CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

Nº:

Nº : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET, domicilié et résidant au 3684, rue de Tourville, Sherbrooke, province de Québec, J1N 0W8

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC., ayant son siège au 1981, avenue McGill College, Montréal, province de Québec, H3A 0G6

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE – Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC, 300, boul. Jean-Lesage, bureau 1.03, Québec, province de Québec, G1K 8K6

PARTIE MISE EN CAUSE – Créancier

REQUÊTE POUR PERMISSION D'APPELER D'UN JUGEMENT RENDU EN APPLICATION DE LA LOI SUR LES ARRANGEMENTS AVEC CERTAINS CRÉANCIERS
(Article 13 LACC)
Partie requérante
Datée du 23 juin 2021

À L'UN DES HONORABLES JUGES DE LA COUR D'APPEL, LA PARTIE REQUÉRANTE EXPOSE :

FAITS ET MOYENS D'APPEL

1. La partie appelante se pourvoit contre un jugement de la Cour supérieure, rendu le 4 juin 2021, par l'honorable Gaétan Dumas, j.c.s., siégeant dans le district de Saint-François et qui a accueilli la requête pour directives de l'intimée;

2. La date de l'avis du jugement est le 4 juin 2021;

3. La durée de l'instruction en première instance a été d'approximativement une demi-journée;

4. La partie appelante joint à la présente le jugement de première instance à l'annexe 1;

5. La valeur de l'objet du litige est de 84 456 523,00 $CAN, en tenant pour acquis la réclamation non vérifiée de la province;

6. Le dossier ne comporte pas d'élément confidentiel;

7. La partie requérante joint à la présente requête le jugement faisant l'objet du présent appel (voir Annexe 1) ainsi que tous les jugements des instances précédentes, pièces et éléments de preuve présentés en première instance et nécessaires à l'obtention de la permission;

8. Il s'agit d'un jugement dont la question en jeu en est une qui devrait être soumise à la Cour d'appel pour les raisons suivantes :

9. Il est dans l'intérêt de la justice d'accorder la permission demandée puisque les questions soulevées ont un impact significatif sur la pratique en insolvabilité s'agissant de droit nouveau, tel que :

    a) Le jugement rendu en première instance est contradictoire avec le « Claims resolution order » et même s'il y avait entente entre les parties, ce qui n'est pas admis ici, le juge de première instance ne pouvait relever un créancier de son obligation de justifier sa preuve de réclamation;

    b) L'impact de l'amendement extrêmement tardif d'une preuve de réclamation, et ce, bien après l'homologation du plan d'arrangement et l'expiration de toute possibilité d'appel même hors délai;

c) L’impact de cette preuve de réclamation amendée tardivement sur la validité du vote des créanciers ayant approuvé le plan d’arrangement homologué;

d) L’impact sur un plan d’arrangement homologué d’un vice de consentement découvert après le fait par le dépôt extrêmement tardif d’une preuve de réclamation réduite de façon fort substantive;

e) La portée de la compétence inhérente de la Cour et de la compétence discrétionnaire en vertu de la LACC d’interpréter ou même d’amender une partie d’un plan déjà homologué alors qu’un élément essentiel ayant mené à la conclusion du plan d’arrangement et modifié de façon significative et substantive plusieurs années après l’homologation du plan;

10. Il est dans l’intérêt de la justice d’accorder la permission demandée puisque la question est également d’intérêt pour le dossier lui-même considérant l’impact important sur les distributions non seulement de surplus actuels, mais également sur des distributions futures importantes;

11. En effet, la distribution de sommes additionnelles extrêmement importante est très probable et est la seule véritable raison du maintien en vigueur de ce dossier;

12. Il est dans l’intérêt de la justice d’accorder la permission demandée puisque la question en appel n’est pas frivole. En effet :

a) Les contradictions dans la position de l’intimée sont révélatrices que l’article 4.2 e) ne reflète pas clairement l’intention des parties;

b) Au surplus, l’amendement de redistribution de surplus des dommages économiques ayant été amendé à la dernière minute (1 journée avant le vote d’approbation du plan) n’a été ajouté seulement suite à la connaissance par les créanciers que des surplus seraient en effet dégagés. Ce n’était pas le cas dans le cadre de l’estimation de la province, ce qui démontre plutôt qu’il était à l’intention des parties de redistribuer tout surplus, le cas échéant;

c) L’intention des créanciers découlant du vote d’approbation et non pas des négociations par les procureurs représentant ceux-ci, démontre au mieux une renonciation tacite à des surplus éventuels, ce qui ne constitue pas une renonciation valide en droit québécois;

13. Il est dans l'intérêt de la justice d'accorder la permission demandée puisque l'appel ne retardera pas indument le progrès du dossier, celui-ci étant au stade de la simple distribution après l'homologation d'un plan d'arrangement amendé. Par ailleurs :

    a) considérant que des recours récursoires sont toujours en cours devant les tribunaux et que le plan demeurera ouvert tant et aussi longtemps que ces recours récursoires ne seront pas terminés, le dossier pourra continuer;

    b) le dossier en cours ne vise que les surplus et n'aura pas d'impact sur les sommes déjà distribuées;

14. Le juge de première instance a erré dans son jugement pour les motifs suivants :

    a) Le juge a omis d'exercer sa compétence en ne traitant pas la requête verbale en irrecevabilité de l'appelant;

<u>Erreurs de droit</u>

15. Le juge de première instance a erré en droit en exerçant la compétence du « Claims officer » qu'il avait pourtant lui-même délégué en vertu du « Claims resolution order »;

16. Le juge de première instance a erré en droit en considérant que la vérification préalable de la créance de la province par l'intimée n'était pas nécessaire considérant que cela avait un impact déterminant sur les points suivants :

    a) L'interprétation du plan d'arrangement amendé, ci-après « Plan »;

    b) L'analyse du consentement des créanciers lors du vote sur l'adoption du Plan;

    c) L'impact possible sur la validité même du vote d'approbation du Plan si la réclamation de la province s'avérait substantiellement inférieure au montant amendé;

17. Le juge de première instance a erré en droit en omettant de clarifier la nature juridique du Plan;

18. Le juge de première instance a erré en droit en omettant d'appliquer les principes généraux d'interprétation des contrats afin d'établir l'intention des parties lors du vote sur l'adoption du Plan, particulièrement quant à l'article 4.2;

19. Le juge de première instance a erré en droit en ne considérant pas l'impact du dépôt d'une réclamation d'ordre pécuniaire supérieure aux dommages réellement subis dans un dossier d'invalidité;

20. Le juge de première instance a erré en droit en n'analysant pas la possibilité qu'une réclamation supérieure aux dommages subis était potentiellement contraire à l'ordre public et donc nulle d'une nullité absolue, et ce, même si la possibilité de surindemnisation n'était que théorique, ce qui n'est pas admis en l'espèce;

21. Le juge de première instance a erré en droit en n'analysant pas la possibilité du vice de consentement causant la nullité partielle de l'article 4.2;

22. Le juge de première instance a erré en droit en n'utilisant pas sa compétence pour remédier à la rédaction lacunaire de l'article 4.2 du Plan, et ce, afin de le rendre conforme à l'intention des parties, soit suite à l'interprétation du contrat ou afin de remédier à la nullité partielle ou même absolue dudit article;

<u>Erreurs de fait manifestes et déterminantes ou erreurs mixtes de fait et droit</u>

23. Le juge de première instance a erré de façon manifeste et déterminante lorsqu'il considère au paragraphe 43 que le Plan ne pourrait être approuvé sans un vote favorable du gouvernement. Or, pour que cette affirmation soit véridique, le gouvernement doit détenir plus du tiers de la masse des créances en valeur;

24. Or, comment le juge de première instance peut-il faire cette affirmation sans que la créance de la province soit vérifiée par l'intimée, vérification que le juge de première instance considère superfétatoire;

25. Le juge de première instance a erré de façon manifeste et déterminante en ignorant un pan complet de la preuve, soit l'impact des recours récursoires statutaires actuellement engagés par le US Trustee, ci-après « Carmack claims »;

26. En effet, ces recours statutaires pourraient résulter dans l'injection de sommes excessivement importantes pour des distributions futures et incidemment avoir un impact essentiel sur l'ensemble des arguments soulevés dans le cadre du présent dossier;

27. Le juge de première instance a erré de façon manifeste et déterminante en ne relevant pas les contradictions évidentes dans la position de l'intimée, principalement quant à la nécessité de la vérification de la créance de la province et incidemment sur la base du consentement des parties dans le cas des négociations;

28. En effet, l'intimée prétend dans sa requête et lors de l'audience que la vérification de la créance de la province est superfétatoire considérant que la somme a été fixée de façon consensuelle dans le cadre de la négociation du Plan et que la possibilité d'une réclamation inférieure à celle estimée par la province lors desdites négociations avait toujours été considérée par les créanciers;

29. Paradoxalement, l'intimée dans pas moins de onze (11) de ses rapports au tribunal fait clairement mention qu'il est dans le processus de vérification de la réclamation et même, lors de certaines mentions, dit être dans l'attente de pièces justificatives et additionnelles de la part de la province;

30. Le juge de première instance a erré de façon manifeste et déterminante en considérant que l'indemnisation des familles des victimes établie en tenant compte des barèmes des tribunaux américains constituait de la surindemnisation faisant fi du dossier miroir américain du protocole interfrontalier et que le Plan réglait pour ceux-ci des procédures devant une autre juridiction;

31. Le juge de première instance a erré de façon manifeste et déterminante en ne considérant pas que le montant de la réclamation prouvé de la province était un élément essentiel du consentement des autres créanciers alors que l'intimée le reconnait lui-même dans l'un de ses rapports;

32. Le juge de première instance a erré de façon manifeste et déterminante en considérant que des explications suffisantes avaient été données aux victimes pour constituer une renonciation valide à une somme d'au moins 84 456 523,00 $CAN, voir même plus, alors que toutes les parties impliquées ignoraient cet élément qui n'est apparu que sept (7) ans plus tard;

33. Le juge de première instance a erré de façon manifeste et déterminante en ne considérant pas que l'amendement de dernière minute de redistribution des surplus

économiques démontrait clairement une intention des parties de ne pas renoncer à quelque surplus que ce soit suite à la découverte que des réclamations réelles seraient substantiellement inférieures aux preuves de réclamation estimée;

34. Par ailleurs, bien que le juge de première instance déclare clairement que la diligence du créancier soit l'un (1) des trois (3) critères importants dans l'analyse de son intervention, il ne fait aucun état du laxisme évident de la province et de l'iniquité entre les exigences quant aux dépôts des preuves de réclamation ainsi créées;

35. Au moment de déposer la présente déclaration l'appelant n'a toujours pas reçu le procès-verbal ainsi que l'enregistrement audio de l'audience et se réserve le droit d'amender les présentes sur réception de ceux-ci;

CONCLUSIONS RECHERCHÉES

36. La partie requérante demandera à la Cour d'appel de :

a) **ACCUEILLIR** l'appel;

b) **INFIRMER** le jugement de première instance;

c) **DÉCLARER** irrecevable la requête pour directives de l'intimée;

d) **RETOURNER** le dossier devant le « Claims officer » afin qu'il procède à la vérification exhaustive de la preuve de réclamation de la province;

e) **DÉTERMINER** que la réclamation prouvée de la province n'a pas été réglée au montant 409 313 000,00 $ par les termes du sous-paragraphe 4.2 du Plan;

f) **PERMETTRE** l'amendement de l'article 4.2 e) afin que le pourcentage de distribution soit ajusté proportionnellement à la preuve de réclamation réelle et vérifiée de la province et que les points de pourcentage ainsi dégagés soient redistribués proportionnellement entre les créanciers des autres catégories, soit 4.2 a), b), c), et d);

OU SUBSIDAIREMENT

DÉCLARER que les surplus dégagés par la différence entre la réclamation initiale et la réclamation amendée et vérifiée de la province soient redistribués au prorata de la valeur de leur réclamation dans les catégories 4.2 a), b), c), et d);

g) **LE TOUT** avec frais de justice.

POUR CES MOTIFS, PLAISE À LA COUR DE :

ACCUEILLIR la présente requête;

ACCORDER à la partie requérante la permission d'appeler du jugement rendu le 4 juin 2021 par le juge Gaétan Dumas de la Cour supérieure dans le dossier portant le numéro 450-11-000167-134;

LE TOUT, frais à suivre selon le sort de l'appel.

Le 23 juin 2021, à Saint-Georges,

ME HANS MERCIER
MERCIER MORIN AVOCATS INC.
Avocats de la partie APPELANTE
Code d'impliqué : BM3006
11505, 1ère Avenue, suite 200
Saint-Georges (Québec) G5Y 7X3
Tél. : 418-228-1222
Téléc. : 418-228-1277
Courriel : hansmercier@merciermorin.ca

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE – Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

DÉCLARATION SOUS SERMENT
Partie requérante
Datée du 23 juin 2021

Je, soussigné, Me Hans Mercier, domicilié pour les fins de ma profession au 11505, 1ière Avenue, suite 200, Saint-Georges (Québec) G5Y 7X3, affirme solennellement ce qui suit :

1. Je suis l'avocat de la partie requérante en la présente cause;

2. Tous les faits allégués dans la *Requête pour permission d'appeler d'un jugement rendu en application de la loi sur les arrangements avec certains créanciers* sont vrais.

Le 23 juin 2021, à Saint-Georges,

ME HANS MERCIER
Avocat de la partie requérante

Affirmé solennellement devant moi
ce 23 juin 2021,

Nadia Tanguay #212369
Nadia Tanguay, commissaire à l'assermentation pour le Québec

AVIS DE PRÉSENTATION

À :

Richter Groupe Conseil inc.
1981, avenue McGill College
Montréal (Québec) H3A 0G6
Partie intimée

Me Sylvain Vauclair
WOODS s.e.n.c.r.l.
200, avenue McGill College, bureau 1700
Montréal (Québec) H3A 3H3
Avocats de la partie intimée

Me Geneviève Cloutier
GOWLING WLG
1, place Ville-Marie, 37e étage
Montréal (Québec) H3B 3P4
Avocats de la partie mise en cause
Montréal, Maine & Atlantique Co.

Me Pierre-Luc Beauchesne
BERNARD, ROY (JUSTICE-QUÉBEC)
1, rue Notre-Dame Est, Bureau 8.00
Montréal (Québec)H2Y 1B9
Avocats de la partie mise en cause
Procureur général du Québec

PRENEZ AVIS que la *Requête pour permission d'appeler d'un jugement rendu en application de la loi sur les arrangements avec certains créanciers* sera présentée devant un honorable juge de la Cour d'appel siégeant à l'Édifice Ernest-Cormier, situé au 100, rue Notre-Dame Est, à Montréal, le **20 juillet 2021**, à 9 h 30, dans la salle RC-18.

VEUILLEZ AGIR EN CONSÉQUENCE.

Le 23 juin 2021, à Saint-Georges,

Mercier Morin avocats

ME HANS MERCIER
MERCIER MORIN AVOCATS INC.
Avocats de la partie APPELANTE
Code d'impliqué : BM3006
11505, 1ère Avenue, suite 200
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PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

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COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

LISTE DES ANNEXES AU SOUTIEN DE LA REQUÊTE POUR PERMISSION D'APPELER
Partie requérante

ANNEXE 1 : Jugement de l'honorable Gaétan Dumas de la Cour supérieure rendu le 4 juin 2021;

ANNEXE 2 : Déclaration d'appel;

ANNEXE 3 : Amended plan of compromise and arrangement;

ANNEXE 4 : Motion for an order establishing a procedure for the review and determination of claims;

ANNEXE 5 : Claims resolution order;

ANNEXE 6 : Motion for the appointment of a claims officer;

ANNEXE 7 : Order to appoint a claims officer;

ANNEXE 8 : Seventeenth report of the monitor;

ANNEXE 9 : Nineteenth report of the monitor on the petitioner's plan of arrangement;

ANNEXE 10 : Twenty-first report of the monitor;

ANNEXE 11 : Twenty-second report of the monitor;

ANNEXE 12 : Twenty-third report of the monitor;

ANNEXE 13 : Twenty-fifth report of the monitor;

ANNEXE 14 : Twenty-sixth report of the monitor;

ANNEXE 15 : Twenty-seventh report of the monitor;

ANNEXE 16 : Twenty-eighth report of the monitor;

ANNEXE 17 : Twenty-ninth report of the monitor;

ANNEXE 18 : Thirtieth report of the monitor;

ANNEXE 19 : Thirty-first report of the monitor;

ANNEXE 20 : Thirty-second report of the monitor;

ANNEXE 21 : Document d'informations lors du vote des créanciers.

Le 23 juin 2021, à Saint-Georges,

Mercier Morin avocats

ME HANS MERCIER
MERCIER MORIN AVOCATS INC.
Avocats de la partie APPELANTE
Code d'impliqué : BM3006
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COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

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PARTIE MISE EN CAUSE – Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 1

(Jugement de l'honorable Gaétan Dumas de la Cour supérieure rendu le 4 juin 2021)

COUR SUPÉRIEURE

(*Chambre commerciale*)

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE SAINT-FRANÇOIS

N° : 450-11-0000167-134

DATE : 4 juin 2021

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

Dans l'affaire du plan d'arrangement :

MONTRÉAL, MAINE & ATLANTIC CANADA CO. (MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE)
Débitrice
Et
RICHTER GROUPE CONSEIL INC.
Contrôleur

JUGEMENT

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[1] Le Tribunal est saisi d'une requête pour directives présentée par le contrôleur en vertu de l'article 11 LACC et du paragraphe 54 de l'ordonnance initiale.

[2] Rappelons que le présent dossier peut être qualifié d'exceptionnel. En effet, suite à la tragédie ferroviaire survenue à Lac-Mégantic le 6 juillet 2013, le centre-ville de Mégantic fut alors détruit par le feu qui a suivi les explosions du pétrole contenu dans les wagons de la MMA. Quarante-sept personnes sont décédées. La valeur des preuves de réclamation produites dans le dossier dépasse le milliard de dollars.

[3] En date du 15 décembre 2015, le soussigné mentionnait avoir déjà rendu plus de 40 jugements et ordonnances dans ce dossier qu'il supervise suite à l'ordonnance initiale rendue par notre collègue l'honorable Martin Castonguay, j.c.s., le 8 août 2013.

[4] Le 9 octobre 2015, une ordonnance intitulée « *Order Varying the Order Approving the Amended Plan of Compromise and Arrangement* » (datée du 8 juin 2015) est prononcée par le Tribunal.

[5] Dans une lettre datée du 4 décembre 2020, reproduite à l'Annexe A du 33e rapport du contrôleur, la Province de Québec informe le contrôleur que :

> a. le « montant final de [ses] dommages se chiffre à 324 856 477 $, plutôt qu'au montant de 409 313 000 $ qui avait été fixé dans le Plan d'arrangement. »;
>
> b. la Province pourrait considérer une redistribution volontaire « à l'ensemble des créanciers, incluant le gouvernement du Québec, d'une partie du dividende qui lui est dû, à savoir un montant de 39 609 585 $, correspondant à la différence entre i) le montant du dividende calculé selon les termes du Plan d'arrangement sur une créance de 409 313 000 $ [409M$], soit un montant de 191 965 396 $ et ii) le montant du dividende calculé selon le pourcentage prévu au Plan d'arrangement, mais sur la base d'une créance de 324 856 477 $ [325M$], soit un montant de 152 355 811 $ »;
>
> c. une telle redistribution volontaire étant « conditionnelle à ce que les avocats des créanciers qui ont des conventions d'honoraires basés sur un pourcentage des sommes reçues par les créanciers confirment avant le 29 janvier 2021 qu'ils ne tenteront pas de percevoir des créanciers des honoraires additionnels en raison de cette redistribution ».

[6] Dans une lettre datée du 22 février 2021, la Province informe le contrôleur qu'elle n'avait pas reçu la confirmation requise des avocats qu'ils ne tenteront pas de recevoir des créanciers des honoraires additionnels en raison de la redistribution qu'entend faire la Province[1].

[7] Lors de l'audition de la requête, le Tribunal comprend qu'il n'est pas question pour les procureurs de renoncer à quelques honoraires additionnels que ce soient.

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[1] Voir pièce R-1.

[8] Le contrôleur a même été requis par Me Gloriane Blais et Me Hans Mercier de ne pas effectuer d'autres paiements à la Province aux termes du plan. Me Hans Mercier, agissant à titre de représentant de « *Meyers & Flowers/Webster litigation group and the Toups litigations group* » a également indiqué que la réclamation prouvée de la Province devrait être déterminée suite à un examen de la preuve de réclamation de la Province conformément à l'ordonnance relative à la procédure de résolution des réclamations émise par le Tribunal le 15 avril 2015 et que le plan devrait être amendé pour refléter le montant déterminé de la réclamation prouvée de la Province.

[9] Pour les raisons ci-après exprimées, le Tribunal croit que Me Mercier a tort lorsqu'il affirme que la preuve de réclamation de la Province devrait être examinée conformément à l'ordonnance relative à la procédure de résolution des réclamations. Me Mercier a également tort lorsqu'il prétend que le Tribunal pourrait « *proprio motu* » amender le plan d'arrangement et redistribuer les sommes selon son désir.

[10] L'interprétation que fait Me Mercier du plan d'arrangement est contraire aux termes précis de ce plan et à la compréhension qu'en a le contrôleur et le Tribunal.

[11] La position de Me Mercier est assez paradoxale. En effet, celui-ci voudrait que son interprétation du plan d'arrangement soit retenue alors qu'il affirme lui-même dans une note adressée aux procureurs du contrôleur le 30 mars 2021 :

> « Tout d'abord, comme vous le savez, le soussigné agit comme avocat-conseil local pour les procureurs américains représentant 40 des 49 familles de victimes (...) **Ces clients n'ont pas voté sur le plan canadien et voté seulement par procuration aux États-Unis**.
>
> Afin de ne pas nuire au débat prévisible de *forum non conveniens* ces créanciers n'ont jamais comparu au Canada (...)
>
> Me Blais agit quant à elle comme avocate-conseil locale pour le procureur américain Me Toups qui représente les 9 autres familles de victimes (...)
>
> Aucun d'entre eux n'a comparu devant le tribunal canadien. (...)
>
> Il est important de spécifier que nous avons demandé de façon répétée et insistante au moniteur depuis le début des négociations d'obtenir les justifications de la réclamation du gouvernement. Cela a toujours été et est encore à ce jour refusé. Nous avons dû nous en remettre à la bonne foi du gouvernement et aux obligations fiduciaires du moniteur.
>
> Nous ne pouvons par ailleurs passer sous silence à quel point les familles des victimes et les victimes sont outrés (sic) par le fait que le gouvernement soit potentiellement surindemnisé à leurs dépens (...)

