

**TO THE HONOURABLE JUSTICE GAÉTAN DUMAS OF THE SUPERIOR COURT,
SITTING IN THE PRESENT CLASS ACTION, IN AND FOR THE JUDICIAL DISTRICT
OF MÉGANTIC, THE PLAINTIFFS RESPECTFULLY SUBMIT THE FOLLOWING:**

A. INTRODUCTION AND BACKGROUND

1. On July 15, 2013, the Plaintiffs filed a *Motion to Authorize the Bringing of a Class Action and to Ascribe the Status of Representative* (the “**Class Action**”) pursuant to ss. 1002 and following of the *Code of Civil Procedure of Quebec*, R.S.Q., c. C-25 (the “**C.C.P.**”). Thereafter, the Motion to Authorize was amended on July 18, 2013, again on August 16, 2013, on November 1, 2013, on February 19, 2014, and finally on July 7, 2014 (the “**Motion to Authorize**”), the whole as appears more fully from the Court record and from a copy of the *Fifth Amended Motion to Authorize*, attached hereto for ease of reference as **Exhibit CAR-1**;
2. The Motion to Authorize alleged that the Respondents, which include Montreal, Maine & Atlantic Canada Co. (“**MMAC**”), are solidarily responsible for damages resulting from the train derailment that took place on July 6, 2013 in Lac-Mégantic, Quebec (the “**Train Derailment**”);
3. On August 7, 2013, within weeks of the filing of the Motion to Authorize, MMAC commenced proceedings pursuant to the *Companies Creditors Arrangement Act* R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). At the same time, MMAC’s parent, Montreal, Maine & Atlantic Railway Ltd. (“**MMA**”), filed for bankruptcy protection before the United States Bankruptcy Court in Bangor, Maine (under Chapter 11 of the United States Bankruptcy Code);
4. On August 8, 2013, the Honourable Justice Castonguay of the Quebec Superior Court granted an initial order under the CCAA in respect of MMAC (as amended on August 23, 2013, the “**Initial Order**”) thereby staying the proceedings against MMAC and certain related parties until September 6, 2013 (the “**Stay Period**”);
5. The Stay Period has been extended from time to time and is currently set to expire on December 15, 2015;
6. On November 1, 2013, a motion was brought seeking to appoint the Petitioners in the Class Action as representatives of the class contemplated therein¹ for the

¹ “All persons and entities residing in, owning or leasing property in, operating a business in or being employed by a person resident in or a business located in Lac-Mégantic, and/or were physically present in Lac-Mégantic, including their estate, successor, spouse or partner, child, grandchild, parent,

purposes of the CCAA proceedings. By order dated April 4, 2014, amended by further order dated April 27, 2015, the Petitioners were appointed as Class Representatives and Me Daniel Larochelle, Consumer Law Group Inc. ("**CLG**"), and Rochon Genova LLP (together "**Class Counsel**") and Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**") were appointed as counsel to the Class Representatives (the "**Representation Order**");

7. Between June 9, 2014 and June 20, 2014, the Motion to Authorize was presented by Class Counsel before the Honourable Mr. Justice Martin Bureau, J.S.C.;
8. In light of ongoing negotiations in the CCAA proceedings and with the consent of the plaintiffs and their counsel, for the purpose of presenting a plan of compromise and arrangement to the creditors of MMAC, on February 20, 2015, MMAC filed a *Motion for an Interim Stay of the Class Action* pending the disclosure of the List of Released Parties (i.e. Respondents in the Class Action who had opted to contribute to an indemnity fund to be created by a potential CCAA plan) by no later than March 20, 2015. The Motion was granted by this Court on February 24, 2015;
9. On May 8, 2015, the Honourable Mr. Justice Martin Bureau, J.S.C. authorized the Class Action as against World Fuel (prior to their settlement and the filing of the Amended Plan) and Canadian Pacific Railway Company ("**CP**"), entities to which the Class Action had not been suspended due to their involvement in the present proceeding; a copy of the Judgment is attached hereto for ease of reference as **Exhibit CAR-2**;
10. MMAC officially filed its Plan of Compromise and Arrangement on March 31, 2015 and later amended same on June 8, 2015 following a settlement reached with World Fuel Services Inc. and certain related entities ("**World Fuel**") (the "**Amended Plan**"). A copy of the Amended Plan is attached hereto for ease of reference as **Exhibit CAR-3**;
11. With the support of the Plaintiffs and their counsel, the Amended Plan was submitted to MMAC's creditors at the creditors meeting held on June 9, 2015, where it was unanimously approved with 3,879 positive votes representing approximately \$694 million of votes. Not a single creditor voted against the Amended Plan;
12. On July 13, 2015, this Honourable Court, sitting in the CCAA file, issued an order approving the Amended Plan (as rectified on August 3, 2015, and amended on October 9, 2015, the "**Canadian Approval Order**");

grandparent and sibling, who have suffered a loss of any nature or kind relating to or arising directly or indirectly from the train derailment that took place on July 6, 2013 in Lac-Mégantic, or any other group to be determined by the Court, other than the Government of Québec and the City of Lac-Mégantic. Excluded from the Class are all persons who timely and validly requested exclusion from such representation by delivering, prior to May 30, 2014, written notice to that effect to the Debtor Company, to the Monitor and to the Class Action Petitioners."