> En effet, considérant que nous n'avons pas voté et que le vote du gouvernement dépend de l'article 3.2 qui exige quant à lui que la réclamation soit prouvée. Cela pourrait aller jusqu'à invalider le vote lui-même. »

[12] Dans un jugement rendu le 14 mars 2014 sur une requête pour augmentation de la charge administrative, le Tribunal mentionnait :

> « [15] Les procureurs représentant les successions des 47 personnes décédées lors de la tragédie ferroviaire du 6 juillet 2013 ont comparu à Bangor le 26 février 2014 pour déclarer qu'ils ne souhaitaient aucunement participer à un plan d'arrangement et qu'ils refusaient d'être inclus dans le groupe pour lequel une requête en autorisation de recours collectif a été déposée au Québec.
>
> [16] D'ailleurs, lors de la clôture de l'audition commune, qui avait été suspendue pendant quelques heures pour permettre la négociation entre les parties, les procureurs représentant les successions se sont plaints d'avoir été mis à l'écart des discussions par les autres créanciers. Le Juge en chef Kornreich qui coprésidait le « *joint hearing* » a alors avisé les procureurs que ce ne sont pas les créanciers qui les ont exclus de toutes discussions, mais qu'ils s'étaient eux-mêmes exclus des discussions.
>
> [17] Nous sommes convaincus que ce groupe serait bienvenu à prendre part aux discussions si un plan d'arrangement devait être déposé.
>
> (...)
>
> [24] Le tribunal a d'ailleurs mentionné aux procureurs présents son inquiétude face aux faits que certains créanciers pourraient renoncer à leurs droits dans un plan d'arrangement au Canada ou dans un recours collectif intenté au Canada et laissent filer les dates butoirs imposées par les tribunaux pour déposer leur réclamation pour, par la suite, se voir refuser tout recours aux États-Unis.
>
> [25] Le tribunal ne peut évidemment pas forcer une partie à s'inclure à un recours collectif ou à un plan d'arrangement, mais doit tout de même s'assurer que les démarches nécessaires ont été faites afin que des victimes ne soient pas exclues.
>
> [26] Le tribunal le mentionne afin que tous gardent ce problème à l'esprit et parce que dans toutes les décisions rendues en application de la LACC l'intérêt de tous les créanciers doit être pris en compte.
>
> [27] En effet, il faut se rappeler que même si un créancier détient un bon recours, il pourra perdre des droits si un vote des créanciers englobe sa réclamation et qu'il y renonce. Conséquemment, si une proposition inclut une quittance de tiers et qu'un créancier ne participe pas au processus sous la LACC, il pourrait perdre ses droits. »

[13] Si ces créanciers se sont exclus du plan d'arrangement, comment ont-ils pu recevoir autant d'argent?

[14] Suite au jugement du 14 mars 2014, le soussigné rendait jugement le 31 mars sur une requête pour l'obtention d'un processus de réclamations et pour l'établissement d'une date butoir dans lequel le Tribunal rappelait que des moyens exceptionnels seraient mis en place pour informer et protéger les créanciers de Mégantic en ces termes :

> « [29] C'est pourquoi le tribunal croit que les moyens mis en place pour informer et protéger les créanciers de Lac-Mégantic sont suffisants.
>
> [30] Des moyens hors du commun seront mis en place pour s'assurer que les créanciers et les victimes seront informés de leurs droits. Des séances d'informations seront tenues, des avis publics seront donnés. Une assistance sera fournie pour remplir les preuves de réclamations.
>
> [31] De plus, le dossier bénéficie d'une couverture médiatique importante. Des journalistes couvrent ce dossier de façon assidue. Le tribunal a donc tout lieu de croire que l'information se rendra à qui de droit.
>
> [32] À cela, il faut ajouter que la municipalité est également une créancière et que sa collaboration semble aussi acquise.
>
> [33] Nous ne semblons pas être dans une situation où chaque créancier tire la couverture de son côté. Les principaux créanciers semblent vouloir privilégier les victimes. »

[15] Tout en rappelant :

> « [37] Pour qu'un plan soit proposé, il semble que l'imposition d'une date butoir soit nécessaire. Les créanciers devront décider s'ils préfèrent être inclus dans un plan d'arrangement ou continuer leurs procédures sous d'autres juridictions.
>
> [38] Le tribunal n'est évidemment pas le conseiller juridique des créanciers. Il leur appartient de décider s'ils déposent une preuve de réclamation dans le présent dossier, quitte à voter contre un plan proposé s'ils le désirent ou continuer leurs procédures s'ils croient ne pas être liés par un plan auquel ils n'ont pas participé.
>
> [39] La décision leur appartient, mais ils doivent être conscients qu'ils ne participent pas à un tournoi « deux balles – meilleure balle ».
>
> [40] S'ils s'excluent et qu'ils ont raison : tant mieux. Mais s'ils s'excluent et qu'ils ont tort et que les quittances obtenues de tiers dans le cadre d'un plan sous la LACC leur sont opposables, ce sera leur décision. »

[16] Toujours dans le même sens, en date du 5 mai 2015, le soussigné rendait jugement sur une requête pour convocation d'une assemblée de créanciers. Dans ce jugement, le soussigné mentionnait :

> « [5] Un fonds, de plus de 300 000 000 $, a pu être constitué, faisant en sorte qu'un plan qui pourrait être acceptable pour les créanciers sera présenté à ceux-ci lors d'une assemblée des créanciers devant se tenir le 9 juin 2015. »

[17] Il était prévu au jugement qu'une preuve de réclamation de protection désignait une preuve de réclamation déposée par les représentants du groupe pour le compte des détenteurs de réclamation dans les cas de décès ce qui permettait qu'une preuve de réclamation soit admise aux fins du vote puisse être produite par des représentants nommés par le Tribunal.

[18] En effet, en date du 4 avril 2014, le soussigné rendait une ordonnance prévoyant que messieurs Yannick Gagné, Guy Ouellet, Serge Jacques et Louis-Serge Parent sont autorisés à produire une preuve de réclamation pour le compte des victimes de décès.

[19] Par la suite, Me Mercier a produit des avis de retrait aux termes de cette ordonnance.

[20] Il fut décidé que les preuves de réclamation en cas de décès déposées dans le dossier « miroir » américain vaudraient dans le présent dossier.

[21] C'est pourquoi le soussigné mentionne dans un jugement rendu le 27 mai 2015 :

> « [19] Bien que le jugement mentionne qu'une ordonnance sera signée le jour même pour établir le processus de réclamation et désigner les requérants aux recours collectifs, ce n'est que le 4 avril 2014 que le soussigné signe ces ordonnances. Dans l'ordonnance approuvant le processus de réclamation et approuvant l'établissement d'une date butoir au 13 juin 2014, il est prévu :
>
> > « [6] **ORDONNE** que, à moins d'autorisation à l'effet contraire par ce Tribunal, un Créancier qui ne produit pas une Preuve de réclamation avant la Date limite de dépôt des Réclamations ne soit pas autorisé à i) un autre préavis, ii) participer en tant que Créancier aux présentes procédures, iii) voter sur quelconque matière dans les présentes procédures, incluant le Plan, iv) produire une demande à l'encontre de la Requérante, et v) recevoir une distribution en vertu du Plan. Plus précisément et sans limiter la généralité de ce qui précède, la production d'une Preuve de réclamation pour le compte d'une catégorie ou d'un groupe de créanciers est interdite et la production d'une telle Preuve de réclamation pour le compte d'une catégorie ou d'un groupe de créanciers sera considérée invalide dans le présent dossier à toutes fins que de droit. Nonobstant ce qui précède, Yannick Gagné, Guy Ouellet, Serge Jacques et Louis-Serges Parent sont, par les présentes,

> autorisés à produire une Preuve de réclamation de protection avant la Date limite de dépôt des Réclamations pour le compte des Victimes de décès. Ladite Preuve de réclamation de protection devra être considérée nulle et non avenue sans autre ordonnance de ce Tribunal à l'égard de toute Victime de décès qui aura produit une Preuve de réclamation individuelle avant la Date limite de dépôt des Réclamations; »

[20] Il est donc prévu que malgré le recours collectif intenté, chaque membre du recours collectif intenté devant la Cour supérieure du district de Saint-François et dont, Yannick Gagné, Guy Ouellet, Serge Jacques et Louis-Serges Parent sont les requérants, une preuve de réclamation individuelle doit être produite dans le présent dossier afin d'être valide.

[21] La seule réclamation de groupe qui pouvait être produite était celle prévue au paragraphe 6 à savoir une preuve de réclamation pour le compte des victimes de décès. Cette preuve de réclamation était qualifiée de protection afin de protéger le droit des victimes de décès qui semblaient vouloir s'exclure du processus de la LACC et qui pouvaient perdre des droits.

[22] Le tribunal dans des jugements antérieurs avait déjà fait part de sa crainte que certains créanciers fassent un mauvais choix stratégique. C'est d'ailleurs pour cette raison que le tribunal avait lancé le message que les créanciers ne participaient pas à « un tournoi deux balles, meilleures balles », et que, si un créancier effectuait un mauvais choix stratégique et dépassait la date butoir, il ne pourrait s'en plaindre plus tard.

[23] Malgré ces avertissements, tous les intervenants ont tenté de s'assurer que personne ne perdrait de droits. »

[22] Cela était évidemment fait pour protéger les droits des familles des victimes.

[23] Aussi, lors de l'audition de la requête pour convocation d'une assemblée de créanciers[2], le Tribunal est informé que des procureurs américains auraient fait signer des mandats aux représentants des 47 victimes décédées lors du déraillement. Ces mandats prévoiraient que les procureurs américains se verraient remettre une somme représentant 40% de toutes sommes perçues suite à des actions intentées aux États-Unis. Le soussigné mentionne :

> « [11] Me Despins se montrait soucieux du fait que le paragraphe 38 proposé dans le projet d'ordonnance pourrait enlever juridiction au tribunal si des disputes s'élèvent quant au paiement d'honoraires qui pourraient sembler disproportionnés par rapport aux services rendus.

[2] Voir jugement du 5 mai 2015.

[12] Depuis le début du dossier, le tribunal a fait part aux procureurs de façon très ouverte qu'il croyait que la meilleure façon de résoudre le dossier était la contribution de tiers en échange de quittances et par l'autorisation du recours collectif canadien aux fins de règlement du dossier. C'était, de l'avis du tribunal, la façon la plus efficace de régler le dossier.

[13] Par contre, le tribunal a en tout temps avisé les procureurs que les honoraires des avocats seraient versés suite à une autorisation du tribunal.

[14] En effet, au Québec, les procureurs au recours collectif, doivent faire approuver leurs honoraires par le juge qui autorise le recours ou qui rend jugement sur la distribution des sommes accordées par jugement.

[15] Or, nous apprenons aujourd'hui que les victimes qui se voient attribuer un fonds de 77 205 000 $ pourraient voir ce montant amputé de 40% en honoraires pour les procureurs américains. Cela représente une somme de 30 882 000 $ en honoraires professionnels.

[16] Sans rendre jugement et sans se prononcer sur la valeur des services rendus, le tribunal a, séance tenante, avisé toutes les parties qu'il n'entendait pas abdiquer le pouvoir inhérent de la Cour supérieure de s'assurer que le plan proposé soit juste et raisonnable.

[17] Pour l'instant, trop de questions restent sans réponse. Si des questions s'élèvent sur la validité des mandats donnés au Québec quelques jours après l'accident ferroviaire, quel tribunal aura juridiction pour déterminer les honoraires payables?

[18] Est-ce que le pourcentage payable en vertu des mandats signés s'applique aux 48[1] victimes ou à une partie d'entre elles seulement.

[19] Les honoraires payables sont-ils conformes aux normes déontologiques au Québec?

[20] Autant de questions pour lesquelles nous n'avons pas de réponse.

[21] Un protocole interfrontalier a été approuvé par la Cour supérieure du Québec et la Bankruptcy Court for the District of Maine. Ce protocole pourrait-il être utilisé pour solutionner des contestations potentielles?

[22] Le tribunal doit respecter la juridiction du tribunal du Maine. L'inverse est aussi vrai. Si le tribunal n'a pas juridiction, il n'a pas l'intention d'usurper la juridiction d'un autre tribunal.

[23] De plus, des mandats de représentation dûment signés en connaissance de cause enlèvent-ils au tribunal son pouvoir inhérent?

[24] Par contre, une chose est claire, pour avoir plein effet, un plan d'arrangement dûment approuvé par les créanciers doit être homologué par le tribunal. Il appartient au tribunal d'accorder les quittances aux tiers et seule une ordonnance de la Cour peut avoir cet effet pour les personnes qui ne règlent pas le dossier de façon individuelle.

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[1] Une victime s'est ajoutée depuis le début des procédures.»

[24] Il fut donc convenu de modifier le paragraphe 38 du projet d'ordonnance pour qu'il se lise ainsi :

« **ORDONNE** que, nonobstant toute disposition contraire de la présente Ordonnance et sujet à l'émission de l'Ordonnance d'Approbation Canadienne et de l'Ordonnance d'Approbation aux États-Unis et à ce que celles-ci soient devenues des Ordonnances Finales, l'évaluation des réclamations pour fins de vote sur le Plan Américain soit déterminée uniquement en vertu du Plan Américain et de toute ordonnance rendue dans le Dossier de Faillite. Les distributions concernant les « Derailment Wrongful Death Claims » (telles que définies dans le Plan Américain) seront effectuées uniquement selon les modalités du Plan Américain, lequel Plan Américain devra prévoir une distribution par le WD Trustee (tel que défini dans le Plan Américain) en stricte conformité avec les dispositions de l'Annexe E du Plan, laquelle est également jointe au Plan Américain. Le présent paragraphe demeure toutefois sujet à ce que le Plan Américain, ou tout plan subséquent dans le Dossier de Faillite, soit amendé (et que l'Ordonnance d'Approbation aux États-Unis contienne une disposition identique) afin de prévoir que :

i. Aucun paiement ni distribution quelconque ne sera effectué à tout avocat ou conseiller juridique qui prétend représenter le détenteur d'un Derailment Wrongful Death Claim (tel que défini dans le Plan Américain) à moins que l'avocat ou le conseiller juridique en question remette au WD Trustee une lettre de mandat ou autre document similaire dûment signé et autorisant l'avocat ou le conseiller juridique en question à recevoir cette distribution ou à percevoir des honoraires, incluant sur une base contingente (une « Lettre Mandat d'un Client dans un Cas de Décès »); et

ii. Aucune telle distribution ne sera effectuée par le WD Trustee si :

a. La Lettre Mandat d'un Client dans un Cas de Décès a été déclarée invalide ou inopérante aux termes d'une ordonnance ou d'une décision finale rendue dans quelque procédure judiciaire que ce soit (incluant une procédure administrative) initiée par une partie ayant l'intérêt nécessaire pour contester les droits de l'avocat ou du conseiller juridique en question à des honoraires, devant tout tribunal, tribunal administratif ou autre forum ayant juridiction en la matière, au États-Unis ou au Canada (collectivement, une « Procédure »), et dans le

cadre de laquelle la validité et(ou) les effets de la Lettre Mandat d'un Client dans un Cas de Décès sont contestées; ou

b. Une Procédure demeure pendante dans le cadre de laquelle il y a une contestation de la validité et(ou) des effets de la Lettre Mandat d'un Client dans un Cas de Décès, jusqu'à ce que cette Procédure soit terminée par l'émission d'une ordonnance ou décision finale en faveur de l'avocat ou du conseiller juridique impliqué. La distribution à l'avocat ou au conseiller juridique sera limitée conformément aux termes d'une telle ordonnance ou décision finale rendue dans le cadre de la Procédure, dans la mesure où l'ordonnance ou la décision en question prévoit de telles limitations.

Les détenteurs de Derailment Wrongful Death Claims impliqués dans une Procédure recevront la portion de leurs distributions en vertu de leur Derailment Wrongful Death Claim qui n'est pas contestée dans le cadre de la Procédure en même temps et de la même manière que les détenteurs des autres Derailment Wrongful Death Claims non impliqués dans une Procédure.

Rien dans ce paragraphe 38 n'a pour but de limiter ou ne peut être interpréter comme limitant l'exercice par la Cour Responsable de la LACC de ses pouvoirs dans le Dossier LACC, incluant en ce qui concerne l'approbation du Plan.[3] »

[25] Dans sa requête pour directives, le contrôleur soumet que la question en litige est la suivante :

« 13. Est-ce que la Province est en droit de recevoir une distribution basée sur une Réclamation Prouvée de 409 M $ ou cette distribution devrait-elle être basée sur une Réclamation Prouvée de 325 M $ ou sur une Réclamation Prouvée au montant qui sera déterminé suite à l'examen de la preuve de réclamation de la Province aux termes de l'Ordonnance de résolution.

14. Si la Province n'est pas en droit de recevoir une distribution basée sur une Réclamation Prouvée de 409 M $ mais est en droit de recevoir une distribution basée sur une Réclamation Prouvée de 325 M $ ou sur une Réclamation Prouvée au montant qui sera déterminé suite à l'examen de la preuve de réclamation de la Province aux termes de l'Ordonnance de résolution, comment cette distribution doit-elle être calculée et si cette « *re-calculation* » (sic) requiert un amendement au Plan, le Plan peut-il être amendé. »[4]

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[3] Le paragraphe 38 devient le paragraphe 75 de la présente ordonnance.
[4] Voir paragraphes 13 et 14 de la requête pour directives.

[26] Le contrôleur comprend des échanges reçues de Me Mercier agissant à titre de représentant de *Meyers & Flowers* que la réclamation prouvée de la Province devrait être déterminée suite à un examen de la preuve de réclamation de la Province conformément à l'ordonnance relativement à la procédure de résolution des réclamations et que le plan devrait par la suite être amendé pour refléter le montant déterminé de la réclamation prouvée de la Province.

[27] De la présentation confuse de Me Mercier, on comprend qu'il voudrait que les pourcentages de distribution des cinq catégories des créanciers décrites au sous-paragraphe 4.2 du plan soient recalculés, mais sans indiquer comment procéder à ce nouveau calcul. Nous y reviendrons.

[28] La province de Québec demande que le plan soit exécuté tel que voté et approuvé par le Tribunal, selon l'interprétation qu'elle lui donne. Le contrôleur est d'accord avec la position de la Province alors que Me Mercier demande au Tribunal d'exercer sa discrétion pour ordonner l'évaluation de la réclamation de la Province et modifier le pourcentage de distribution des cinq catégories des créanciers décrites au plan.

[29] Dans tous les cas, le Tribunal croit que la décision devant être rendue doit tenir compte des enseignements de la Cour suprême dans *Callidus*[5] lorsqu'elle affirme :

> « (2) Le rôle du juge surveillant dans les procédures intentées sous le régime de la *LACC*
>
> [47] Un des principaux moyens par lesquels la *LACC* atteint ses objectifs réside dans le rôle particulier de surveillance qu'elle réserve aux juges (voir Sarra, *Rescue! The Companies' Creditors Arrangement Act*, p. 18-19). Chaque procédure fondée sur la *LACC* est supervisée du début à la fin par un seul juge surveillant. En raison de ses rapports continus avec les parties, ce dernier acquiert une connaissance approfondie de la dynamique entre les intéressés et des réalités commerciales entourant la procédure.
>
> [48] La *LACC* mise sur la position avantageuse qu'occupe le juge surveillant en lui accordant le vaste pouvoir discrétionnaire de rendre toute une gamme d'ordonnances susceptibles de répondre aux circonstances de chaque cas et de « [s'adapter] aux besoins commerciaux et sociaux contemporains » (*Century Services*, par. 58) en « temps réel » (par. 58, citant R. B. Jones, « The Evolution of Canadian Restructuring: Challenges for the Rule of Law », dans J. P. Sarra, dir., *Annual Review of Insolvency Law 2005* (2006), 481, p. 484). Le point d'ancrage de ce pouvoir discrétionnaire est l'art. 11 , qui confère au juge le pouvoir de « rendre toute ordonnance qu'il estime indiquée ». Cette disposition a été décrite comme étant le « moteur » du

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[5] *9354-9186 Québec inc. c. Callidus Capital Corp.*, 2020 CSC 10.

régime législatif (*Stelco Inc. (Re)* (2005), 253 D.L.R. (4th) 10 (C.A. Ont.), par. 36).

[49] Quoique vaste, le pouvoir discrétionnaire conféré par la *LACC* n'est pas sans limites. Son exercice doit tendre à la réalisation des objectifs réparateurs de la *LACC* , que nous avons expliqués ci-dessus (voir *Century Services*, par. 59). En outre, la cour doit garder à l'esprit les trois « considérations de base » (par. 70) qu'il incombe au demandeur de démontrer : (1) que l'ordonnance demandée est indiquée, et (2) qu'il a agi de bonne foi et (3) avec la diligence voulue (par. 69).

[50] Les deux premières considérations, l'opportunité et la bonne foi, sont largement connues dans le contexte de la *LACC* . Le tribunal « évalue l'opportunité de l'ordonnance demandée en déterminant si elle favorisera la réalisation des objectifs de politique générale qui sous-tendent la Loi » (par. 70). Par ailleurs, l'exigence bien établie selon laquelle les parties doivent agir de bonne foi dans les procédures d'insolvabilité est depuis peu mentionnée de façon expresse à l'art. 18.6 de la *LACC*, qui dispose :

> **Bonne foi**
>
> **18.6 (1)** Tout intéressé est tenu d'agir de bonne foi dans le cadre d'une procédure intentée au titre de la présente loi.
>
> **Bonne foi — pouvoirs du tribunal**
>
> **(2)** S'il est convaincu que l'intéressé n'agit pas de bonne foi, le tribunal peut, à la demande de tout intéressé, rendre toute ordonnance qu'il estime indiquée.
>
> (Voir aussi *LFI*, art. 4.2 ; *Loi nº 1 d'exécution du budget de 2019*, L.C. 2019, c. 29, art. 133 et 140 .)

[51] La troisième considération, celle de la diligence, requiert qu'on s'y attarde. Conformément au régime de la *LACC* en général, la considération de diligence décourage les parties de rester sur leurs positions et fait en sorte que les créanciers n'usent pas stratégiquement de ruse ou ne se placent pas eux-mêmes dans une position pour obtenir un avantage (*Lehndorff General Partner Ltd., Re* (1993), 17 C.B.R. (3d) 24 (C.J. Ont. (Div. gén.)), p. 31). La procédure prévue par la *LACC* se fonde sur les négociations et les transactions entre le débiteur et les intéressés, le tout étant supervisé par le juge surveillant et le contrôleur. Il faut donc nécessairement que, dans la mesure du possible, ceux qui participent au processus soient sur un pied d'égalité et aient une compréhension claire de leurs droits respectifs (voir McElcheran, p. 262). La partie qui, dans le cadre d'une procédure fondée sur la *LACC* , n'agit pas avec diligence et en temps utile risque de compromettre le processus et, de façon plus générale, de nuire à l'efficacité du régime de la Loi (voir, p. ex., *North American Tungsten Corp. c. Global Tungsten and*

> *Powders Corp.*, 2015 BCCA 390, 377 B.C.A.C. 6 par. 21-23; *Re BA Energy Inc.*, 2010 ABQB 507, 70 C.B.R. (5th) 24; *HSBC Bank Canada c. Bear Mountain Master Partnership*, 2010 BCSC 1563, 72 C.B.R. (5th) 276 par. 11; *Caterpillar Financial Services Ltd. c. 360networks Corp.*, 2007 BCCA 14, 279 D.L.R. (4th) 701, par. 51-52, où les tribunaux se sont penchés sur le manque de diligence d'une partie).
>
> [52] Nous soulignons que les juges surveillants s'acquittent de leur rôle de supervision avec l'aide d'un contrôleur qui est nommé par le tribunal et dont les compétences et les attributions sont énoncées dans la *LACC* (voir art. 11.7 , 11.8 et 23 -25). Le contrôleur est un expert indépendant et impartial qui agit comme [TRADUCTION] « les yeux et les oreilles du tribunal » tout au long de la procédure (*Essar*, par. 109). Il a essentiellement pour rôle de donner au tribunal des avis consultatifs sur le caractère équitable de tout plan d'arrangement proposé et sur les ordonnances demandées par les parties, y compris celles portant sur la vente d'actifs et le financement provisoire (voir *LACC*, al. 23(1) d) et i); Sarra, *Rescue! The Companies' Creditors Arrangement Act* , p. 566 et 569). »

[30] Sans risque de se tromper, le Tribunal peut affirmer qu'en l'espèce, il s'est impliqué beaucoup plus qu'il ne le fait habituellement dans les dossiers de LACC.

[31] Il faut dire qu'il s'agissait d'un dossier exceptionnel qui a reçu un traitement exceptionnel.

[32] Pour bien comprendre les raisons qui ont amené les créanciers à accepter le fonds d'indemnisation créé par des tiers et la façon dont le plan a été monté et approuvé par le Tribunal, un retour sur le dossier s'impose.

[33] Le Tribunal croit que la décision qu'on lui demande de prendre aujourd'hui doit être basée sur les différentes décisions et orientations prises depuis le début.

[34] Dans un jugement rendu le 15 décembre 2015, sur une requête pour approbation d'honoraires professionnels, le soussigné reprend les étapes importantes du présent dossier. Ainsi, il est mentionné :

> « [8] Un mois après cette tragédie, MMA reconnaît sa responsabilité dans la tragédie ferroviaire et dépose la requête initiale dans le présent dossier laquelle est accordée par notre collègue Martin Castonguay, j.c.s.
>
> [9] Il est important de noter que dès le départ, la débitrice, entourée de ses conseillers judiciaires, agit de façon à ce que les victimes de cette tragédie puissent espérer recevoir un jour une indemnisation pour les torts que lui a causés la MMA.

[10] Lors de la tragédie, MMA bénéficie d'une protection d'assurance de 25 000 000 $ de la part de la compagnie d'assurance XL. Cette assurance peut servir à indemniser les victimes de la tragédie en plus d'obliger l'assureur à défendre son assurée contre toute poursuite civile.

[11] Cette assurance couvrait non seulement MMA, mais également ses administrateurs.

[12] Il est facile aujourd'hui d'affirmer que MMA n'avait d'autre choix que de reconnaître sa responsabilité, mais force est d'admettre qu'elle était tout de même en droit d'exiger de ses assureurs d'être défendue, ce qui aurait pu entraîner des procédures judiciaires s'échelonnant sur plusieurs années.

[13] Tous les actifs de MMA sont vendus pour une somme de 14 000 000 $ alors que les actifs sont grevés de garanties totalisant 30 000 000 $.

[14] L'accident ferroviaire a lieu en juillet 2013 et les actifs sont vendus dès le début de l'année 2014.

[15] Jusqu'ici, rien de juridiquement exceptionnel dans ce dossier, si ce n'est le protocole interfrontalier qui est tout de même assez rare au Québec.

[16] Il en est de même du mode de vente des actifs. En effet, la vente fait suite à un *« stalking horse bid »*. Il s'agit peut-être de la deuxième ou troisième fois que cette méthode est utilisée dans un dossier d'insolvabilité au Québec.

[17] Autre évènement exceptionnel dans le présent dossier, une audition commune est ordonnée et tenue à Bangor, Maine, en février 2014.

[18] Plutôt que de tenir une audition commune par visioconférence, il est convenu que le tribunal se déplacera pour une audition commune coprésidée par le Juge en chef de la Cour de faillite du Maine, l'honorable Louis Kornreich et le soussigné.

[19] Le soussigné a, à plusieurs reprises, mentionné dans divers jugements rendus dans le présent dossier que cette audition commune est le point tournant du dossier puisque cette audition a permis à tous les créanciers, autant américains que canadiens, de finalement s'asseoir ensemble pour tenter de trouver une solution au présent dossier. »

[20] Dans un jugement rendu le 14 mars 2014, le Tribunal mentionne :

« [2] Le tribunal ne reprendra pas tous les faits survenus dans le présent dossier, mais réfère le lecteur à un jugement rendu par le soussigné le 17 février 2014 par lequel le soussigné accueillait une demande pour un « *joint status conference* » qui s'est tenu à Bangor (Maine) le 26 février 2014.

[3] Les faits mentionnés dans ce jugement sont toujours pertinents et les faits survenus suite à ce jugement auront un impact sur le présent jugement.

[4] Qu'il suffise de mentionner que dans le jugement du 17 février 2014, le soussigné discute, à compter du paragraphe 57 de la décision jusqu'au paragraphe 105, de l'opportunité d'utiliser la LACC pour permettre la vente d'actifs hors du cours ordinaire des affaires, mais dans un cadre de continuité d'exploitation (*as a going concern*).

[5] Comme le mentionnait le soussigné dans la décision du 17 février 2014[1], le tribunal s'est toujours assuré du consentement de la FRA et du gouvernement du Québec avant d'ordonner l'augmentation de la charge administrative.

[6] Or, le soussigné mentionne également dans ce jugement qu'une fois les actifs vendus, la FRA n'aura plus d'intérêt à financer les procédures en vertu de la LACC puisqu'elle aura été payée en partie à même les actifs vendus. Dans les faits, la FRA a tout de même un intérêt pour sa créance non garantie, mais cet intérêt est non significatif si on le compare à la somme des créances ordinaires auxquelles la débitrice devra faire face. Entre autres, le gouvernement du Québec à lui seul aura une réclamation de plus 400 000 000 $, en plus de toutes les autres réclamations des victimes. Il n'est donc pas dans l'intérêt de la FRA de financer les procédures pour les créanciers ordinaires.

[7] C'est ce dont discutait le soussigné dans sa décision du 17 février à partir du paragraphe 116.

[8] Le tribunal explique donc la raison pour laquelle un « *joint hearing* » sera tenu à Bangor le 26 février 2014.

[9] Bien que le tribunal ait pu sembler pessimiste dans sa décision du 17 février sur les chances du dépôt d'un plan d'arrangement viable dans un futur rapproché, il semble que le résultat de cette conférence soit au-delà de ce que le soussigné espérait.

[10] En effet, cela a permis aux créanciers impliqués autant dans le dossier canadien qu'américain de se rencontrer pour la première fois.

[11] Le procureur du Comité de créanciers américains a présenté un tableau objectif de la situation qui a sûrement permis que les discussions s'orientent dans la bonne direction.

[12] L'assureur responsabilité de la débitrice, *XL Insurance*, semble être prête à étudier la possibilité d'une contribution additionnelle à la somme de 25 000 000 $ qu'elle reconnaît être prête à payer depuis le début du dossier, sous réserve de quittances évidemment.

[13] Il semble même qu'on puisse voir poindre à l'horizon la possibilité de contributions de tiers pour contribuer à une offre permettant finalement le dépôt d'un plan d'arrangement.

[14] Tous admettent que le dépôt d'un plan est complexe et que plusieurs difficultés devront être aplanies. Une des difficultés est que différents recours ont été intentés dans différentes juridictions.

[15] Les procureurs représentant les successions des 47 personnes décédées lors de la tragédie ferroviaire du 6 juillet 2013 ont comparu à Bangor le 26 février 2014 pour déclarer qu'ils ne souhaitaient aucunement participer à un plan d'arrangement et qu'ils refusaient d'être inclus dans le groupe pour lequel une requête en autorisation de recours collectif a été déposée au Québec.

[16] D'ailleurs, lors de la clôture de l'audition commune, qui avait été suspendue pendant quelques heures pour permettre la négociation entre les parties, les procureurs représentant les successions se sont plaints d'avoir été mis à l'écart des discussions par les autres créanciers. Le Juge en chef Kornreich qui coprésidait le « *joint hearing* » a alors avisé les procureurs que ce ne sont pas les créanciers qui les ont exclus de toutes discussions, mais qu'ils s'étaient eux-mêmes exclus des discussions.

[17] Nous sommes convaincus que ce groupe serait bienvenu à prendre part aux discussions si un plan d'arrangement devait être déposé.

[18] Un autre point qui peut rendre les parties optimistes sur les chances de dépôt d'un plan viable est la possibilité de l'homologation d'un plan d'arrangement qui prévoit des quittances en faveur de tiers en plus des administrateurs. C'est ce dont le soussigné discutait dans sa décision du 17 février aux pages 23 à 28. Cette possibilité de libération des tiers est reconnue au Canada et semble avoir reçu l'aval de la Cour suprême dans *Century Services inc.* c. *Canada (Procureur général)*[2].

[19] Discutant des pouvoirs des tribunaux dans l'application de la LACC et du fait que les tribunaux chargés d'appliquer la LACC ont été appelés à innover dans l'exercice de leur compétence, la Cour suprême mentionne :

> « [62] L'utilisation la plus créative des pouvoirs conférés par la *LACC* est sans doute le fait que les tribunaux se montrent de plus en plus disposés à autoriser, après le dépôt des procédures, la constitution de sûretés pour financer le débiteur demeuré en possession des biens ou encore la constitution de charges super-prioritaires grevant l'actif du débiteur lorsque cela est nécessaire pour que ce dernier puisse continuer d'exploiter son entreprise pendant la réorganisation (voir, p. ex., *Skydome Corp., Re* (1998), 16 C.B.R. (4th) 118 (C. Ont. (Div. gén.)); *United Used Auto & Truck Parts Ltd., Re*, 2000 BCCA 146, 135 B.C.A.C. 96, conf. (1999), 12 C.B.R. (4th) 144 (C.S.); et, d'une manière générale, J. P. Sarra, *Rescue! The Companies' Creditors Arrangement Act* (2007), p. 93-115). La *LACC* a aussi été utilisée pour libérer des tiers des actions susceptibles d'être intentées contre eux, dans le cadre de l'approbation d'un plan global d'arrangement et de transaction,

> malgré les objections de certains créanciers dissidents (voir *Metcalfe & Mansfield*). Au départ, la nomination d'un contrôleur chargé de surveiller la réorganisation était elle aussi une mesure prise en vertu du pouvoir de surveillance conféré par la *LACC*, mais le législateur est intervenu et a modifié la loi pour rendre cette mesure obligatoire. »

[20] La possibilité de libération de tiers ne semble plus faire de doute au Canada. Par contre, cette certitude ne semble pas exister aux États-Unis puisque la Cour suprême ne semble pas s'être penchée sur cette question.

[21] Le présent jugement ne lie évidemment pas le tribunal américain et n'est basé que sur les informations reçues des procureurs dans le présent dossier. Il appartiendra au tribunal américain d'en décider si la question lui est soumise.

[22] Par contre, si un plan d'arrangement est accepté et homologué au Canada et qu'il est par la suite reconnu par le tribunal américain on nous informe que dans l'état actuel du droit américain, les quittances de tiers obtenues au Canada pourraient être opposables aux États-Unis.

[23] Encore une fois, le présent jugement n'a pas autorité aux États-Unis. Par contre, et c'est là la bonne nouvelle, il semble que les probabilités de reconnaissance des quittances canadiennes aux États-Unis soient assez fortes pour que des tiers acceptent de contribuer à un plan d'arrangement au Canada quitte à en débattre par la suite aux États-Unis dans un recours éventuel si certaines personnes persistent aux États-Unis et choisissent de ne pas participer à un plan d'arrangement au Canada.

[24] Le tribunal a d'ailleurs mentionné aux procureurs présents son inquiétude face aux faits que certains créanciers pourraient renoncer à leurs droits dans un plan d'arrangement au Canada ou dans un recours collectif intenté au Canada et laissent filer les dates butoirs imposées par les tribunaux pour déposer leur réclamation pour, par la suite, se voir refuser tout recours aux États-Unis.

[25] Le tribunal ne peut évidemment pas forcer une partie à s'inclure à un recours collectif ou à un plan d'arrangement, mais doit tout de même s'assurer que les démarches nécessaires ont été faites afin que des victimes ne soient pas exclues.

[26] Le tribunal le mentionne afin que tous gardent ce problème à l'esprit et parce que dans toutes les décisions rendues en application de la LACC l'intérêt de tous les créanciers doit être pris en compte.

[27] En effet, il faut se rappeler que même si un créancier détient un bon recours, il pourra perdre des droits si un vote des créanciers englobe sa réclamation et qu'il y renonce. Conséquemment, si une proposition inclut une quittance de tiers et qu'un créancier ne participe pas au processus sous la LACC, il pourrait perdre ses droits.

> [28] Comme mentionné dans la décision du 17 février 2014, la vente des actifs a été autorisée même s'il n'était pas évident qu'un plan d'arrangement viable pouvait, par la suite, être présenté aux créanciers. »

[35] Dans un autre jugement rendu le 15 décembre 2015 sur une requête en approbation d'honoraires professionnels, il est mentionné :

> [30] Dans l'état actuel du dossier, nous avons plus qu'un « *germ of a plan* » et croyons qu'il y a possibilité de trouver une solution viable et acceptable.
>
> [30] Autre évènement tout à fait exceptionnel dans un dossier d'insolvabilité, une date butoir pour produire les preuves de réclamation fut ordonnée par le soussigné dans le jugement du 31 mars 2014.
>
> [31] Ce qu'il y a d'exceptionnel dans cette date butoir n'est pas qu'elle ait été ordonnée, mais plutôt qu'elle le soit avant même qu'un plan d'arrangement soit déposé.
>
> [32] En effet, le but annoncé et déclaré lors de l'audience tenue à Bangor est de faire participer les tiers potentiellement responsables de la tragédie ferroviaire en échange de quittances pour les recours judiciaires pouvant être intentés contre eux.
>
> [33] Or, les tiers potentiellement responsables refusent de présenter quelque offre que ce soit avant de connaître le total des réclamations approximatives auxquelles ils pourraient faire face. C'est donc la raison pour laquelle le processus a été inversé obligeant les créanciers à déposer leur réclamation avant une date butoir alors qu'ils ne savaient même pas si une offre leur serait faite un jour.
>
> [34] C'est pourquoi le soussigné mentionnait dans le jugement du 31 mars 2014 :
>
> > « [21] Dans l'esprit populaire, il pourrait être raisonnable de décider qu'il est inutile de produire une preuve de réclamation puisqu'il n'y a aucun actif. Les nombreux créanciers ne savent pas nécessairement que des tiers pourraient décider de contribuer à un plan d'arrangement dans le but de mettre fin à des procédures qui s'annoncent longues et en échange de quittances qui mettraient fin aux procédures.
> >
> > [22] C'est donc la raison pour laquelle le tribunal a préféré faire part de ses inquiétudes séance tenante plutôt que de rendre jugement sans avoir donné l'occasion à toutes les parties d'éclairer le tribunal sur ce point. Le principe dans l'application d'un pouvoir discrétionnaire n'est pas de ne pas avoir d'opinion, mais plutôt de garder l'esprit ouvert aux opinions exprimées.

[23] Le tribunal doit donc décider si un processus de réclamation doit être établi même si aucun plan n'est déposé à ce jour. Si un processus est établi, doit-il y avoir une date butoir d'établie? En effet, il est possible qu'un processus de réclamation soit établi et qu'une date butoir soit fixée à une date postérieure au dépôt d'un plan.

[24] Pour décider de la question, le tribunal doit garder à l'esprit que :

> « In CCAA proceedings, a claims bar order can be made by the judge in charge of the proceedings. The purpose of the order is, amongst other things, to enable creditors to meaningfully assess and vote on a plan of arrangement and to ensure a timely and orderly completion of the CCAA proceedings. »[3]

[25] La date butoir est là en principe pour favoriser les créanciers et non pas les débiteurs ou les tiers. Mais elle est aussi là pour que le dossier puisse progresser et aboutir sans délai inutile[4].

[26] L'autre principe que doit suivre le tribunal pour rendre sa décision est la confiance qu'il doit avoir dans le contrôleur qu'il a nommé et les professionnels de l'insolvabilité qui se présentent devant lui.

[27] Dans son volume Rescue! The Companies Creditors Arrangement Act[5], la professeure Janis P. Sarra enseigne :

> « The monitor can serve as a stabilizing force in the sense of reassuring creditors, because it is monitoring the debtor's business and financial affairs, projected cash flow and appropriate use of assets, and managerial conduct in the operation of the business during the stay period. Given the limited size of the Canadian market of insolvency professionals and the less litigious legal culture in Canada than in the United States, there has also developed a level of confidence and trust between professionals that serve as monitors and the creditors that are repeat players in insolvency proceedings. This confidence and trust can facilitate proceedings and enhance the effectiveness of the monitor. Equally, however, the process, the trust and co-operation among repeat players can create a perception of bias. The monitor must be scrupulous in fulfilling its obligation to consider and balance the interests of all stakeholders. »

[28] Il n'y a pas seulement que le contrôleur et les professionnels de l'insolvabilité en qui le tribunal doit avoir confiance. En l'espèce, le gouvernement du Québec est un créancier majeur. Il nous semble quasi impossible qu'un plan d'arrangement puisse être adopté sans son

consentement. Or, depuis le début, le gouvernement déclare qu'il désire que les sommes recueillies aillent aux victimes de Lac-Mégantic. Dans un précédent jugement, le tribunal a indiqué que la définition de victime n'était pas la même pour le gouvernement et le tribunal. Inutile d'y revenir. Mais pour les besoins du présent jugement, les victimes que veut favoriser le gouvernement et celles que le tribunal veut protéger sont les mêmes.

[29] C'est pourquoi le tribunal croit que les moyens mis en place pour informer et protéger les créanciers de Lac-Mégantic sont suffisants.

[30] Des moyens hors du commun seront mis en place pour s'assurer que les créanciers et les victimes seront informés de leurs droits. Des séances d'informations seront tenues, des avis publics seront donnés. Une assistance sera fournie pour remplir les preuves de réclamations.

[31] De plus, le dossier bénéficie d'une couverture médiatique importante. Des journalistes couvrent ce dossier de façon assidue. Le tribunal a donc tout lieu de croire que l'information se rendra à qui de droit.

[32] À cela, il faut ajouter que la municipalité est également une créancière et que sa collaboration semble aussi acquise.

[33] Nous ne semblons pas être dans une situation où chaque créancier tire la couverture de son côté. Les principaux créanciers semblent vouloir privilégier les victimes.

[34] À cela, il est aussi important de rappeler que le tribunal a toujours discrétion pour admettre une réclamation tardive[6].

[35] Mais attention, un mauvais choix stratégique sera rarement un motif pour déposer une preuve de réclamation hors délai[7].

[36] En autorisant le processus de réclamation et en imposant une date butoir, le tribunal continue donc dans la même logique sous-jacente à l'ordonnance d'un « *joint hearing* » en février 2014. À savoir, faciliter la participation de tiers dans l'élaboration d'un plan d'arrangement.

[37] Pour qu'un plan soit proposé, il semble que l'imposition d'une date butoir soit nécessaire. Les créanciers devront décider s'ils préfèrent être inclus dans un plan d'arrangement ou continuer leurs procédures sous d'autres juridictions.

[38] Le tribunal n'est évidemment pas le conseiller juridique des créanciers. Il leur appartient de décider s'ils déposent une preuve de réclamation dans le présent dossier, quitte à voter contre un plan proposé s'ils le désirent ou continuer leurs procédures s'ils croient ne pas être liés par un plan auquel ils n'ont pas participé.

> [39] La décision leur appartient, mais ils doivent être conscients qu'ils ne participent pas à un tournoi « deux balles – meilleure balle ».
>
> [40] S'ils s'excluent et qu'ils ont raison : tant mieux. Mais s'ils s'excluent et qu'ils ont tort et que les quittances obtenues de tiers dans le cadre d'un plan sous la LACC leur sont opposables, ce sera leur décision.
>
> [41] Le présent tribunal ne peut certainement pas décider du droit américain, tel que déjà discuté dans la décision du 14 mars. Le tribunal y faisait la distinction entre la possibilité d'obtenir des quittances pour des tiers au Canada et aux États-Unis, ainsi que la possibilité de reconnaissance des jugements canadiens aux États-Unis dans le cadre d'une restructuration. Tout ce dont le tribunal peut s'assurer est que les créanciers auront l'opportunité d'obtenir les informations auxquelles ils ont droit.
>
> [42] C'est aussi la raison pour laquelle le tribunal accueillera la requête pour désigner les requérants au recours collectif à titre de représentants dans le présent dossier.