13. On October 9, 2015, MMA's Plan of Liquidation, which essentially mirrors the Amended Plan in MMA's Chapter 11 proceedings, was confirmed by the United States Bankruptcy Court for the District of Maine;
14. Moreover, the Canadian Approval Order was recognized and enforced by the United States Bankruptcy Court for the District of Maine on August 26, 2015 (supplemental order issued on October 21, 2015) within the scope of MMAC's Chapter 15 proceedings;
15. Upon implementation of the Amended Plan, including the settlements comprised therein, the claims against the Released Parties (as defined in the Amended Plan), including any claims that form or which might form the subject matter of the Class Action, will be released and forever barred and enjoined, and, subject to implementation of the Amended Plan, the Court Appointed Class Representatives hereby respectfully ask this Honourable Court to direct the Parties (as defined in the Amended Plan) and Class Members to comply with the terms and conditions of the Amended Plan for the reasons that follow;

B. THE AMENDED PLAN

16. The Plaintiffs and the Parties have agreed to the terms of the Amended Plan, the whole subject to the approval of this Honourable Court, without any admission of liability whatsoever by the Released Parties (Schedule "A" to the Amended Plan) and for the sole purpose of resolving the dispute between the Parties;
17. As part of the CCAA proceedings, all of the Respondents in the Class Action, with the exception of CP (the "**Released Parties**" or the "**Settling Defendants**"), have contributed to a settlement fund that is intended to compensate various groups of stakeholders affected by the Train Derailment, including the Class Members represented by the Plaintiffs, Creditors (as defined in the Amended Plan) who opted-out of that representation, various insurers, and the Province of Quebec;
18. This settlement fund (the "**Indemnity Fund**") currently amounts to approximately \$440 million²;
19. The Amended Plan includes, in exchange for their contribution to the Indemnity Fund, releases for all "Released Parties" as defined in Schedule "A" of the Amended Plan. The Released Parties include all of the Settling Defendants and does not include CP;
20. The implementation of the Plan is conditional on the granting of the order sought

² This amount will fluctuate with exchange rates to the extent that some of the settlement agreements call for payment in U.S. dollars.

herein;

21. Class Counsel fees will be addressed in a subsequent motion;
22. All of the materials disseminated and made available to Class Members as well as all future materials, as the case may be, are in French and in English;

C. APPROVAL OF THE PLAN

23. The Plaintiffs voted in favour of the Amended Plan, having concluded that the Amended Plan is fair, reasonable and in the best interests of the Class Members;
24. Class Counsel has extensive expertise in the area of class actions and Paliare Roland has broad experience in insolvency proceedings. They believe that the Amended Plan provides substantial relief and benefits to the Class Members in light of the risks that would arise from continuing the litigation against the Released Parties;
25. It also allows the litigation to continue against CP, the only remaining solvent Defendant to the Class Action, the whole as appears from the Motion to Institute Proceedings filed against CP on August 7, 2015, a copy which is attached for ease of reference as **Exhibit CAR-4**;
26. The Motion to Institute Proceedings will also be amended to include MMAC as a Defendant once the Stay Period in effect against MMAC has expired.
27. The Plaintiffs have been advised of the terms and conditions of the Amended Plan and have provided their instructions to enter into the Amended Plan on their own behalf and on behalf of the Class Members;
28. Moreover, Class Members have received multiple notices relating to the claims process and the Amended Plan within the scope of the CCAA proceedings. Copies of those notices are filed in support hereof as **Exhibit CAR-5**;
29. The steps taken to notify the Class Members of the CCAA claims process and the approval of the Amended Plan are also summarized at paragraphs 49 and following of MMAC's *Motion for the Approval of the Amended Plan of Compromise and Arrangement*, a copy of which is filed in support hereof as **Exhibit CAR-6**;
30. Notwithstanding the appointment of the Plaintiffs as Class Representatives in the CCAA proceedings, Class Members were afforded the opportunity to express their independent views and vote against the Amended Plan if they were so inclined,

either in person or by proxy³. None did. Approval of the Amended Plan at the Creditors Meeting was unanimous – there were no objectors and no one voted against the Amended Plan;