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[3] Lloyd W. Houlden, Geoffrey B. Morawetz et Janis P. Sarra, The 2012-2013 Annotated Bankruptcy and Insolvendy Act, Carswell, 2012, page 1263.
[4] *Hurricane Hydrocarbons ltd* c. *Komarnicki*, 37 C.B.R. (5th) 1 (Alta. C.A.).
[5] Dr. Janis P. Sarra, Rescue! The Companies' Creditors Arrangement Act, 2nd edition, Carswell, 2013, pages 570 et 571.
[6] *Société canadienne de la Croix Rouge*, 2008, Carswell Ont. 6105 (Ont. S.c.j.) et *re : Blue Range Ressource Corp. (2000)*, 15, C.B.R. (4th) 192.
[7] *Re : Semcanada Crude Co.*, 2012 ABQB 489 (J. Romaine). »

Soulignements du soussigné

[36] Ici, un autre rappel s'impose, bien que Me Mercier prétende que le gouvernement a fait de fausses représentations dans leur réclamation et que le gouvernement serait de mauvaise foi, l'attitude du gouvernement dans le présent dossier démontre l'inverse.

[37] En effet, malgré que le présent dossier ait connu trois gouvernements successifs, sa position a toujours été la même.

[38] Ainsi, le 17 février 2014, le soussigné mentionnait dans un jugement :

> « [123] (...) 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. »

[39] Avec le recul, on peut aujourd'hui apprécier l'importance de l'affirmation suivante que faisait le soussigné dans le jugement du 17 février 2014 :

> « [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 'accepter et pourront décider de catégories de créanciers pouvant participer au partage. Ils pourraient également accepter que des tiers soient libérés. »

[40] C'est exactement la façon dont le plan a été proposé. Diverses catégories de créanciers ont été établies et il était prévu que chaque catégorie reçoive un pourcentage du fonds d'indemnisation créé par des tiers.

[41] Quant à la position du gouvernement, elle fut toujours la même. D'ailleurs, lors de la présentation de la requête pour fixer une date butoir, Me Louise Comtois, représentant le Procureur général mentionnait :

« On comprend votre préoccupation. Vous voyez le grand inconvénient à la date butoir, mais je voudrais d'abord vous faire la liste des avantages que nous on y voit, puis, il faut réaliser que, puis Me Levine l'a dit, on a quand même beaucoup cheminé collectivement depuis la première date.

Il ne faut pas oublier non plus que dès l'ordonnance initiale, il a été décidé par la Cour de protéger le 25 000 000 $ qui venait de la police d'assurance.

Alors, je pense pas qu'à ce stade des procédures, on peut dire, ha oui, mais là, le processus n'a pas besoin d'être mis en marche pour ce 25 000 000 là parce que c'est pas vraiment un actif de MMA.

Je pense qu'il a toujours été compris et convenu qu'on protégeait le 25 000 000 et puis je me souviens, dès les premières séances devant la Cour, les procureurs de la débitrice et les procureurs du contrôleur évoquaient déjà la possibilité d'un règlement avec des ventes de quittances, je vais utiliser le mot entre guillemets, alors je pense, aujourd'hui, on peut pas changer de logique puis faire un tour à 180 degrés. On est dans une logique qui est pas complètement habituelle du C-36, qui est pas un recours collectif non plus, qui est pas un recours civil, mais ce qu'on a créé comme cadre judiciaire pour régler la situation des victimes du déraillement de Lac-Mégantic.

Alors, je pense qu'il faut qu'on garde ce focus là, et une fois qu'on a dit qu'on conservait ce focus là, mais il faut que l'on regarde que, heu, la date butoir va effectivement permettre d'avoir la somme globale des réclamations.

Une fois qu'on va avoir ça, on va savoir où est la majorité des créanciers, qui peut la constituer, où est la valeur des réclamations, qui va représenter le deux tiers de la valeur, parce qu'un moment donné il est évident qu'on va avoir des décisions importantes à prendre pour chacun de nos clients individuellement ou collectivement.

Mais tant et aussi longtemps qu'on ne sait pas quelle sera la totalité de la réclamation qui peut être formulée à l'égard des personnes responsables, j'vais le dire comme ça, de manière plus générale du déraillement du 6 juillet, on arrivera pas à rien.

Alors donc, connaître la somme des réclamations, de notre point de vue, c'est capital.

Je vais pas parler pour les défenderesses là, j'en ai compté 50 dans le recours collectif canadien, j'ai pas regardé les procédures américaines, mais si on a pas de date butoir, ce qu'on demande, je vais les appeler les défenderesses dans les autres recours, de se livrer à un exercice de négociations à l'aveuglette. Je te dis pas combien je vais te réclamer, mais je voudrais que tu me dises combien tu m'offres. Et ça je vois pas que ça puisse fonctionner dans le dossier dans lequel on est aujourd'hui où on parle de nombreux impliqués et de sommes importantes d'argent qui sont en jeu.

Alors, il faut encadrer le processus le plus possible puis je pense pas que c'est l'existence de la date butoir qui va faire que y va avoir des personnes, de nombreuses personnes, qui vont perdre leurs droits.

C'est sûr que, idéalement monsieur le juge, on aurait fait toutes nos procédures en l'an 2013, c'est pas ça qui est arrivé pour toutes sortes de raisons.

Maintenant, on arrive avec une date à l'entrée de l'été. Ça pas l'air du printemps ce matin là, mais on va avoir une date au 13 juin, qui est avant la période des vacances.

Dans le scénario où vous rejetez la requête, là, il y aura des décisions qui devront être prises de part et d'autre, mais il y a de bonnes chances qu'on revienne avec une autre requête avec un autre processus, et oui, probablement obligatoirement une nouvelle date butoir.

Mais là, on peut pas mettre ça au 15 juillet, on peut pas mettre ça au 15 août. Alors, on va être reporté à l'automne.

Et dans l'approche du gouvernement dans ce dossier, c'est vrai que ça fait longtemps que XL nous dit que le 25 000 000 est là. Il y a toutes sortes de difficultés pour clore ce volet de la procédure, mais le gouvernement a toujours dit, on veut que l'argent s'en aille à Mégantic le plus rapidement possible et dans la plus grosse quantité possible. Mais c'est sûr que les deux préoccupations sont là, puis si on a pas une date butoir aujourd'hui pour le mois de juin, j'pense qu'on va reporter tard dans l'automne, la capacité même de pouvoir distribuer de l'argent, ne serait-ce que après analyse sommaire des réclamations pour régler la question du 25 000 000.

L'inconvénient que vous y voyez, puis là je crois le contrôleur, puis on voit le processus qui est institué par les documents qui vous sont présentés, je pense qu'on peut raisonnablement conclure que les créanciers de Lac-Mégantic vont être informés de leur droit puis de l'importance de déposer leur preuve de réclamation avant une certaine date.

Oui c'est vrai, ça peut paraître volumineux, mais il y a quand même un petit effort qui devra être mis oui, mais de toute façon, oui, un effort pour aussi quantifier les réclamations pour que le processus puisse s'enclencher.

Le mettre sans date, je vois pas l'avantage que ça aurait, compte tenu des avantages de la date butoir puis tout ce qu'on fait pour ...

Par le tribunal :

Ça aurait l'avantage que les gens sauraient ce qu'on leur offre avant de perdre leurs droits. Alors que présentement, ils sont informés qu'il n'y a aucun actif. Qui en a pas d'argent. Ils sont informés de ça là. Puis, ils ont raison d'être informés de ça parce qu'il y en a pas d'argent dans le dossier.

Me Comtois :

Oui, mais monsieur le juge, ils sont également informés que leur recours contre XL, qui lui en a de l'argent 25 000 000, ils sont suspendus en raison de la décision sur l'ordonnance initiale.

On peut pas parler des actifs de MMA, de l'absence des actifs d'MMA, sans parler d'XL?

Par le tribunal :

Regardez maître, je dis souvent je ne rends pas jugement. Mais vous avez lu tous mes jugements à date? Ça, là-dessus, je vous le dis d'avance. Je rends jugement : jamais je n'autoriserai un plan où il y aura seulement qu'un 25 000 000 d'XL parce que il y a aucune raison qu'il y ait des quittances de donner dans un dossier pour un tiers qui reconnaît devoir l'argent. Alors, il n'y a aucune raison.

Me Comtois :

C'est pas ça qu'on vous a demandé monsieur le juge. Ce dont on a besoin c'est de temps, d'encadrement pour permettre d'arriver à la meilleure solution possible pour l'ensemble des créanciers. Alors, pour le gouvernement du Québec, ce que je vous dis monsieur le juge, dans le cadre de votre réflexion sur «est-ce que je mets ou non une date butoir» je le suggère bien humblement, il y a beaucoup d'avantages à avoir une date butoir et l'inconvénient qu'on pourrait y voir, il est diminué par le fait qu'il va y avoir un encadrement sur le processus comme tel et qu'il y a beaucoup d'avocats, beaucoup de personnes qui sont présents dans le dossier, présents à Lac-Mégantic pour faire en sorte que personne ne perde leurs droits et que le processus soit pas mis dans une espèce de « No Mans Land » pendant on sait pas combien de temps, 6 semaines, 2 mois, 3 mois.

Par le tribunal :

Très bien. »

[42] Dans le jugement rendu par le soussigné le 15 décembre 2015, il est fait mention du processus suivi par la suite. Ainsi :

« [36] Le processus a bien fonctionné. Les tiers potentiellement responsables connaissant maintenant les réclamations probables ont commencé à négocier avec les professionnels au dossier.

[37] Bien que l'on puisse parler d'un nombre d'environ 40 tiers responsables, il est plus juste de parler de 25 groupes différents.

[38] C'est donc avec 25 groupes représentés par des avocats chevronnés qu'ont eu à négocier les professionnels au dossier.

[39] Les noms indiqués aux procès-verbaux dans le présent dossier démontrent la qualité des avocats auxquels ont dû faire face les professionnels dans le présent dossier.

[40] Il y a aussi lieu de mentionner que certains créanciers se plaignaient d'être tenus à l'écart des négociations et de ne pas être informés des développements.

[41] Jusqu'à une certaine période, cela était tout à fait normal puisque les tiers potentiellement responsables, qui faisaient déjà l'objet de poursuites judiciaires, ne voulaient pas que l'on sache qui offre des montants ni les sommes offertes tant et aussi longtemps qu'une offre que les professionnels jugeraient raisonnable puisse être soumise aux créanciers.

[42] Les principaux créanciers sont le gouvernement du Québec, les représentants au recours collectif intenté et les successeurs des personnes décédées.

[43] À force de travail acharné et toujours avec le risque de ne pas être payés de leurs honoraires, les professionnels ont réussi ce que plusieurs croyaient impossible.

[44] Dans son quatorzième rapport déposé le 21 novembre 2014, le contrôleur nous informe :

> « 48. Depuis l'Ordonnance visant la neuvième prorogation, la Requérante (par l'entremise de son conseiller juridique), le Syndic en vertu du Chapitre 11 et le Contrôleur ont poursuivi leurs discussions avec les Tiers, afin de déterminer s'ils seraient disposés à contribuer au Fonds d'indemnisation en échange de quittances totales de tout litige découlant du déraillement, le tout dans le but de procurer une distribution plus avantageuse aux victimes du déraillement dans le cadre du Plan.
>
> 49. À la suite des différentes négociations, des ententes de principe totalisant environ 126 M$ ont été conclues jusqu'à ce jour (et ces montants pourraient augmenter d'environ 37 M$ pour totaliser 163 M$ en attendant l'achèvement de diverses discussions en cours). Les ententes de principe ainsi que toute autre entente pouvant être conclues sont, bien entendu, conditionnelles à l'approbation des créanciers et de la Cour. L'une des ententes incluses dans les conventions de règlement proposées totalisant environ 126 M$ demeure conditionnelle à l'approbation interne d'une des parties aux fins du règlement.
>
> 50. En ce qui concerne les montants additionnels potentiels de 37 M$ aux termes du règlement, ils font l'objet d'autres discussions en cours avec diverses parties, dont la Province et les Représentants d'un groupe de créanciers.
>
> 51. En ce qui concerne les Tiers qui n'ont pas conclu d'entente de principe, les discussions se poursuivent, mais il n'y a aucune certitude quant à la conclusion de d'autres ententes. Par conséquent, ces Tiers seront exclus du Plan et des quittances qui en découlent s'ils omettent de soumettre des offres satisfaisantes avant le dépôt du Plan susmentionné.

> 52. La mise en oeuvre du Plan sera conditionnelle i) à l'obtention d'une Ordonnance d'homologation du Plan en vertu de la LACC, ii) à la reconnaissance de l'Ordonnance d'homologation du Plan aux États-Unis en vertu du Chapitre 15 du Bankruptcy Code des États-Unis, où le Contrôleur agira à titre de représentant étranger et iii) à la mise en oeuvre d'un plan en vertu du Chapitre 11.
>
> 53. Afin de garantir l'administration continue dans le cadre des procédures en vertu de la LACC et du Chapitre 11, une partie du Fonds d'indemnisation servira à acquitter les honoraires professionnels accumulés et futurs. Par souci de clarté, la totalité du montant de 25 M$ de XL, s'il devient disponible aux fins de distribution aux termes du Plan, sera distribuée aux bénéficiaires sans qu'aucune déduction n'y soit faite. »

[45] Dans son quinzième rapport déposé le 9 janvier 2015, une ébauche du plan de transaction et d'arrangement est jointe. Au paragraphe 47 du rapport, le contrôleur mentionne que :

> « 47. (...) De plus, les principales parties intéressées par le processus de restructuration, soit la province de Québec (la « Province »), les avocats des Représentants d'un groupe de créanciers et les avocats des victimes du déraillement dans le cadre des procédures en vertu du Chapitre 11 (les « Conseillers juridiques américains ») (collectivement les « Principales parties intéressées ») ont été consultés et ils appuient l'entente globale conclue à ce jour. (...) »

[46] Aux termes de ce plan, une contribution totale d'environ 208 000 000 $ est offerte par des tiers qui contribueront au fonds d'indemnisation.

[47] Il est à noter qu'à cette époque, la province de Québec déclare être satisfaite du plan proposé incluant les sommes à être déposées dans le fonds d'indemnisation. À cette époque, et tel que prévu au paragraphe 52 du rapport du contrôleur, les réclamations présentées au gouvernement ne devaient pas représenter plus de 48,4% de tous les votes des créanciers. À la page 12, il est prévu que les créanciers titulaires de réclamations présentées au gouvernement recevront au total 52,2% des fonds de distribution. Ce montant devait être distribué par le contrôleur sur une base proportionnelle à la Province, à la ville de Lac-Mégantic, au gouvernement fédéral du Canada et à la Commission de santé et sécurité au travail.

[48] Conséquemment, en date du 9 janvier 2015, la Province s'apprêtait à recevoir environ 100 000 000 $. Évidemment, elle conservait ses recours contre tous les tiers potentiellement responsables qui n'ont pas contribué au fonds.

> [49] En date du 13 avril 2015, le contrôleur dépose son seizième rapport dans lequel il mentionne que le fonds d'indemnisation prévu au plan s'élève maintenant à la somme de 300 000 000 $. Il est mentionné au paragraphe 19 du rapport que le pourcentage maximal aux fins de votation serait donc de 45.5% pour la Province dont la preuve de réclamation s'élève à 409 000 000 $. Par la suite, peu avant l'assemblée des créanciers, d'autres tiers potentiellement responsables ont décidé de contribuer au fonds d'indemnisation de telle façon que ce fonds représente aujourd'hui une somme approximative de 452 000 000 $. Il est à noter que la variation du taux de change à elle seule a fait augmenter la valeur du fonds d'indemnisation de 22 000 000 $. »
>
> Soulignements du soussigné

[43] C'est donc dans ce contexte qu'a été déposé un plan d'arrangement qui fut accepté à l'unanimité par les créanciers et approuvé par le Tribunal. Ce plan n'aurait pu être approuvé sans un vote favorable du gouvernement.

[44] Une partie essentielle du Plan se retrouve à la section 4.2 « Distributions aux créanciers »:

> **Distributions aux créanciers**
>
> Les Créanciers suivants ayant des Réclamations Prouvées auront droit aux distributions suivantes aux termes du présent Plan :
>
> (a) les Créanciers ayant des Réclamations dans les Cas de Décès recevront au total 24,1 % des Fonds pour Distribution en règlement intégral et final de leurs Réclamations Prouvées contre les Parties Quittancées [...] selon le mécanisme prévu à l'annexe E des présentes;
>
> (b) les Créanciers ayant des Réclamations en Raison de Lésions Corporelles et de Dommages Moraux recevront globalement 10,4 % des Fonds pour Distribution en règlement intégral et final de leurs Réclamations Prouvées contre les Parties Quittancées [...] selon le mécanisme prévu à l'annexe F des présentes;
>
> (c) les Créanciers ayant des Réclamations pour Dommages Matériels et Économiques recevront globalement 9,0 % des Fonds pour Distribution en règlement intégral et final de leurs Réclamations Prouvées contre les Parties Quittancées [...] selon le mécanisme prévu à l'annexe G des présentes;
>
> (d) les Créanciers ayant des Réclamations à titre d'Assureurs Subrogés recevront globalement 4,1 % des Fonds pour Distribution en règlement intégral et final de leurs Réclamations Prouvées contre les Parties Quittancées. [...]

(e) les Créanciers ayant des Réclamations Gouvernementales recevront globalement 52,4 % des Fonds pour Distribution en règlement intégral et final de leurs Réclamations Prouvées contre les Parties Quittancées. Le Contrôleur distribuera ce montant proportionnellement entre la Province, la Ville Lac-Mégantic, le Procureur général du Canada (pour le compte du Développement économique Canada pour les régions du Québec) et la Commission de la santé et de la sécurité au travail (CSST). Aux fins du présent Plan, les Réclamations Prouvées de la Province, de la ville de Lac-Mégantic, du gouvernement fédéral du Canada (Développement économique Canada pour les régions du Québec) et de la Commission de la santé et de la sécurité au travail (CSST) sont ainsi évaluées et établies :

(i) la Province : 409 313 000 $ CA (soit 89.9 % ~~94~~ % des Réclamations Gouvernementales);

(ii) la Ville Lac-Mégantic : 20,000,000 ~~$5 000 000 $~~ CA (soit 4,4 % ~~1,1~~ % des Réclamations Gouvernementales) ;

(iii) le Procureur général du Canada (pour le compte du Développement économique Canada pour les régions du Québec) : 21 000 000 $ CA (soit 4,6 % ~~4,8~~ % des Réclamations Gouvernementales)

(iv) CSST : 4 915 257 $ ~~313 775 $~~ CA (soit 1,1 % ~~0,1~~ % des Réclamations Gouvernementales).

[45] C'est au paragraphe 4.2 (e) du plan que l'on retrouve la distribution aux détenteurs de réclamations gouvernementales, soit, la Province, la ville de Mégantic et le Procureur général du Canada. La CSST telle qu'on la décrivait alors était initialement un créancier, mais a amendé sa réclamation à zéro.

[46] En juin 2014, la preuve de réclamation prouvable de la Province avait été déposée pour une somme de 409 000 000 $ laquelle incluait une provision pour des dommages futurs ainsi qu'une provision pour des dommages encourus, mais non encore quantifiés.

[47] C'est ainsi qu'en janvier 2015, un projet du plan déposé au dossier de la Cour prévoit au paragraphe 4.2(e) :

> « Aux fins du présent plan, les réclamations prouvées de la Province (...) sont ainsi évaluées et établies à 409 313 000 $.»
>
> Soulignement du soussigné

[48] Dans la rubrique définition, une réclamation prouvée est définie comme étant :

> « Une réclamation établie, réglée ou acceptée de manière définitive aux fins de vote et de distribution conformément aux dispositions du présent plan ou de l'ordonnance. »
>
> Soulignement du soussigné

[49] C'est ce plan qui fut subséquemment approuvé par un vote unanime des créanciers et par le Tribunal.

[50] Il faut rappeler que les tiers qui ont participé à la formation d'un fonds d'indemnisation désiraient connaître à l'avance le montant des réclamations auxquelles ils pouvaient faire face avant de créer ce fonds d'indemnisation. Le Tribunal en a déjà expliqué les raisons dans le présent jugement.

La position de la Province

[51] Selon la Province, le vocabulaire utilisé au sous-paragraphe 4.2 (e) du plan a été utilisé pour régler le montant de la réclamation prouvée de la Province afin de permettre aux créanciers principaux de négocier le partage des fonds pour distribution tel que défini au plan entre les cinq catégories de créanciers décrites à ce sous-paragraphe 4.2 sans attendre le décompte final et définitif des dommages qui seraient réclamés par la Province.

[52] La distribution à la Province devait être basée sur le montant de 409 000 000 $ que les dommages subis par la Province soient éventuellement établis à un montant inférieur ou supérieur au montant de 409 000 000 $.

[53] D'ailleurs, Me Daniel Larochelle, procureur des représentants des membres du groupe nommé par jugement rendu le 4 avril 2014, a déclaré, lors de l'audition sur la présente requête, qu'en 2015, il n'avait pas l'impression que la réclamation de la Province était surévaluée. Selon sa perception, la réclamation de la Province aurait pu être plus élevée, mais vu la transaction intervenue, la Province serait limitée à recevoir un dividende basé sur la réclamation évaluée et établie à 409 000 000 $ pour la Province. Le même principe doit s'appliquer si les dommages sont inférieurs.

[54] Lorsqu'il est apparu que le montant des dommages effectivement subis par la Province serait substantiellement inférieur au montant de 409 000 000 $, la Province a considéré la question de savoir si la Province redistribuerait volontairement une partie de sa distribution.

[55] Selon l'information reçue, la Province a initialement envisagé une redistribution volontaire à la ville de Lac-Mégantic, mais a éventuellement décidé qu'une telle redistribution volontaire serait effectuée à tous les créanciers, à la condition que les avocats des créanciers qui ont des conventions d'honoraires basées sur un pourcentage des sommes reçues par les créanciers, confirment qu'ils ne tenteront pas de percevoir des créanciers des honoraires additionnels en raison de cette redistribution.

[56] Il semble que la Province ait tenu compte de l'affirmation du Tribunal dans son jugement rendu le 17 février 2014 où il affirme :

> « [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. »

[57] La Province a donc décidé qu'elle redistribuerait la partie de sa distribution représentant l'excédent de sa distribution sur la distribution que la Province aurait reçue sur une réclamation de 325 000 000 $ en utilisant le même ratio de recouvrement que le ratio de recouvrement généré aux termes du plan sur sa réclamation de 409 000 000 $ soit 46.9 %.

[58] Ainsi, ce ratio de recouvrement de 46.9% appliqué à une réclamation de 325 000 000 $ est approximativement de 152 000 000 $. C'est ainsi que la Province considère que la différence approximative de 39 000 000 $[6] (192 000 000 $ - 152 000 000 $) serait traitée comme étant des fonds pour distribution additionnelle et distribuer selon les termes du plan en incluant les détenteurs de réclamations gouvernementales. Dans sa requête, le contrôleur produit un tableau illustrant le résultat de cette redistribution.

[59] Bien que la Province a connaissance que certains créanciers ont conclu des ententes relatives aux honoraires légaux, elle allègue avec raison qu'elle n'est pas partie à ces ententes.

[60] La Province considère que sa redistribution est un paiement volontaire à être effectué par la Province à l'extérieur du cadre du plan et que la Province peut donc disposer comme elle le veut des sommes auxquelles elle a droit.

[61] La Province est conséquente avec sa position de départ qu'elle priorise les victimes. Par contre, elle ne redistribuera pas volontairement des fonds publics si ces

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[6] Les montants sont arrondis. Pour les montants exacts, voir le tableau au paragraphe 68 du présent jugement.

fonds sont utilisés pour payer des honoraires légaux additionnels à ceux déjà reçus par les procureurs des victimes.

[62] Pour ce qui est du montant exact déjà perçu par les procureurs des familles des victimes, le Tribunal n'a obtenu aucune réponse à ses questions.

[63] Maître Mercier, représentant les familles de plusieurs victimes, se déclare outré par le fait que le gouvernement soit potentiellement surindemnisé à leurs dépens.

[64] Cette prétention est fausse. En effet, quelle que soit la valeur réelle des dommages subis par la Province, elle ne sera pas surindemnisée.

[65] La Province subit des dommages s'élevant à 325 000 000 $. En utilisant le ratio de recouvrement généré aux termes du plan, soit 46.9% c'est 192 000 000 $ que la Province recevrait. La Province sera donc indemnisée en deçà des dommages réels qu'elle a subis.

[66] D'autre part, dans l'hypothèse de la redistribution volontaire du montant de 39 000 000 $ proposée par la Province, celle-ci recevrait un total de 171 439 156 $ ce qui représenterait un ratio de recouvrement de 52.8%. Ainsi, au paragraphe 27 de sa requête, le contrôleur produit un tableau qui résume l'impact de la redistribution volontaire de 39 000 000 $ proposée par la Province sur les ratios de recouvrement des détenteurs de réclamations dans toutes les autres catégories décrites au sous-paragraphe 4.2 du plan. Les ratios de recouvrement seraient donc les suivantes :

Montreal, Maine & Atlantic Canada Co.
Estimated Recovery (Before and After Province's Proposed Redistribution)

	Original Recovery %	Revised Recovery %
Wrongful Death Claims	60.9%	66.2%
Bodily Injury and Moral Damage Claims	51.3%	55.9%
Property and Economic Damages Claims	56.8%	62.1%
Province du Quebec Claim	46.9%	52.8%
Lac Megantic Claim	50.2%	56.1%
Government of Canada Claim [1]	0.0%	0.0%
Subrogated Insurer Claims	52.5%	57.5%

[1] The Government of Canada's distribution is redistributed to the other categories in accordance with section 4.3 of the Plan.

[67] Aussi, si la réclamation prouvée de la Province n'est pas de 409 000 000 $, mais qu'un autre montant est déterminé suite à un examen de la preuve de réclamation de la Province et que cet examen démontre que la réclamation devrait être diminuée cela fait tout de même en sorte que les ratios de recouvrement pour les autres catégories décrites au paragraphe 4.2 du plan demeureraient essentiellement inchangés.

[68] À titre d'exemple, s'il est déterminé que la réclamation prouvée de la Province est de 325 000 000 $, la Province aurait droit à une distribution de 187 310 814 $ ce qui représenterait un ratio de recouvrement de 57.7%. Le tableau suivant démontre qu'une distribution basée sur une réclamation prouvée de 325 000 000 $ calculée aux termes du plan serait donc substantiellement moins avantageuse pour les autres créanciers que la redistribution volontaire de 39 000 000 $ proposée par la Province.

Montreal, Maine & Atlantic Canada Co.
Distributions and Estimated Recovery
Revised Province Claim

	Original Claim Amount	Original Estimated Distribution	Recovery %	Revised Claim Amount	Revised Estimated Distribution by Category	Revised Recovery %
Wrongful Death Claims	$ 200 000 000	$ 121 853 060	60.9%	$ 200 000 000	$ 123 203 682	61.6%
Bodily Injury and Moral Damage Claims	100 000 000	51 259 867	51.3%	100 000 000	51 931 791	51.9%
Property and Economic Damages Claims [1]	45 252 862	25 696 116	56.8%	45 252 862	25 996 705	57.4%
Province du Quebec Claim	409 312 923	191 965 396	46.9%	324 856 477	187 310 814	57.7%
Lac Megantic Claim	20 000 000	10 038 010	50.2%	20 000 000	12 361 140	61.8%
Government of Canada Claim [2]	21 000 000	-	0.0%	21 000 000	-	0.0%
Subrogated Insurer Claims	33 701 000	17 684 170	52.5%	33 701 000	17 692 607	52.5%
	$ 829 266 785	$ 418 496 639		$ 744 810 339	$ 418 496 639	

[1] Represents the proven value of the claims after review by the Monitor as opposed to the $75M provision as set out in the Plan.
[2] The Government of Canadas additional distribution of $2.3M is redistributed to the other categories in accordance with section 4.3 of the Plan.

[69] Bref, la redistribution proposée par la Province est plus avantageuse pour tous les créanciers que celle proposée par Me Mercier. Les seuls qui profiteraient de la redistribution proposée par les avocats seraient les avocats eux-mêmes.

[70] Même leurs clients recevraient moins que ce qui est présentement proposé gracieusement par la Province.

La position du contrôleur

[71] Selon le contrôleur, le plan est le fruit des négociations menées durant plusieurs mois au cours de l'automne 2014 et l'année 2015. Le plan a permis le partage d'un montant, à l'époque encore indéterminé, en déterminant les pourcentages de ce montant qui serait éventuellement distribué à chacune des catégories décrites au sous-paragraphe 4.2 du plan. La détermination de la distribution entre chaque catégorie est

elle-même basée sur une entente entre les catégories de créanciers sur la manière de déterminer le montant des réclamations dans chacune des catégories.

[72] Il faut se rappeler qu'après la rédaction du plan d'arrangement proposé aux créanciers, d'autres tiers ont ajouté des sommes substantielles au fonds d'indemnisation créés par les tiers pour obtenir des quittances. Certaines tierces parties, qui avaient jusqu'alors refusé de participer au fonds d'indemnisation, craignaient de ne pas pouvoir obtenir les quittances prévues au plan d'arrangement si elles ne se joignaient pas au groupe participant au fonds d'indemnisation avant l'approbation du plan.

[73] Il faut rappeler que plusieurs des tierces parties étaient tout de même présentes à chaque audition devant le Tribunal. Le Tribunal avait d'ailleurs averti qu'une tierce partie qui prenait la décision de ne pas participer au fonds d'indemnisation pourrait se voir refuser une telle participation après l'approbation d'un plan d'arrangement.

[74] C'est ici que le jeu des négociations entre les différentes catégories de créanciers a été décisif. Pour le Tribunal, le vocabulaire utilisé au sous-paragraphe 4.2 (e) du plan représente bien l'intention des parties au moment de la rédaction, du vote et de l'approbation du plan.

[75] Le paragraphe 4.2 (e) prévoit que les réclamations gouvernementales recevront globalement 52,4% des fonds pour distribution en règlement intégral et final de leur réclamation prouvée. Il est également prévu que les réclamations sont évaluées et établies à la somme de 409 000 000 $ pour la Province.

[76] Il s'agit de la méthode d'établissement du pourcentage d'évaluation pour chaque catégorie. Ainsi, les créanciers ayant des réclamations dans les cas de décès devaient recevoir 24,1% des fonds, peu importe le montant total du fonds accumulé.

[77] Les créanciers ayant des réclamations en raison des lésions corporelles et dommages moraux devaient recevoir 10,4% des fonds alors que les créanciers ayant des réclamations pour dommages matériels et économiques devaient recevoir 9% des fonds pour distribution.

[78] Quant aux assureurs subrogés, ils devaient recevoir globalement 4,1% des fonds.

[79] Pour chacune des catégories, peu importait le montant total du fonds accumulé, les sommes à recevoir étaient toujours basées sur le pourcentage établi dans le plan d'arrangement.

[80] D'autre part, les créanciers prévus au sous-paragraphe 4.2 (c) à savoir les créanciers ayant des réclamations pour dommages matériels et économiques étaient les seuls pour qui le montant des réclamations pouvait avoir un impact.

[81] Ainsi, malgré ce qui est prévu au sous-paragraphe 4.2 (c), si après l'examen des réclamations pour dommages matériels et économiques, la valeur totale des réclamations pour dommages matériels et économiques est réduite en deçà de 75 000 000 $ le montant pour distribution relatif à la différence entre ce montant de 75 000 000 $ et la valeur totale révisée devait être réparti selon le paragraphe 4 *in fine*.

[82] Aussi, au paragraphe 4.3 du plan d'arrangement, les gouvernements provincial et fédéral ont décidé que les montants payables aux termes du plan à la Province et au Procureur général sur l'indemnité de la compagnie d'assurance XL seraient remis aux créanciers.

[83] En effet, dès le départ, le gouvernement provincial avait avisé qu'il désirait que les sommes perçues de la compagnie d'assurance (25 000 000 $) soient remises aux victimes. Il était donc prévu que la part de la Province évaluée à 13 383 000 $ serait redistribuée de la façon suivante à savoir :

i) 53,3% des dividendes réaffectés seront distribués aux créanciers ayant des réclamations en cas de décès;

ii) 26,7% des dividendes réaffectés seront distribués aux créanciers ayant des réclamations en raison de lésions corporelles et de dommages moraux;

iii) 20% des dividendes réaffectés seront distribués aux créanciers ayant des réclamations pour dommages matériels et économiques.

[84] Bref, il est inexact de prétendre que la Province sera surindemnisée et il est encore plus faux de prétendre qu'elle sera surindemnisée aux dépens des familles des victimes. La Province recevra moins que ses dommages réels quelle que soit la méthode employée.

[85] Même si dans les faits la Province recevait plus que le montant des dommages qu'elle a réellement subis, rien ne s'y oppose légalement.

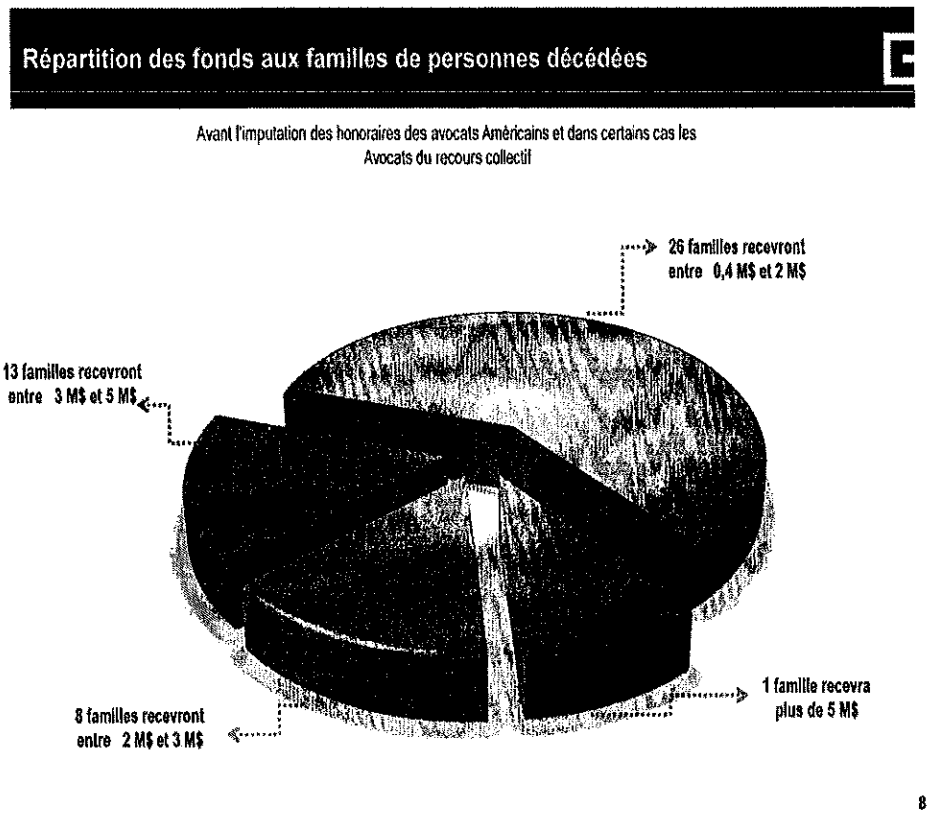
[86] En effet, le plan d'arrangement a été valablement négocié, accepté et approuvé.

[87] Cette façon d'interpréter le plan est exactement celle qui fut expliquée par le contrôleur lors de la réunion des créanciers tenue à ville de Lac-Mégantic le 9 juin 2015 à 14 heures au Centre sportif.

[88] Il y était d'ailleurs mentionné qu'un règlement est intervenu avec World fuel Services (WFS) le 8 juin 2015 lequel prévoit un paiement de 110 000 000 $ US ce qui représente un montant de 137 000 000 $ CA additionnel offert en vertu du plan. Il y était spécifiquement mentionné que la réclamation de la Province est évaluée et établie à 409 313 000 $ CA et que les créanciers ayant des réclamations gouvernementales

recevront globalement 52,4% des fonds pour distribution en règlement intégral et final de leur réclamation.

[89] La distribution estimative pour les réclamations dans le cas de décès était au 8 juin 2015 établie à 111 221 428 $. On retrouve à la présentation faite par le contrôleur un tableau de la répartition des fonds aux familles de personnes décédées :



- On peut constater que 26 familles recevront entre 400 000 $ et 2 000 000 $;
- 13 familles recevront entre 3 et 5 millions de dollars;
- 8 familles recevront entre 2 et 3 millions de dollars;
- Et 1 famille recevra plus de 5 000 000$.

[90] L'Annexe E du plan d'arrangement prévoyait la marche à suivre concernant la distribution relative aux réclamations dans les cas de décès. L'Annexe F du plan d'arrangement prévoit la marche à suivre concernant la distribution relative aux réclamations en raison des dommages moraux permettant d'évaluer le système de points utilisé pour l'évaluation des dommages.

[91] Certains diront qu'une vie n'a pas de prix et ils auraient raison. Le Tribunal est tout à fait d'accord. C'est pourquoi il est toujours très difficile d'attribuer un montant de dommages-intérêts lors d'un décès.

[92] Par contre, dans le présent dossier, tous sont d'accord pour affirmer que les familles des victimes dans les cas de décès ont reçu plus que ce qu'elles auraient pu obtenir si elles avaient intenté un recours civil en vertu des lois du Québec.

[93] Bien sûr, la menace de recours réclamant des sommes astronomiques aux États-Unis a pu faire en sorte de permettre d'obtenir un fonds d'indemnisation aussi élevé. Par contre, la possibilité d'obtenir des quittances en vertu de la LACC (qui n'est pas possible en vertu des lois américaines) a aussi pesé dans la balance.

[94] Somme toute, la possibilité que le gouvernement puisse recevoir plus qu'il n'aurait reçu suite à des procédures judiciaires n'a rien d'illégal. Pas plus que cette possibilité puisse exister pour les familles des victimes décédées.

[95] C'est en tenant compte de tous ces facteurs que les créanciers et les tiers participants au fonds d'indemnisation en sont venus à un plan d'arrangement équitable pour tous, lequel a été approuvé par le Tribunal.

[96] Le Tribunal ne peut donc accepter l'invitation de certains créanciers de revoir le plan de répartition déjà prévu au plan d'arrangement en exerçant un pouvoir discrétionnaire.

[97] D'ailleurs, s'il fallait réévaluer le plan, ne pourrions-nous pas affirmer que les tiers ayant participé au fonds d'indemnisation auraient pu offrir moins et que les parties s'en seraient satisfaites.

[98] Jugement a été rendu par le soussigné en 2015 approuvant le plan d'arrangement. Il n'est pas opportun de changer la donne six ans plus tard. Un parallèle peut être fait avec ce qu'affirmait notre collègue Robert Mongeon dans *White Birch Paper*[7] :

> « [221] Il est vrai que l'ordonnance initiale comporte une "clause de retour" ou "comeback clause" qui permet au Tribunal de rajuster le tir si cette même ordonnance cause problème à une partie intéressée qui n'aurait pas été entendue lors de l'audition originale.

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[7] *White Birch Paper Holding Company (Arrangement relatif à)*, 2012 QCCS 1679, par. 221-223.

> [222] On ne doit cependant pas perdre de vue que les ordonnances rendues en cours d'instance sont aussi des jugements sur la base desquels d'importantes décisions sont prises et, une fois rendues et tant qu'elles ne sont pas modifiées, ces ordonnances jouissent, sinon d'une autorité de la chose jugée totale et complète (étant révisables par le Tribunal qui les a rendues), à tout le moins de l'autorité de la chose décidée.
>
> [223] Une des distinctions à faire entre l'autorité de la chose jugée et celle de la chose décidée semble être que l'une s'applique dans le cas où un jugement d'un tribunal n'est révisable que par une Cour d'appel tandis que l'autre peut être révisable par le même tribunal qui l'a prononcé. C'est le cas des jugements interlocutoires, des ordonnances de sauvegarde rendues en cours d'instance, des ordonnances de garde, accès et pension alimentaire en droit familial, des ordonnances de gestion, etc. **Une ordonnance initiale peut donc être revue, corrigée ou adaptée aux circonstances, selon les intérêts des parties qui en demandent la révision, la correction ou l'adaptation, mais sans pour autant "changer la donne" ou les droits et obligations des autres parties qui ont pris des décisions majeures et importantes sur la base d'une ordonnance initiale antérieure.** »

[99] En l'instance, aucun des jugements rendus par le soussigné n'a été porté en appel. Le principe de la stabilité des jugements et de la chose jugée doit recevoir application. Surtout lorsque des décisions majeures ont été prises sur la base de ces jugements.

[100] En conséquence, le Tribunal ne croit pas que le pouvoir discrétionnaire qui lui est conféré à l'article 11 LACC serait utilisé de façon opportune en reformulant les pourcentages de distribution déjà prévus au plan.

[101] Le gouvernement provincial est en droit de recevoir une distribution basée sur sa réclamation évaluée et établie à la somme de 409 313 000 $.

[102] Cela étant dit, les sommes que recevra le gouvernement du Québec lui appartiennent et il pourra en disposer à sa guise. Le gouvernement pourra redistribuer ou non les sommes auxquelles il a droit. Il s'agit d'une décision politique sur laquelle le Tribunal n'a pas à s'immiscer.

[103] Un dernier commentaire s'impose.

[104] Comme le mentionnait la Cour suprême dans *Callidus*[8], le contrôleur est un expert indépendant et impartial qui agit comme les yeux et les oreilles du Tribunal tout au long de la procédure. Le Tribunal constate que la perception du contrôleur sur le plan d'arrangement est identique à celle qu'a le Tribunal. Aussi, même si la Cour suprême

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[8] Précité note 5.

dans *Callidus*[9], mentionne que chaque procédure basée sur la LACC est supervisée du début à la fin par un seul juge surveillant, la loi ne semble pas le prévoir. Par contre, il s'agit d'une façon de faire qui facilite grandement l'exercice d'une discrétion judiciaire et permet la connaissance approfondie nécessaire de la dynamique du dossier. Il va sans dire que cette façon de procéder alourdit le fardeau du juge, mais en même temps facilite l'exercice du pouvoir discrétionnaire de rendre une gamme d'ordonnances susceptibles de répondre aux circonstances de chaque cas[10].

POUR CES MOTIFS, LE TRIBUNAL :

[105] **ACCUEILLE** la requête pour directives;

[106] **DÉTERMINE** que la réclamation prouvée de la Province a été réglée au montant de 409 313 000 $ par les termes du sous-paragraphe 4.2 (e) du plan;

[107] **DÉCLARE** que la Province peut utiliser à sa guise les sommes qui lui reviennent en vertu du plan d'arrangement;

[108] **AUTORISE** la Province à utiliser les services du contrôleur pour effectuer la distribution des sommes qu'elle voudra bien remettre aux créanciers de son choix et à ses conditions puisque le contrôleur est en possession d'informations nominatives lui permettant de remplir ce mandat;

[109] **LE TOUT SANS FRAIS DE JUSTICE.**

(s) *Gaétan Dumas, j.c.s.*
GAÉTAN DUMAS, J.C.S.

Me Geneviève Cloutier
Gowling Lafleur
Procureurs de Montreal, Maine & Athlantic Co. (MMA)

Me Sylvain Vauclair
Me Émilie St-Pierre
Woods LLP
Procureurs de Richter Advisory Group (Contrôleur)

Me Pierre-Luc Beauchesne
Bernard, Roy (Justice-Québec)
Procureurs du Procureur général du Québec

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[9] Précité note 5, paragraphe 47.
[10] Voir *Callidus*, précité note 5, paragraphe 48.