31. In reaching this Amended Plan, the Parties engaged in lengthy, good faith, adversarial, and arm's length negotiations and it is put forward that the product of these negotiations is fair and reasonable and in the best interests of Class Members;

PAR CES MOTIFS, PLAISE AU TRIBUNAL : FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

ACCUEILLIR la présente requête;

GRANT the present motion;

ORDONNER ET DÉCLARER que, pour l'application de ce jugement, les définitions énoncées au Plan d'Arrangement Amendé, CAR-3 (ci-après le « Plan »), s'appliquent et y sont incorporées par renvoi;

ORDER AND DECLARE that for the purposes of this judgment, the definitions contained in the Amended Plan of Compromise and Arrangement, CAR-3 (hereinafter the "Plan"), shall apply and are incorporated by reference;

DÉCLARER que l'ensemble du Plan fait partie intégrale du présent jugement;

DECLARE that the Plan is an integral part of this judgment;

ORDONNER ET DÉCLARER que l'Ordonnance d'approbation au Canada et l'ordonnance d'approbation aux États-Unis lient les Parties, incluant tous ceux qui font partie du Recours Collectif, que ce soit en tant que Représentant du Groupe, Membres du Groupe, Intimées/ défendeurs nommés ou mise-en-cause, et, de plus, **ORDONNER ET DÉCLARER** que les Parties et les Membres du Groupe se conforment aux termes et conditions prévus au Plan;

ORDER AND DECLARE that the Canadian Approval Order and the U.S. Approval Order are binding and have full effect against the Parties, including all those that are part of the Class Action, whether as a Class Representative, Class Member, named Respondent/ Defendant or mise-en-cause, and **ORDER AND DECLARE** that the Parties and the Class Members shall abide by the terms and conditions of the Plan;

ORDONNER ET DÉCLARER qu'à la Date de Mise en Oeuvre du Plan, (i) les allégations formulées et les conclusions recherchées contre les Parties Quittancées ne feront plus partie du Recours Collectif, et (ii) le Recours Collectif sera rejeté et terminé à toutes fins que de droit contre les Parties Quittancées, sans

ORDER AND DECLARE that on the Plan Implementation Date, (i) the allegations made and the conclusions sought against the Released Parties shall no longer form part of the Class Action, and (ii) the Class Action shall be dismissed and terminated as against the

³ The Plaintiffs do not admit that such views would have been legally binding in light of the terms of the Representation Order and Meeting Order (both as defined in the Amended Plan), but they are a useful indicator of public sentiment.

frais;

LE TOUT, sans frais.

Released Parties, without costs;

THE WHOLE, without costs.

LAC-MÉGANTIC, November 12, 2015

DANIEL E. LAROCHELLE L.L.B.
AVOCAT INC.

Per: Me Daniel E. Larochelle
Attorney for the Court Appointed Class
Representatives

MONTRÉAL, November 12, 2015

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein
Attorney for the Court Appointed Class
Representatives

AFFIDAVIT

I, Jeff Orenstein, attorney, practicing my profession at 1030 rue Berri, Suite 102, Montreal, Quebec, H2L 4C3, solemnly affirm:

1. That I am one of the attorneys for the Court Appointed Class Representatives in this matter;
2. That I have taken cognizance of the Motion attached and the facts alleged therein are accurate to the best of my knowledge;
3. That said Motion is made in good faith.

AND I HAVE SIGNED

Jeff Orenstein

Solemnly affirmed before me at Montreal
this 12th day of November, 2015

Commissioner of Oaths
for the judicial district of Montreal

CANADA

SUPERIOR COURT
(Class Action)

PROVINCE OF QUEBEC
DISTRICT OF MÉGANTIC

N°: 480-06-000001-132

GUY OUELLET

and

SERGE JACQUES

and

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**Petitioners/Plaintiffs/Class
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v.

CANADIAN PACIFIC RAILWAY COMPANY

Defendant

NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the present motion will be presentable for adjudication before the Honourable Mr. Justice Gaétan Dumas, J.S.C., of the district of Saint-François, on a date and location to be determined by the Court.

DO GOVERN YOURSELVES ACCORDINGLY.

LAC-MÉGANTIC, November 12, 2015

DANIEL E. LAROCHELLE L.L.B.
AVOCAT INC.
Per: Me Daniel E. Larochelle

Attorney for the Court Appointed Class
Representatives

MONTRÉAL, November 12, 2015

CONSUMER LAW GROUP INC.

Per: Me Jeff Orenstein

Attorney for the Court Appointed Class
Representatives

N°: 480-06-000001-132

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CANADA CO.**

(Articles 2, 20, 46, 1045, 1051 *C.C.P.*, and section 17 of the
Companies' Creditors Arrangement Act, R.S.C. 1985, c. C 36)

ORIGINAL

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