Me Gérald Kandestin
Me Jeremy Cuttler
Kugler Kandestin
Procureurs de Us Trustee – Robert Keach

Me Jeff Orenstein
Me Daniel Larochelle
Me Max Starmino
Procureurs des victimes et membres du recours collectif

Me Charles Foucreault
Norton Rose Fulbright
Procureurs Intact Assurance, Compangie d'Assurance Bélair inc. et Mutuelle des municipalités du Québec

Me Éric Savard
Langlois Kronstrom Desjardins
Procureurs de Promutuel Mots & Rives, Desjardins Assurances Générales, L'Unique Assurances générales, La Capitale, Assurances générales et La Garantie compagnie d'assurance de l'Amérique du Nord

Me Hans Mercier
Mercier Morin
Procureurs de Samuel Audet

Date d'audition : 15 avril 2021

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 2

(Déclaration d'appel)

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N° :

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET, domicilié et résidant au 3684, rue de Tourville, Sherbrooke, province de Québec, J1N 0W8

PARTIE APPELANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC., ayant son siège au 1981, McGill College Ave, Montréal, province de Québec, H3A 0G6

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC, 300, boul. Jean-Lesage, bureau 1.03, Québec, province de Québec, G1K 8K6

PARTIE MISE EN CAUSE – Créancier

DÉCLARATION D'APPEL

(article 352 *C.p.c.*)
Partie appelante
Datée du 23 juin 2021

FAITS ET MOYENS D'APPEL

1. La partie appelante se pourvoit contre un jugement de la Cour supérieure, rendu le 4 juin 2021, par l'honorable Gaétan Dumas, j.c.s., siégeant dans le district de Saint-François et qui a accueilli la requête pour directives de l'intimée;

2. La date de l’avis du jugement est le 4 juin 2021;

3. La durée de l’instruction en première instance a été d’approximativement une demi-journée;

4. La partie appelante joint à la présente le jugement de première instance à l’annexe 1;

5. La valeur de l’objet du litige est de 84 456 523,00 $CAN, en tenant pour acquis la réclamation non vérifiée de la province;

6. Le dossier ne comporte pas d’élément confidentiel;

7. Le juge de première instance a erré dans son jugement pour les motifs suivants :

8. Le juge a omis d’exercer sa compétence en ne traitant pas la requête verbale en irrecevabilité de l’appelant;

I. <u>Erreurs de droit</u>

9. Le juge de première instance a erré en droit en exerçant la compétence du « Claims officer » qu’il avait pourtant lui-même délégué en vertu du « Claims resolution order »;

10. Le juge de première instance a erré en droit en considérant que la vérification préalable de la créance de la province par l’intimée n’était pas nécessaire considérant que cela avait un impact déterminant sur les points suivants :

    a) L’interprétation du plan d’arrangement amendé, ci-après « Plan »;

    b) L’analyse du consentement des créanciers lors du vote sur l’adoption du Plan;

    c) L’impact possible sur la validité même du vote d’approbation du Plan si la réclamation de la province s’avérait substantiellement inférieure au montant amendé;

11. Le juge de première instance a erré en droit en omettant de clarifier la nature juridique du Plan;

12. Le juge de première instance a erré en droit en omettant d'appliquer les principes généraux d'interprétation des contrats afin d'établir l'intention des parties lors du vote sur l'adoption du Plan, particulièrement quant à l'article 4.2;

13. Le juge de première instance a erré en droit en ne considérant pas l'impact du dépôt d'une réclamation d'ordre pécuniaire supérieure aux dommages réellement subis dans un dossier d'invalidité;

14. Le juge de première instance a erré en droit en n'analysant pas la possibilité qu'une réclamation supérieure aux dommages subis était potentiellement contraire à l'ordre public et donc nulle d'une nullité absolue, et ce, même si la possibilité de surindemnisation n'était que théorique, ce qui n'est pas admis en l'espèce;

15. Le juge de première instance a erré en droit en n'analysant pas la possibilité du vice de consentement causant la nullité partielle de l'article 4.2;

16. Le juge de première instance a erré en droit en n'utilisant pas sa compétence pour remédier à la rédaction lacunaire de l'article 4.2 du Plan, et ce, afin de le rendre conforme à l'intention des parties, soit suite à l'interprétation du contrat ou afin de remédier à la nullité partielle ou même absolue dudit article;

II. <u>Erreurs de fait manifestes et déterminantes ou erreurs mixtes de fait et droit</u>

17. Le juge de première instance a erré de façon manifeste et déterminante lorsqu'il considère au paragraphe 43 que le Plan ne pourrait être approuvé sans un vote favorable du gouvernement. Or, pour que cette affirmation soit véridique, le gouvernement doit détenir plus du tiers de la masse des créances en valeur;

18. Or, comment le juge de première instance peut-il faire cette affirmation sans que la créance de la province soit vérifiée par l'intimée, vérification que le juge de première instance considère superfétatoire;

19. Le juge de première instance a erré de façon manifeste et déterminante en ignorant un pan complet de la preuve, soit l'impact des recours récursoires statutaires actuellement engagés par le US Trustee, ci-après « Carmack claims »;

20. En effet, ces recours statutaires pourraient résulter dans l'injection de sommes excessivement importantes pour des distributions futures et incidemment avoir un impact essentiel sur l'ensemble des arguments soulevés dans le cadre du présent dossier;

21. Le juge de première instance a erré de façon manifeste et déterminante en ne relevant pas les contradictions évidentes dans la position de l'intimée, principalement quant à la nécessité de la vérification de la créance de la province et incidemment sur la base du consentement des parties dans le cas des négociations;

22. En effet, l'intimée prétend dans sa requête et lors de l'audience que la vérification de la créance de la province est superfétatoire considérant que la somme a été fixée de façon consensuelle dans le cadre de la négociation du Plan et que la possibilité d'une réclamation inférieure à celle estimée par la province lors desdites négociations avait toujours été considérée par les créanciers;

23. Paradoxalement, l'intimée dans pas moins de onze (11) de ses rapports au tribunal fait clairement mention qu'il est dans le processus de vérification de la réclamation et même, lors de certaines mentions, dit être dans l'attente de pièces justificatives et additionnelles de la part de la province;

24. Le juge de première instance a erré de façon manifeste et déterminante en considérant que l'indemnisation des familles des victimes établie en tenant compte des barèmes des tribunaux américains constituait de la surindemnisation faisant fi du dossier miroir américain du protocole interfrontalier et que le Plan réglait pour ceux-ci des procédures devant une autre juridiction;

25. Le juge de première instance a erré de façon manifeste et déterminante en ne considérant pas que le montant de la réclamation prouvé de la province était un élément essentiel du consentement des autres créanciers alors que l'intimée le reconnait lui-même dans l'un de ses rapports;

26. Le juge de première instance a erré de façon manifeste et déterminante en considérant que des explications suffisantes avaient été données aux victimes pour constituer une renonciation valide à une somme d'au moins

84 456 523,00 $CAN, voir même plus, alors que toutes les parties impliquées ignoraient cet élément qui n'est apparu que sept (7) ans plus tard;

27. Le juge de première instance a erré de façon manifeste et déterminante en ne considérant pas que l'amendement de dernière minute de redistribution des surplus économiques démontrait clairement une intention des parties de ne pas renoncer à quelque surplus que ce soit suite à la découverte que des réclamations réelles seraient substantiellement inférieures aux preuves de réclamation estimée;

28. Par ailleurs, bien que le juge de première instance déclare clairement que la diligence du créancier soit l'un (1) des trois (3) critères importants dans l'analyse de son intervention, il ne fait aucun état du laxisme évident de la province et de l'iniquité entre les exigences quant aux dépôts des preuves de réclamation ainsi créées;

29. Au moment de déposer la présente déclaration l'appelant n'a toujours pas reçu le procès-verbal ainsi que l'enregistrement audio de l'audience et se réserve le droit d'amender les présentes sur réception de ceux-ci;

CONCLUSIONS

30. La partie appelante demandera à la Cour d'appel de :

a) **ACCUEILLIR** l'appel;

b) **INFIRMER** le jugement de première instance;

c) **DÉCLARER** irrecevable la requête pour directives de l'intimée;

d) **RETOURNER** le dossier devant le « Claims officer » afin qu'il procède à la vérification exhaustive de la preuve de réclamation de la province;

e) **DÉTERMINER** que la réclamation prouvée de la province n'a pas été réglée au montant 409 313 000,00 $ par les termes du sous-paragraphe 4.2 du Plan;

f) **PERMETTRE** l'amendement de l'article 4.2 e) afin que le pourcentage de distribution soit ajusté proportionnellement à la preuve de réclamation

réelle et vérifiée de la province et que les points de pourcentage ainsi dégagés soient redistribués proportionnellement entre les créanciers des autres catégories, soit 4.2 a), b), c), et d);

OU SUBSIDAIREMENT

DÉCLARER que les surplus dégagés par la différence entre la réclamation initiale et la réclamation amendée et vérifiée de la province soient redistribués au prorata de la valeur de leur réclamation dans les catégories 4.2 a), b), c), et d);

g) **LE TOUT** avec frais de justice.

Avis de la présente déclaration d'appel est donné à Richter Groupe Conseil inc., à Me Sylvain Vauclair, avocat de la partie intimée, à Me Geneviève Cloutier, avocate de la partie mise en cause Montréal, Maine & Atlantique Canada cie, à Me Pierre-Luc Beauchesne, avocat de la partie mise en cause Procureur général du Québec et le greffe de la Cour supérieure du district de Saint-François.

Le 23 juin 2021, à Saint-Georges

Mercier Morin avocats

ME HANS MERCIER
MERCIER MORIN AVOCATS INC.
Avocats de la partie appelante
Code d'impliqué : BM3006
11505, 1ère Avenue, suite 200
Saint-Georges (Québec) G5Y 7X3
Tél. : 418-228-1222
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CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 3

(Amended plan of compromise and arrangement;

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

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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

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 Agreement~~Agreements~~ are set forth in and shall be governed by ~~the~~said Settlement Agreement~~Agreements~~. 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 ~~the~~a Settlement Agreement~~Agreements~~, the terms of said Settlement Agreement~~Agreements~~ 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

Schedule "A" List of Released Parties

PLAN OF COMPROMISE AND ARRANGEMENT

concerning, affecting and involving

MONTREAL, MAINE & ATLANTIC CANADA CO.

VERSION ANGLAISE SEULEMENT

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

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

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.

VERSION ANGLAISE SEULEMENT

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

- 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

VERSION ANGLAISE SEULEMENT

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

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%	3,643,000
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)

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 4

(Motion for an order establishing a procedure for the review and determination of claims)

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF ST-FRANÇOIS

N°: 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 OR ARRANGEMENT OF:

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

PETITIONER

and

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

MONITOR

MOTION FOR AN ORDER ESTABLISHING A PROCEDURE FOR THE REVIEW AND DETERMINATION OF CLAIMS
(Sections 9 and 11 *et seq.* of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA"))

TO THE HONORABLE JUSTICE GAÉTAN DUMAS OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF SAINT-FRANÇOIS, THE PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. On July 6, 2013, a train operated by Montreal Maine & Atlantic Canada Co. ("**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 (the "**Derailment**");

2. Numerous claims have been made against MMAC and its parent company, Montreal, Maine & Atlantic Railway Ltd ("**MMA**"), arising out of the Derailment;

3. On August 7, 2013, MMA filed a voluntary petition in the United States Bankruptcy Court, District of Maine (the "**Bankruptcy Court**") for relief under Chapter 11 of the U.S. Bankruptcy Code (the "**Bankruptcy Case**");

4. On August 8, 2013, the Honourable Justice Castonguay of the Quebec Superior Court (the "**CCAA Court**") granted an initial order in respect of MMAC (the "**Initial Order**") pursuant to the CCAA and Richter Advisory Group Inc. (Richter Groupe Conseil Inc.) was appointed as monitor of MMAC (the "**Monitor**");

5. On August 21, 2013, the United States Trustee appointed Robert J. Keach to serve as trustee in the Bankruptcy Case (the "**Trustee**");

6. Pursuant to the Initial Order, a stay of proceedings was ordered until and including September 6, 2013 (the "**Stay Period**"). That Stay Period has since been extended by this CCAA Court on eleven (11) previous occasions with the most recent extension having been granted until May 15, 2015 pursuant to an order dated as of January 12, 2015, the whole as appears from the Court record;

7. On April 4, 2014, the CCAA Court issued a Claims Procedure Order that was subsequently amended on June 13, 2014 (as amended, the "**Claims Procedure Order**"), whereby a Claims Bar Date was established and creditors were called upon to file their claims;

8. The purpose of the Claims Procedure Order was essentially to allow MMAC and the Monitor to assess the total breadth of claims. Said order provided that the procedure for the review and determination of claims, as well as for the calling, holding and conduct of a creditors' meeting, would be established by further order of the CCAA Court;

9. Through the concerted and coordinated efforts of MMAC, the Monitor and the Trustee, with the involvement of those creditors that hold an overwhelming majority of the votes in respect of the Plan, namely the Province of Quebec, the Class Representatives and the Wrongful Death Victims (collectively, the "**Major Stakeholders**"), predicated on constituting an indemnity fund with a view to providing compensation for the victims of the Derailment, a *Plan of Compromise and Arrangement* (the "**Plan**") was filed on March 31, 2015;

10. Note that all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Plan;

II. ORDER SOUGHT

11. MMAC hereby seeks an order establishing a procedure for the review and determination of claims substantially in the form of the draft order filed in support hereof as **Exhibit R-1** (the "**Draft Claims Resolution Order**");

III. GROUNDS FOR THIS MOTION

12. In light of the filing of the Plan, which provides for a distribution to creditors, it is now necessary and appropriate to obtain an order in respect of the procedure for the review and determination of claims;

13. The Draft Claims Resolution Order is designed to provide for a fair, timely and efficient determination of claims that may be subject to dispute;

14. It essentially provides for the following:

    a) the review of claims by the Monitor;

b) the procedure applicable to the disallowance of claims, as well as the dispute of any such disallowance and the adjudication thereof;

c) The procedure for the appointment of one or more claims officers, as well as the powers of said claims officers;

15. In light of the foregoing, MMAC respectfully requests that the CCAA Court issue an order substantially in the form of the Draft Claims Resolution Order;

16. The Petitioner respectfully submits that the notices given of the presentation of the present Motion are proper and sufficient;

17. The present Motion is well founded in fact and in law;

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

GRANT the present *Motion for an Order Establishing a Procedure for the Review and Determination of Claims* (the "**Motion**"), the whole substantially in the form of the draft order filed in support of this Motion as Exhibit R-1;

DECLARE that the notices given of the presentation of the Motion are adequate and sufficient;

ORDER the provisional execution of the order notwithstanding any appeal, without the necessity of furnishing any security;

THE WHOLE without costs, save and except in the event of contestation.

MONTREAL, April 10, 2015

Gowling Lafleur Henderson

GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF SAINT-FRANÇOIS

N°: 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 OR ARRANGEMENT OF:

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

PETITIONER

and

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

MONITOR

NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present *Motion for an Order Establishing a Procedure for the Review and Determination of Claims* will be presented for adjudication before the honourable Gaétan Dumas, j.s.c., of the district of Saint-François, on **April 15, 2015,** in **room** 1 of the Sherbrooke Courthouse, located at 375, rue King Ouest, Sherbrooke, at 10:00 a.m. or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, April 10, 2015

Gowling Lafleur Henderson

GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

EXHIBIT R-1

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS

No: 450-11-000167-134

DATE:

PRESENT: THE HONOURABLE GAÉTAN DUMAS, J.S.C.

IN THE MATTER OF THE PLAN OF COMPROMISE OF:

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

Debtor/Petitioner

-and-

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

CLAIMS RESOLUTION ORDER

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[1] **CONSIDERING** the Petitioners' *Motion for an Order Establishing a Procedure for the Review and Determination of Claims* (the "**Motion**");

[2] **CONSIDERING** the representations of the parties;

FOR THESE REASONS, THE COURT:

[3] **GRANTS** the Motion;

[4] **ISSUES** this Order divided under the following headings:

(a) Definitions;

(b) Review and Determination of Claims;

(c) Distribution for Disputed Claims;

(d) Notices and Communications;

(e) Aid and Assistance of Other Courts;

(f) General Provisions;

Definitions

[5] **ORDERS** that capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Plan and that the following terms in this Order shall have the following meanings ascribed thereto:

(a) "**Bankruptcy Case**" means the case styled in re Montreal, Maine & Atlantic Railway Ltd., Bankr. D. Me. No. 13-10670;

(b) "**Bankruptcy Court**" means United States Bankruptcy Court for the District of Maine, as presiding over the Bankruptcy Case;

(c) "**Business Day**" means a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Montreal, Québec, Canada;

(d) "**Claims Bar Date**" means 5:00 p.m. (Montréal time) on July 14, 2014 with respect to Wrongful Death Claims and 5:00 p.m. (Montréal Time) on June 13, 2014 with respect to all the other Creditors;

(e) "**Claims Officer(s)**" means the individual(s) appointed as claims officer(s) pursuant to paragraph 7 of the present Order;

(f) "**Claims Procedure Order**" means the Amended Claims Procedure Order rendered on June 13, 2014, in the CCAA Proceeding by the CCAA Court, establishing, among other things, a claims procedure in respect of Petitioner, as such Order may be amended, restated or varied from time to time;

(g) "**Class Representatives**" has the meaning ascribed to "Class Action Plaintiffs" and to "Class Counsel" by the Court in the Representation Order;

(h) "**Court**" means the Superior Court of Quebec;

(i) "**Creditors**" means collectively all Persons having filed Proofs of Claim and "**Creditor**" means any one of them;

(j) "**Determination Date**" means August 8, 2013;

(k) "**Dispute Package**" means, with respect to any disputed Proof of Claim, a copy of the related Proof of Claim, Notice of Revision or Disallowance and Notice of Dispute;

(l) "**Monitor**" means Richter Advisory Group Inc. (Richter Groupe Conseil Inc.), in its capacity as Monitor in the CCAA Proceeding;

(m) "**Notice of Dispute**" means the notice that may be delivered by a Creditor who has received a Notice of Revision or Disallowance disputing such Notice of Revision or Disallowance;

(n) "**Notice of Revision or Disallowance**" means the notice advising a Creditor that the Monitor has revised or rejected all or part of such Creditor's Claim set out in its Proof of Claim and setting out the reasons for such revision or disallowance, which notice shall be substantially in the form attached hereto as **Schedule A**;

(o) "**Plan**" means the plan(s) of compromise and arrangement filed on March 31, 2015 in these proceedings, as may be amended or supplemented from time to time;

(p) "**Proofs of Claim**" means the form of proofs of claim filed by Creditors before the Claims Bar Date in accordance with the Claims Procedure Order or otherwise accepted for filing pursuant to further order of this Court. Individually, each is a "**Proof of Claim**";

(q) "**Representation Order**" means the Representation Order issued by this Court on April 4, 2014;

Review and Determination of Claims

[6] **ORDERS** that:

(a) where applicable given the provisions of the Plan, the Monitor, together with the Petitioner, shall review the Proofs of Claim and the terms set out therein;

(b) where applicable, the Monitor shall send the Creditor a Notice of Revision or Disallowance in accordance with paragraph 14 below;

(c) the Creditor who receives a Notice of Revision or Disallowance and wishes to dispute it shall, within twenty (20) calendar days of the Notice of Revision or Disallowance, send, in accordance with paragraph 15 below, a Notice of Dispute to the Monitor setting out the basis for its dispute;

(d) unless otherwise authorized by this Court, if the Creditor does not provide a Notice of Dispute within the time period provided for above, such Creditor shall be deemed to have accepted the determination of its Proof of Claim as set out in the Notice of Revision or Disallowance;

(e) the Monitor, with the assistance of Petitioner, shall attempt to consensually resolve the disputed Proof of Claim following the receipt by the Monitor of the Notice of Dispute;

(f) if, after the expiration of such period of time as the Monitor believes appropriate, the disputed Proof of Claim has not been resolved:

(i) the Monitor, after consultation with Petitioner, shall refer the disputed Proof of Claim to a Claims Officer and the Monitor shall deliver a Dispute Package to the Claims Officer; or

(ii) the Monitor, after consultation with Petitioner, shall refer the Proof of Claim to the Court, and either the Creditor, the Monitor or Petitioner may bring a motion for the resolution of such Proof of Claim by the Court; and

(g) the Monitor shall not be required to send any Creditor a confirmation of receipt by the Monitor of any document provided by a Creditor pursuant to this Order and each. Creditor shall be responsible for obtaining proof of delivery, if they so require, through their choice of delivery method;

[7] **ORDERS** that Petitioner shall have the power and authority to appoint from time to time one or more individuals to act as a Claims Officer for the purposes of this claims procedure, provided however that the Monitor and this Court shall have both approved such appointment;

[8] **ORDERS** that upon receipt of a Dispute Package, the Claims Officer shall schedule and conduct a hearing to settle the disputed portion of the disputed Proof of Claim and shall, as soon as practicable thereafter, notify Petitioner, the Monitor and the Creditor of his or her determination;

[9] **ORDERS** that the Claims Officer shall have the authority to determine the procedure for adjudication of disputed Proofs of Claim that are referred to him or her, including the manner of presenting evidence and the conduct of any hearing before him or her, provided that a Creditor may request that such adjudication be conducted in either French or English;

[10] **ORDERS** that each Claims Officer may, with the consent of the parties, act as a mediator in respect of any Proof of Claim without thereby being disqualified from adjudicating upon such claim;

[11] **ORDERS** that Petitioner or the Creditor may appeal a Claims Officer's determination to this Court within ten (10) Business Days of notification of the Claims Officer's determination of the disputed portion of such Creditor's Proof of Claim by serving upon Petitioner and the Monitor, and filing with this Court a motion returnable on a date to be fixed by this Court. If an appeal is not filed within such period then the Claims Officer's determination shall, subject to a further order of the Court, be deemed to be final and binding on Petitioner and the Creditor;

[12] **ORDERS** that any appeal of a Claims Officer's determination before this Court shall be considered for all intents and purposes to be a true appeal such that there will be no *de novo* hearing;

Distribution for Disputed Claims

[13] **ORDERS** that no distributions shall be made with respect to a disputed Proof of Claim unless and until it has been finally determined;

Notices and Communications

[14] **ORDERS** that any document sent by the Monitor or Petitioner pursuant to this Order may be sent by e-mail, ordinary mail, registered mail, courier or facsimile transmission, in either

French or English as requested by the Creditor. A Creditor shall be deemed to have received any document sent pursuant to this Order two (2) Business Days after the document is sent by ordinary mail and one (1) Business Day after the document is sent by registered mail, courier, e-mail or facsimile transmission. Documents shall not be sent by ordinary or registered mail during a postal strike or work stoppage of general application.

[15] **ORDERS** that any notice or other communication to be given under this Order by a Creditor to the Monitor or the Petitioner shall be in writing in substantially the form provided for in this Order and will be sufficiently given only if given by mail, telecopier, courier or email addressed to:

(a) If to the Petitioner

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

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

(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

Aid and Assistance of Other Courts

[16] **REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to, act in aid of and to be complementary to this Court in carrying out the terms of this Order;

General Provisions

[17] **ORDERS** that references in this Order to the singular include the plural, to the plural include the singular and to any gender include the other gender.

[18] **ORDERS** that the Monitor may apply to this Court for advice and direction in connection

with the discharge or variation of its powers and duties under this Order.

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

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

Sherbrooke, _____

_____
Honourable Gaétan Dumas, J.S.C.

Schedule A

(Claims Resolution Order)

RICHTER

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF ST-FRANÇOIS
COURT NO. 450-11-000167-134
ESTATE NO. 0000164-2013-QC

SUPERIOR COURT
(Commercial Division)
(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:
MONTREAL, MAINE & ATLANTIC CANADA CO.

Petitioner

NOTICE OF DISALLOWANCE OR AMENDMENT – MONTREAL, MAINE & ATLANTIC CANADA CO

Name of Creditor: _____

Pursuant to the Claims Procedure Order dated April 15, 2015, the Monitor hereby gives you notice that it has reviewed your Proof of Claim and has disallowed your claim, in whole or in part, as follows:

Nature of the Claim	Proof of Claim as submitted	Proof of Claim as accepted
	$	$

Reason for the Disallowance or Amendment:

If you intend to dispute this Notice of Disallowance you must, within **20 calendar days** of the receipt of the present notice, file with the Monitor a notice of dispute appealing the disallowance or amendment and setting out the basis for your dispute, failing which you shall be deemed to have accepted the value of your Claim as set out in this Notice of Disallowance or Amendment.

IF YOU FAIL TO TAKE ACTION WITHIN THE PRESCRIBED TIME PERIOD, THIS NOTICE OF DISALLOWANCE OR AMENDMENT WILL BE BINDING UPON YOU FOR ALL PURPOSES UNDER THE PLAN.

Dated at Montreal, this • day of • 2015.

Richter Advisory Group Inc.
In its capacity as court-appointed Monitor of Montreal, Maine & Atlantic Canada Co.

T. 1-866-845-8958
mmaclaims@richter.ca

Richter Groupe Conseil Inc.
Richter Advisory Group Inc.
1981 McGill College
Mtl (Qc) H3A 0G6
www.richter.ca

Montréal, Toronto

No. 450-11-000167-134

SUPERIOR COURT
(COMMERCIAL DIVISION)
DISTRICT OF ST-FRANÇOIS

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

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

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

Petitioner

and

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

Monitor

BL0052

MOTION FOR AN ORDER ESTABLISHING A PROCEDURE FOR THE REVIEW AND DETERMINATION OF CLAIMS (Sections 9 and 11 et seq. of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C 36 ("CCAA"))

ORIGINAL

Me Patrice Benoit
Gowling Lafleur Henderson LLP
1 Place Ville Marie, 37th Floor
Montreal, Québec
Canada H3B 3P4
Tel.: 514-392-9550 / Fax: 514-876-9550
Patrice.benoit@gowlings.com
File No.: L134420004
INIT. : PB/cl c/o 3511

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE SAINT-FRANÇOIS
N°: 450-11-000167-134

COUR SUPÉRIEURE

(Chambre commerciale)

(*Loi sur les arrangements avec les créanciers des compagnies, L.R.C. C-36, telle qu'amendée*)

DANS L'AFFAIRE DU PLAN D'ARRANGEMENT ET DE COMPROMIS DE:

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

Requérante

et

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

Contrôleur

ATTESTATION D'AUTHENTICITÉ
Selon l'art. 82.1 du *C.p.c.*

J'atteste que la copie de l'affidavit est conforme au facsimilé de cet acte reçu par télécopieur:

Nature du document :	Affidavit de Robert J. Keach
Numéro de Cour :	450-11-000167-134
Nom de l'expéditeur :	Robert J. Keach
Numéro du télécopieur émetteur :	207-774-1127
Lieu de la transmission :	Portland, Maine
Date de la transmission :	Le 13 avril 2015
Heure de transmission :	10h08

Montréal, ce 13 avril 2015

Alexander Bayus
GOWLING LAFLEUR HENDERSON SENCRL, SRL

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF SAINT-FRANÇOIS
N°: 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 OR ARRANGEMENT OF:

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

PETITIONER

and

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

MONITOR

AFFIDAVIT OF ROBERT J. KEACH

I, the undersigned, Robert J. Keach, Shareholder of Bernstein Shur, doing business at 100 Middle Street, West Tower, Portland, Maine, USA, 04101, solemnly declare as follows:

1. I am the Chapter 11 Trustee to Montreal, Maine & Atlantic Railway Ltd., the sole shareholder of the Petitioner;

2. All the facts alleged in the present *Motion for an Order Establishing a Procedure for the Review and Determination of Claims* are true.

AND I HAVE SIGNED:

ROBERT J. KEACH

SWORN TO before me in Portland, Maine,
this 13th day of April, 2015

Notary Public

AUBREY L. CUMMINGS
Notary Public, Maine
My Commission Expires October 21, 2017

MTL_LAW\ 2339069\1

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

Nº:

Nº : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 5

(Claims resolution order)

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS

No: **450-11-000167-134**

DATE: 15 avril 2015

PRESENT: THE HONOURABLE GAÉTAN DUMAS, J.S.C.

IN THE MATTER OF THE PLAN OF COMPROMISE OF:

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

Debtor/Petitioner

-and-

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

CLAIMS RESOLUTION ORDER

---

[1] **CONSIDERING** the Petitioners' *Motion for an Order Establishing a Procedure for the Review and Determination of Claims* (the "**Motion**");

[2] **CONSIDERING** the representations of the parties;

FOR THESE REASONS, THE COURT:

[3] **GRANTS** the Motion;

[4] **ISSUES** this Order divided under the following headings:

(a) Definitions;

(b) Review and Determination of Claims;

(c) Distribution for Disputed Claims;

(d) Notices and Communications;

(e) Aid and Assistance of Other Courts;

(f) General Provisions;

Definitions

[5] **ORDERS** that capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Plan and that the following terms in this Order shall have the following meanings ascribed thereto:

(a) "**Bankruptcy Case**" means the case styled in re Montreal, Maine & Atlantic Railway Ltd., Bankr. D. Me. No. 13-10670;

(b) "**Bankruptcy Court**" means United States Bankruptcy Court for the District of Maine, as presiding over the Bankruptcy Case;

(c) "**Business Day**" means a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Montreal, Québec, Canada;

(d) "**Claims Bar Date**" means 5:00 p.m. (Montréal time) on July 14, 2014 with respect to Wrongful Death Claims and 5:00 p.m. (Montréal Time) on June 13, 2014 with respect to all the other Creditors;

(e) "**Claims Officer(s)**" means the individual(s) appointed as claims officer(s) pursuant to paragraph 7 of the present Order;

(f) "**Claims Procedure Order**" means the Amended Claims Procedure Order rendered on June 13, 2014, in the CCAA Proceeding by the CCAA Court, establishing, among other things, a claims procedure in respect of Petitioner, as such Order may be amended, restated or varied from time to time;

(g) "**Class Representatives**" has the meaning ascribed to "Class Action Plaintiffs" and to "Class Counsel" by the Court in the Representation Order;

(h) "**Court**" means the Superior Court of Quebec;

(i) "**Creditors**" means collectively all Persons having filed Proofs of Claim and "**Creditor**" means any one of them;

(j) "**Determination Date**" means August 8, 2013;

(k) "**Dispute Package**" means, with respect to any disputed Proof of Claim, a copy of the related Proof of Claim, Notice of Revision or Disallowance and Notice of Dispute;

(l) "**Monitor**" means Richter Advisory Group Inc. (Richter Groupe Conseil Inc.), in its capacity as Monitor in the CCAA Proceeding;

(m) "**Notice of Dispute**" means the notice that may be delivered by a Creditor who has received a Notice of Revision or Disallowance disputing such Notice of Revision or Disallowance;

(n) "**Notice of Revision or Disallowance**" means the notice advising a Creditor that the Monitor has revised or rejected all or part of such Creditor's Claim set out in its Proof of Claim and setting out the reasons for such revision or disallowance, which notice shall be substantially in the form attached hereto as **Schedule A**;

(o) "**Plan**" means the plan(s) of compromise and arrangement filed on March 31, 2015 in these proceedings, as may be amended or supplemented from time to time;

(p) "**Proofs of Claim**" means the form of proofs of claim filed by Creditors before the Claims Bar Date in accordance with the Claims Procedure Order or otherwise accepted for filing pursuant to further order of this Court. Individually, each is a "**Proof of Claim**";

(q) "**Representation Order**" means the Representation Order issued by this Court on April 4, 2014;

Review and Determination of Claims

[6] **ORDERS** that:

(a) where applicable given the provisions of the Plan, the Monitor, together with the Petitioner, shall review the Proofs of Claim and the terms set out therein;

(b) where applicable, the Monitor shall send the Creditor a Notice of Revision or Disallowance in accordance with paragraph 14 below;

(c) the Creditor who receives a Notice of Revision or Disallowance and wishes to dispute it shall, within twenty (20) calendar days of the Notice of Revision or Disallowance, send, in accordance with paragraph 15 below, a Notice of Dispute to the Monitor setting out the basis for its dispute;

(d) unless otherwise authorized by this Court, if the Creditor does not provide a Notice of Dispute within the time period provided for above, such Creditor shall be deemed to have accepted the determination of its Proof of Claim as set out in the Notice of Revision or Disallowance;

(e) the Monitor, with the assistance of Petitioner, shall attempt to consensually resolve the disputed Proof of Claim following the receipt by the Monitor of the Notice of Dispute;

(f) if, after the expiration of such period of time as the Monitor believes appropriate, the disputed Proof of Claim has not been resolved:

(i) the Monitor, after consultation with Petitioner, shall refer the disputed Proof of Claim to a Claims Officer and the Monitor shall deliver a Dispute Package to the Claims Officer; or

(ii) the Monitor, after consultation with Petitioner, shall refer the Proof of Claim to the Court, and either the Creditor, the Monitor or Petitioner may bring a motion for the resolution of such Proof of Claim by the Court; and

(g) the Monitor shall not be required to send any Creditor a confirmation of receipt by the Monitor of any document provided by a Creditor pursuant to this Order and each. Creditor shall be responsible for obtaining proof of delivery, if they so require, through their choice of delivery method;

[7] **ORDERS** that Petitioner shall have the power and authority to appoint from time to time one or more individuals to act as a Claims Officer for the purposes of this claims procedure, provided however that the Monitor and this Court shall have both approved such appointment;

[8] **ORDERS** that upon receipt of a Dispute Package, the Claims Officer shall schedule and conduct a hearing to settle the disputed portion of the disputed Proof of Claim and shall, as soon as practicable thereafter, notify Petitioner, the Monitor and the Creditor of his or her determination;

[9] **ORDERS** that the Claims Officer shall have the authority to determine the procedure for adjudication of disputed Proofs of Claim that are referred to him or her, including the manner of presenting evidence and the conduct of any hearing before him or her, provided that a Creditor may request that such adjudication be conducted in either French or English;

[10] **ORDERS** that each Claims Officer may, with the consent of the parties, act as a mediator in respect of any Proof of Claim without thereby being disqualified from adjudicating upon such claim;

[11] **ORDERS** that Petitioner or the Creditor may appeal a Claims Officer's determination to this Court within ten (10) Business Days of notification of the Claims Officer's determination of the disputed portion of such Creditor's Proof of Claim by serving upon Petitioner and the Monitor, and filing with this Court a motion returnable on a date to be fixed by this Court. If an appeal is not filed within such period then the Claims Officer's determination shall, subject to a further order of the Court, be deemed to be final and binding on Petitioner and the Creditor;

[12] **ORDERS** that any appeal of a Claims Officer's determination before this Court shall be considered for all intents and purposes to be a true appeal such that there will be no *de novo* hearing; and

Distribution for Disputed Claims

[13] **ORDERS** that no distributions shall be made with respect to a disputed Proof of Claim unless and until it has been finally determined;

Notices and Communications

[14] **ORDERS** that any document sent by the Monitor or Petitioner pursuant to this Order may be sent by e-mail, ordinary mail, registered mail, courier or facsimile transmission, in either French or English as requested by the Creditor. A Creditor shall be deemed to have received any document sent pursuant to this Order two (2) Business Days after the document is sent by ordinary mail and one (1) Business Day after the document is sent by registered mail, courier, e-mail or facsimile transmission. Documents shall not be sent by ordinary or registered mail during a postal strike or work stoppage of general application.

[15] **ORDERS** that any notice or other communication to be given under this Order by a Creditor to the Monitor or the Petitioner shall be in writing in substantially the form provided for in this Order and will be sufficiently given only if given by mail, telecopier, courier or email addressed to:

(a) If to the Petitioner

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

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

(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

Aid and Assistance of Other Courts

[16] **REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to, act in aid of and to be complementary to this Court in carrying out the terms of this Order;

U.S. Plan and Derailment Wrongful Death Claims

[17] **ORDERS** that, notwithstanding anything in this Order to the contrary, the allowance and valuation of claims for voting purposes with respect to the plan of liquidation filed in the Bankruptcy Case (the "U.S. Plan") shall be determined solely in accordance with the U.S. Plan and any orders entered in such case with respect to the U.S. Plan, and the allowance of (including any objections to) for all purposes, and distributions with respect to, Derailment Wrongful Death Claims (as defined in the U.S. Plan) shall be solely in accordance with the terms of the U.S. Plan;

General Provisions

[18] **ORDERS** that references in this Order to the singular include the plural, to the plural include the singular and to any gender include the other gender.

[19] **ORDERS** that the Monitor may apply to this Court for advice and direction in connection with the discharge or variation of its powers and duties under this Order.

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

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

Sherbrooke, 15 avril 2015

GAÉTAN DUMAS

Honourable Gaétan Dumas, J.S.C.

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 6

(Motion for the appointment of a claims officer)

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF ST-FRANÇOIS

N°: 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 OR ARRANGEMENT OF:

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

Petitioner

and

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

Monitor

MOTION FOR THE APPOINTMENT OF A CLAIMS OFFICER
(Sections 9 and 11 *et seq.* of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA"))

TO THE HONORABLE JUSTICE GAÉTAN DUMAS OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF SAINT-FRANÇOIS, THE PETITIONER RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. On July 6, 2013, a train operated by Montreal Maine & Atlantic Canada Co. ("**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 (the "**Derailment**");

2. Numerous claims have been made against MMAC and its parent company, Montreal, Maine & Atlantic Railway Ltd ("**MMA**"), arising out of the Derailment;

3. On August 7, 2013, MMA filed a voluntary petition in the United States Bankruptcy Court, District of Maine (the "**Bankruptcy Court**") for relief under Chapter 11 of the U.S. Bankruptcy Code (the "**Bankruptcy Case**");

4. On August 8, 2013, the Honourable Justice Castonguay of the Quebec Superior Court (the "**CCAA Court**") granted an initial order in respect of MMAC (the "**Initial Order**") pursuant to the CCAA and Richter Advisory Group Inc. (Richter Groupe Conseil Inc.) was appointed as monitor of MMAC (the "**Monitor**");

5. On August 21, 2013, the United States Trustee appointed Robert J. Keach to serve as trustee in the Bankruptcy Case (the "**Trustee**");

6. Through the concerted and coordinated efforts of MMAC, the Monitor, the Trustee and those creditors that held an overwhelming majority of the votes in respect of any plan, namely the Province of Quebec, the Class Representatives and the Wrongful Death Victims (collectively, the "**Major Stakeholders**"), MMAC officially filed its *Plan of Compromise and Arrangement* on March 31, 2015 (the "**Initial Plan**");

7. On April 15, 2015, this Honourable Court issued a Claims Resolution Order in order to establish a procedure for the review and determination of claims (the "**Claims Resolution Order**"). A copy of the Claims Resolution Order is filed in support hereof for ease of reference as **Exhibit R-1**;

8. Following further negotiations with the Major Stakeholders, as well as the settlement reached with World Fuel Services Inc. and its related entities, MMAC filed an *Amended Plan of Compromise and Arrangement* on June 8, 2015 (the "**Amended Plan**");

9. The Amended Plan was submitted to 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;

10. On July 13, 2015, this Honourable Court issued an order approving the Amended Plan (as rectified on August 3, 2015, and amended on October 9, 2015, the "**Canadian Approval Order**");

11. On or around October 8, 2015, Trustee's Plan of Liquidation filed in the Bankruptcy Case (the "**US Plan**"), which is intended to mirror the effects of the Amended Plan in the United States, was confirmed (the "**U.S. Approval Order**");

12. The Plan Implementation Date (as defined in the Amended Plan) is expected to occur on or around December 21, 2015, the whole as appears from the Monitor's Twenty-First Report, which will be filed in support hereof;

13. Note that all capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Amended Plan;

II. ORDER SOUGHT

14. The Petitioner hereby seeks the appointment of former Court of Appeal Justice André Rochon to act as the Claims Officer as set out in the Claims Resolution Order;

III. GROUNDS FOR THIS MOTION

15. Between these CCAA proceedings and the Bankruptcy Case, in excess of 5,000 claims have been filed;

16. The status of the Monitor's review of those claims is more fully set out in its Twenty-First Report and may be summarized as follows:

a) Wrongful Death Claims: these claims are to be valued in accordance with Schedule E to the Amended Plan. The calculation of the amounts to each claimant in this category is substantially complete;

b) Bodily Injury and Moral Damage Claims: these claims are to be valued in accordance with Schedule F to the Amended Plan. The calculation of the amounts to each claimant in this category is significantly advanced. The deadline for the submission of forms in respect of claims of post-traumatic stress is November 30, 2015;

c) Property and Economic Damages Claims: the Monitor, its counsel and MMAC's counsel have performed a preliminary review of the more significant claims in this category. The Monitor is in contact with the creditors and / or their legal counsel to both provide preliminary feedback and obtain additional information to enable a proper review of the amounts claimed. There remains considerable work to be performed in order to complete the review of these claims;

d) Subrogated Insurer Claims: the Monitor has received detailed statements of account in respect of all claims in this category and is determining the nature of additional information that may be required to complete the review of these claims;

e) Government Claims: the review of these claims is in process;

17. While the Monitor, its counsel and MMAC's counsel will endeavor to resolve claim disputes consensually, the aid of an independent claims officer may be required in order to deal with disputes in an expedited and efficient manner;

18. The Petitioner respectfully submits that former Court of Appeal Justice André Rochon should be appointed to act as Claims Officer;

19. Me Rochon is most certainly qualified for the role and has confirmed to the Petitioner that he consents to act as Claims Officer, the whole as appears from the letter and curriculum vitae filed *en liasse* in support hereof as **Exhibit R-2**;

20. Moreover, the Monitor fully supports the appointment of former Court of Appeal Justice André Rochon to act as Claims Officer, as appears from its Twenty-First Report;

21. The fees and disbursements of the claims officer would be secured by the current Administration Charge (section 7.1 of the Amended Plan) such that there will be no additional costs to the creditors;

22. Me Rochon has advised the Petitioner that his services would be billed on an hourly basis (plus disbursements) and that his hourly rate will be $550 as of January 2016;

IV. CONCLUSION

23. For the reasons set out above, the Petitioner respectfully requests that former Court of Appeal Justice André Rochon be appointed to act as Claims Officer pursuant to the Claims Resolution Order, and that the fees and disbursements of the Claims Officer be secured by the Administration Charge;

24. The Petitioner respectfully submits that the notices given of the presentation of the present Motion are proper and sufficient;

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

GRANT the present *Motion for the Appointment of a Claims Officer* (the "**Motion**");

DECLARE that the notices given of the presentation of the Motion are adequate and sufficient;

ORDER that former Court of Appeal Justice André Rochon be and is hereby appointed to act as Claims Officer pursuant to the Claims Resolution Order dated as of April 15, 2015;

ORDER that the payment of the fees and disbursements owed to the Claims Officer for services rendered in connection with or relating to these proceedings shall be secured by the Administration Charge (as defined in the Amended Plan);

ORDER the provisional execution of the order notwithstanding any appeal, without the necessity of furnishing any security;

THE WHOLE without costs, save and except in the event of contestation.

MONTREAL, November 25, 2015

GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

CANADA

SUPERIOR COURT
(COMMERCIAL DIVISION)

PROVINCE OF QUÉBEC
DISTRICT OF SAINT-FRANÇOIS

N°: 450-11-000167-134

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

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

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

Petitioner

and

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

Monitor

NOTICE OF PRESENTATION

TO: **SERVICE LIST**

TAKE NOTICE that the present *Motion for the Appointment of a Claims Officer* will be presented for adjudication before the honourable Gaétan Dumas, j.s.c., of the district of Saint-François, on **November 26, 2015,** in **room 1** of the Sherbrooke Courthouse, located at 375 West King Street, at 10:00 a.m. or so soon as counsel may be heard.

DO GOVERN YOURSELVES ACCORDINGLY.

MONTREAL, November 25, 2015

Gowling Lafleur Henderson

GOWLING LAFLEUR HENDERSON LLP
Attorneys for Petitioner

EXHIBIT R-1

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS

No: **450-11-000167-134**

DATE: 15 avril 2015

PRESENT: **THE HONOURABLE GAÉTAN DUMAS, J.S.C.**

IN THE MATTER OF THE PLAN OF COMPROMISE OF:

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

Debtor/Petitioner

-and-

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

CLAIMS RESOLUTION ORDER

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[1] **CONSIDERING** the Petitioners' *Motion for an Order Establishing a Procedure for the Review and Determination of Claims* (the "**Motion**");

[2] **CONSIDERING** the representations of the parties;

FOR THESE REASONS, THE COURT:

[3] **GRANTS** the Motion;

[4] **ISSUES** this Order divided under the following headings:

(a) Definitions;

(b) Review and Determination of Claims;

(c) Distribution for Disputed Claims;

(d) Notices and Communications;

(e) Aid and Assistance of Other Courts;

(f) General Provisions;

Definitions

[5] **ORDERS** that capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Plan and that the following terms in this Order shall have the following meanings ascribed thereto:

(a) "**Bankruptcy Case**" means the case styled in re Montreal, Maine & Atlantic Railway Ltd., Bankr. D. Me. No. 13-10670;

(b) "**Bankruptcy Court**" means United States Bankruptcy Court for the District of Maine, as presiding over the Bankruptcy Case;

(c) "**Business Day**" means a day, other than Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Montreal, Québec, Canada;

(d) "**Claims Bar Date**" means 5:00 p.m. (Montréal time) on July 14, 2014 with respect to Wrongful Death Claims and 5:00 p.m. (Montréal Time) on June 13, 2014 with respect to all the other Creditors;

(e) "**Claims Officer(s)**" means the individual(s) appointed as claims officer(s) pursuant to paragraph 7 of the present Order;

(f) "**Claims Procedure Order**" means the Amended Claims Procedure Order rendered on June 13, 2014, in the CCAA Proceeding by the CCAA Court, establishing, among other things, a claims procedure in respect of Petitioner, as such Order may be amended, restated or varied from time to time;

(g) "**Class Representatives**" has the meaning ascribed to "Class Action Plaintiffs" and to "Class Counsel" by the Court in the Representation Order;

(h) "**Court**" means the Superior Court of Quebec;

(i) "**Creditors**" means collectively all Persons having filed Proofs of Claim and "**Creditor**" means any one of them;

(j) "**Determination Date**" means August 8, 2013;

(k) "**Dispute Package**" means, with respect to any disputed Proof of Claim, a copy of the related Proof of Claim, Notice of Revision or Disallowance and Notice of Dispute;

(l) "**Monitor**" means Richter Advisory Group Inc. (Richter Groupe Conseil Inc.), in its capacity as Monitor in the CCAA Proceeding;

(m) "**Notice of Dispute**" means the notice that may be delivered by a Creditor who has received a Notice of Revision or Disallowance disputing such Notice of Revision or Disallowance;

(n) "**Notice of Revision or Disallowance**" means the notice advising a Creditor that the Monitor has revised or rejected all or part of such Creditor's Claim set out in its Proof of Claim and setting out the reasons for such revision or disallowance, which notice shall be substantially in the form attached hereto as **Schedule A**;

(o) "**Plan**" means the plan(s) of compromise and arrangement filed on March 31, 2015 in these proceedings, as may be amended or supplemented from time to time;

(p) "**Proofs of Claim**" means the form of proofs of claim filed by Creditors before the Claims Bar Date in accordance with the Claims Procedure Order or otherwise accepted for filing pursuant to further order of this Court. Individually, each is a "**Proof of Claim**";

(q) "**Representation Order**" means the Representation Order issued by this Court on April 4, 2014;

Review and Determination of Claims

[6] **ORDERS** that:

(a) where applicable given the provisions of the Plan, the Monitor, together with the Petitioner, shall review the Proofs of Claim and the terms set out therein;

(b) where applicable, the Monitor shall send the Creditor a Notice of Revision or Disallowance in accordance with paragraph 14 below;

(c) the Creditor who receives a Notice of Revision or Disallowance and wishes to dispute it shall, within twenty (20) calendar days of the Notice of Revision or Disallowance, send, in accordance with paragraph 15 below, a Notice of Dispute to the Monitor setting out the basis for its dispute;

(d) unless otherwise authorized by this Court, if the Creditor does not provide a Notice of Dispute within the time period provided for above, such Creditor shall be deemed to have accepted the determination of its Proof of Claim as set out in the Notice of Revision or Disallowance;

(e) the Monitor, with the assistance of Petitioner, shall attempt to consensually resolve the disputed Proof of Claim following the receipt by the Monitor of the Notice of Dispute;

(f) if, after the expiration of such period of time as the Monitor believes appropriate, the disputed Proof of Claim has not been resolved:

(i) the Monitor, after consultation with Petitioner, shall refer the disputed Proof of Claim to a Claims Officer and the Monitor shall deliver a Dispute Package to the Claims Officer; or

(ii) the Monitor, after consultation with Petitioner, shall refer the Proof of Claim to the Court, and either the Creditor, the Monitor or Petitioner may bring a motion for the resolution of such Proof of Claim by the Court; and

(g) the Monitor shall not be required to send any Creditor a confirmation of receipt by the Monitor of any document provided by a Creditor pursuant to this Order and each Creditor shall be responsible for obtaining proof of delivery, if they so require, through their choice of delivery method;

[7] **ORDERS** that Petitioner shall have the power and authority to appoint from time to time one or more individuals to act as a Claims Officer for the purposes of this claims procedure, provided however that the Monitor and this Court shall have both approved such appointment;

[8] **ORDERS** that upon receipt of a Dispute Package, the Claims Officer shall schedule and conduct a hearing to settle the disputed portion of the disputed Proof of Claim and shall, as soon as practicable thereafter, notify Petitioner, the Monitor and the Creditor of his or her determination;

[9] **ORDERS** that the Claims Officer shall have the authority to determine the procedure for adjudication of disputed Proofs of Claim that are referred to him or her, including the manner of presenting evidence and the conduct of any hearing before him or her, provided that a Creditor may request that such adjudication be conducted in either French or English;

[10] **ORDERS** that each Claims Officer may, with the consent of the parties, act as a mediator in respect of any Proof of Claim without thereby being disqualified from adjudicating upon such claim;

[11] **ORDERS** that Petitioner or the Creditor may appeal a Claims Officer's determination to this Court within ten (10) Business Days of notification of the Claims Officer's determination of the disputed portion of such Creditor's Proof of Claim by serving upon Petitioner and the Monitor, and filing with this Court a motion returnable on a date to be fixed by this Court. If an appeal is not filed within such period then the Claims Officer's determination shall, subject to a further order of the Court, be deemed to be final and binding on Petitioner and the Creditor;

[12] **ORDERS** that any appeal of a Claims Officer's determination before this Court shall be considered for all intents and purposes to be a true appeal such that there will be no *de novo* hearing; and

Distribution for Disputed Claims

[13] **ORDERS** that no distributions shall be made with respect to a disputed Proof of Claim unless and until it has been finally determined;

Notices and Communications

[14] **ORDERS** that any document sent by the Monitor or Petitioner pursuant to this Order may be sent by e-mail, ordinary mail, registered mail, courier or facsimile transmission, in either French or English as requested by the Creditor. A Creditor shall be deemed to have received any document sent pursuant to this Order two (2) Business Days after the document is sent by ordinary mail and one (1) Business Day after the document is sent by registered mail, courier, e-mail or facsimile transmission. Documents shall not be sent by ordinary or registered mail during a postal strike or work stoppage of general application.

[15] **ORDERS** that any notice or other communication to be given under this Order by a Creditor to the Monitor or the Petitioner shall be in writing in substantially the form provided for in this Order and will be sufficiently given only if given by mail, telecopier, courier or email addressed to:

(a) If to the Petitioner

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

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

(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

Aid and Assistance of Other Courts

[16] **REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to, act in aid of and to be complementary to this Court in carrying out the terms of this Order;

U.S. Plan and Derailment Wrongful Death Claims

[17] **ORDERS** that, notwithstanding anything in this Order to the contrary, the allowance and valuation of claims for voting purposes with respect to the plan of liquidation filed in the Bankruptcy Case (the "U.S. Plan") shall be determined solely in accordance with the U.S. Plan and any orders entered in such case with respect to the U.S. Plan, and the allowance of (including any objections to) for all purposes, and distributions with respect to, Derailment Wrongful Death Claims (as defined in the U.S. Plan) shall be solely in accordance with the terms of the U.S. Plan;

General Provisions

[18] **ORDERS** that references in this Order to the singular include the plural, to the plural include the singular and to any gender include the other gender.

[19] **ORDERS** that the Monitor may apply to this Court for advice and direction in connection with the discharge or variation of its powers and duties under this Order.

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

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

Sherbrooke, 15 avril 2015

GAÉTAN DUMAS

Honourable Gaétan Dumas, J.S.C.

EXHIBIT R-2

Prévost
Fortin
D'Aoust

AVOCATS S.E.N.C.R.L.
BARRISTERS & SOLICITORS

AFFAIRES | ASSURANCES | CONSTRUCTION | ENTREPRISES | ENVIRONNEMENT | FAMILLE | FINANCE | IMMOBILIER | MUNICIPAL | SANTÉ | SCOLAIRE | TRAVAIL

Saint-Jérôme, le 9 novembre 2015

Me Patrice Benoit
GOWLING LAFLEUR HENDERSON S.E.N.C.R.L.
3700 - 1, Place Ville-Marie
Motnréal (Québec) H3B 3P4

PAR COURRIEL SEULEMENT
(Patrice.Benoit@Gowlings.com)

OBJET: Montreal, Maine & Atlantic Canada Co.
et Richter Groupe Conseil inc.

Cher maître,

Je fais suite à notre conversation téléphonique du 6 novembre 2015. Tel que convenu, vous trouverez, sous pli, mon c.v.

Si d'autres informations vous paraissent utiles, n'hésitez pas à me contacter.

Salutations distinguées,

PRÉVOST FORTIN D'AOUST

André Rochon, avocat

AR/lp
P. J.

HONORABLE ANDRÉ ROCHON

C.V. abrégé

Coordonnées :

Adresse : 55, rue Castonguay, bureau 400
Saint-Jérôme (Québec)
J7Y 2H9

Téléphone : 450-436-8244 poste 139
Cellulaire : 514-913-1091
Télécopieur : 450-436-9735

Courriel : a.rochon@pfdavocats.com

Expérience professionnelle :

1972 :	Licence en droit, Université d'Ottawa Médaillé du gouverneur général du Canada
1974 :	Admission au Barreau du Québec
1974-1994 :	Pratique privée à Saint-Jérôme, notamment Forget, Rochon, Prévost, Auclair
1994 :	D.E.S.S. droit civil, Université de Montréal
04-07-1994 :	Nomination à la Cour supérieure
14-02-2002 :	Nomination à la Cour d'appel
30-08-2014 :	Retraite de la Cour d'appel
Septembre 2014 :	Réadmission au Barreau du Québec Avocat conseil au cabinet Prévost, Fortin D'Aoust agissant principalement à titre d'arbitre et de médiateur

Me André Rochon a reçu une formation spécialisée en matière de médiation à L'Université de Pepperdine de Malibu, en Californie.

Conférencier-invité au Canada sur le thème de la médiation
Conférencier invité devant les tribunaux du Québec pour donner de la formation en matière de médiation.

Alors juge à la Cour d'appel, Me André Rochon a fait partie de l'équipe de médiation de la Cour pendant 12 années et, à ce titre, a agi de façon régulière dans le cadre du programme de règlement des conflits de la Cour d'appel du Québec.

Depuis sa retraite à la Cour d'appel du Québec, Me Rochon œuvre principalement dans le domaine de l'arbitrage et de la médiation dans différents domaines, tant de nature commerciale que civile.

Me André Rochon est l'auteur du « Guide des requêtes devant le juge unique de la Cour d'appel : procédure et pratique ». Il est également l'un des auteurs de « Le Grand Collectif » sur le nouveau Code de Procédure civile, commentaires et annotations, aux Éditions Yvon Blais.

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 7

(Order to appoint a claims officer)

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS

No: **450-11-000167-134**

DATE: November 26th, 2015

PRESENT: THE HONOURABLE GAÉTAN DUMAS, J.S.C.

IN THE MATTER OF THE PLAN OF COMPROMISE OF:

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

Debtor/Petitioner

-and-

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

ORDER TO APPOINT A CLAIMS OFFICER

---

[1] **CONSIDERING** the Petitioners' *Motion for the appointment of a claims officer (*the "**Motion**");

[2] **CONSIDERING** the representations of the parties;

FOR THESE REASONS, THE COURT:

[3] **GRANTS** the Motion;

[4] **DECLARES** that the notices given of the presentation of the Motion are adequate and sufficient;

[5] **ORDERS** that Me André Rochon be and is hereby appointed to act as Claims Officer pursuant to the Claims Resolution Order dated as of April 15, 2015;

[6] **ORDERS** that the payment of the fees and disbursements owed to the Claims Officer for services rendered in connection with or relating to these proceedings shall be secured by the Administration Charge (as defined in the **Amended Plan**);

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

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

Sherbrooke, 30th November, 2015

GAÉTAN DUMAS

Honourable Gaétan Dumas, J.S.C.

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

Nº:

Nº : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 8

(Seventeenth report of the monitor)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF SAINT-FRANÇOIS
No.: 450-11-000167-134

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

IN THE MATTER OF THE PLAN OF ARRANGEMENT WITH RESPECT TO:

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

Petitioner

-and-

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

Monitor

SEVENTEENTH REPORT OF THE MONITOR
April 24, 2015

INTRODUCTION

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

2. The Stay Period was extended by the Court twelve times with the most recent extension to December 15, 2015 having been granted by the Court on April 15, 2015.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.

4. On March 30 and 31, 2015 and on April 14, 2015, five insurance companies filed motions seeking to file claims after the bar date ("Late Claim Motions").

5. On April 10, 2015, the Petitioner filed a Motion for an Order for the Convening, Holding and Conduct of a Creditors' Meeting and for a Twelfth Extension of the Stay Period ("Creditors' Meeting and Extension Motion").

6. On April 10, 2015, the Petitioner filed a Motion for an Order Establishing a Procedure for the Review and Determination of Claims ("Claims Resolution Motion").

7. On April 14, 2015, the Court Appointed Representatives of the Class Members filed the following motions:

   - Motion for an Order Authorizing the Filing of Additional Claims;
   - Motion for an Order Accepting the Filing of an Amended Plan and for Advice and Directions ("Amended Plan Motion").

8. Pursuant to a hearing on April 15, 2015, the Court issued the following orders and set out the following timeline for the hearing of various motions as follows:

   - Order for the Twelfth Extension of the Stay Period;
   - Claims Resolution Order;
   - Amended Additional Claims Motion (as defined below) will be heard on April 27, 2015;
   - Creditors' Meeting Motion filed by Petitioner and the Amended Plan Motion will be heard on April 30, 2015;
   - Late Claim Motions will be heard on May 11, 2015.

9. On April 20, 2015, the Court Appointed Representatives of the Class Members filed the Fresh as Amended Motion of the Court Appointed Representatives of Class Members for an Order Authorizing the Filing of Additional/Late Claims ("Amended Additional Claims Motion").

10. The purpose of this Seventeenth Report of the Monitor is to inform the Court with respect to the Amended Additional Claims Motion.

CLAIMS PROCESS

11. On April 4, 2014, the Court issued the Claims Procedure Order which set out the process by which creditors could file claims in these proceedings. The Claims Procedure Order established a bar date of 5:00 p.m. (Montreal time) on June 13, 2014 ("Bar Date"). Pursuant to the Amended Claims Procedure Order issued on June 13, 2014, the Bar Date was extended to 5:00 p.m. (Montreal time) on July 14, 2014 but solely for claims of wrongful death victims.

12. Pursuant to the Claims Procedure Order, in order to notify creditors of the Bar Date and the claims process, the Monitor undertook various steps to both inform creditors of the Bar Date and to provide assistance in completing a proof of claim prior to the Bar Date. The following steps have been summarized in prior Monitor reports (most notably in the Ninth Report dated April 25, 2014) however, it is relevant to summarize those steps in this report:

- On April 11, 2014, the Monitor posted the proof of claim form package on it's website;
- During the week of April 7, 2014, the Monitor met with a representative of the City to review a communications plan. Further, the City posted on its website a notice alerting residents to the commencement of the claims process, the information sessions and where to obtain further information;
- On April 12 and 19, 2014, the Monitor placed advertisements in La Presse, the Gazette and La Tribune as required under the Claims Order. These advertisements also appeared on April 18 and 25, 2014 in L'Echo de Frontenac and the Sherbrooke Record to inform creditors of the claims process, the claims bar date and information sessions (see Exhibit "3" of the Monitor's Ninth Report);
- During the week of April 14, 2014, the Monitor mailed via Canada Post to all residents and businesses in the MRC du Granit region a public notice ("Public Notice") (see Exhibit "4" of the Monitor's Ninth Report) which described the claim process;
- On April 14, 2014, the Monitor mailed the proof of claim form to all known creditors and other parties including the service list, various governmental agencies and bodies, insurers and employees of MM&A;
- On April 15, 2014, representatives of the Monitor opened a temporary office in the City of Lac-Megantic ("Lac-Megantic") to meet with creditors to provide assistance in the completion of proofs of claim. This office remained open through June 13, 2014;
- On April 17, 2014, the Monitor provided the Public Notice to the CLD du Haut-Richelieu and requested that they circulate this notice to their members as well as enlist the aid of other CLD's in the region for the distribution of the Public Notice;

- On April 22, 23, 30 and May 5, 2014, information sessions were held in Lac-Megantic to explain the claims process to the residents. Attached as Exhibit "5" to the Monitor's Ninth Report is the presentation provided to all who attended the information sessions. The attorneys for the Class Representatives were present at the information sessions and had the opportunity to assist the residents who attended the sessions;
- The Monitor was in frequent communication with the attorneys for the Class Representatives to coordinate efforts to ensure creditors were aware of the claims process, the bar date and were provided with the necessary assistance to file claims.

13. In addition to the above-noted steps, the attorneys for the Class Representatives implemented various measures to inform creditors of the claims process and the importance of filing a claim by the Bar Date, as more fully set out in paragraph 9 of the Amended Additional Claims Motion.

14. It should also be noted that a claims process in the Chapter 11 proceedings of Montreal, Maine & Atlantic Railway Ltd. ("MMA") was instituted which followed the same timelines as the MMAC Claims Procedure Order and allowed for the deemed filing of claims.

CLAIMS FILED BY THE BAR DATE

15. The Monitor refers to its Twelfth Report dated July 18, 2014 and its Thirteenth Report dated September 22, 2014 for details regarding the claims filed by the Bar Date. After adjusting for duplications, we note that approximately 4,300 claims were filed in the CCAA and the Chapter 11 (approximately 4,000 in the CCAA and 300 in the Chapter 11).

16. In respect of the 4,300 claims filed, approximately 3,700 included a claim for damages that has been categorized as a Bodily Injury and Moral Damages Claim (as defined in the Plan).

AMENDED ADDITIONAL CLAIMS MOTION

17. The Amended Additional Claims Motion seeks an authorization to file the following late claims:

- June 2014 Claims (as defined in the Amended Additional Claims Motion);
- January 2015 Claims and April 2015 Claims (as defined in the Amended Additional Claims Motion).

June 2014 Claims (Exhibit R-1 to the Amended Additional Claims Motion)

- 32 claims which were signed June 13, 2014 or prior and that were not submitted to the Monitor prior to the Bar Date as a result of a Class Counsel inadvertence;
- 70 claims which were all dated June 30, 2014, but which have never been remitted to the Monitor;
- In respect of these 102 claims, they can be classified as follows:
    - 65 claims impact solely the Bodily Injury and Moral Damages category;
    - 24 of the claims impact both the Bodily Injury and Moral Damages and the Property and Economic Damages categories;
    - 5 claims impact both the Bodily Injury and Moral Damages and Wrongful Death categories. Upon a preliminary review of these 5 claims and a discussion with Class Counsel, it appears that these creditors likely do not meet the definition of Wrongful Death Claims and should be included solely in the Bodily Injury and Moral Damages category;
    - 6 claims impact solely the Property and Economic Damages category;
    - 2 claims impact solely the Wrongful Death category.
- Based upon a preliminary review of the information listed in Exhibit R-1, the Monitor believes that up to 20 of the 102 claims (including the 2 Wrongful Death Claims) may be duplicates of claims that were already filed with the Monitor prior to the Bar Date and 1 claim is listed twice in this exhibit. Further, the 2 claims which impact solely the Wrongful Death category have already filed claims in the Chapter 11 and have opted out of Class Representation;
- Accordingly, after correcting for claims potentially already filed by the Bar Date or listed in duplicate, and using the points system set out in Schedule F to the Plan, the addition of all of the June 2014 Claims to the Bodily Injury and Moral Damages category is estimated to dilute the distribution to this category by approximately 1.0%;
- At this stage, it is not possible to quantify the impact of these late claims on the distribution to the Property and Economic Damages category;
- It should be noted that the Monitor has based its summary and analysis on the information contained in Exhibit R-1 to the Amended Additional Claims Motion and adjustments may be required following the review of the actual proofs of claim which were submitted to the Monitor on April 22, 2015.

January / April 2015 Claims (Exhibit R-2 to the Amended Additional Claims Motion)

- 108 claims on which we comment as follows:
  - 82 of the claims are dated January 30, 2015 or in February 2015;
  - 26 claims are described in Exhibit R-2 to the Amended Additional Claims Motion as:

    "*En jaune seulement inscrit au recours collectif pas de prévue de réclamation*"

    However, when Class Counsel sent us the copies of the proofs of claims listed in Exhibit R-2, the Monitor notes that in fact claims have been submitted for all 26 of these creditors. 24 of the claims are late as they are dated in April 2015 and 2 of the claims are dated June 12, 2014, prior to the Bar Date.
- These 108 claims can be classified as follows:
  - 56 claims impact solely the Bodily Injury and Moral Damages category.
  - 42 claims impact both the Bodily Injury and Moral Damages category and the Property and Economic Damages category;
  - 9 claims impact both the Bodily Injury and Moral Damages and Wrongful Death categories. Upon a preliminary review of these 9 claims and a discussion with Class Counsel, it appears that these creditors likely do not meet the definition of Wrongful Death Claims and should be included solely in the Bodily Injury and Moral Damages category;
  - 1 claim impacts solely the Property and Economic Damages category.
- Based upon a preliminary review of the information listed in Exhibit R-2, the Monitor believes that 13 of the 108 claims may be duplicates of claims that were already filed with the Monitor prior to the Bar Date;
- Accordingly, after correcting for claims potentially already filed by the Bar Date and using the points system set out in Schedule F to the Plan, the addition of the January / April 2015 Claims to the Bodily Injury and Moral Damages category is estimated to dilute the distribution to this category by approximately 1.0%.
- At this stage, it is not possible to quantify the impact of these late claims on distribution to the Property and Economic Damages category.
- It should be noted that the Monitor has based its summary and analysis on the information contained in Exhibit R-2 to the Amended Additional Claims Motion and adjustments may be required following the review of the actual proofs of claim which were submitted to the Monitor on April 22, 2015.

CONCLUSION

18. The Plan as filed was negotiated over many months with numerous parties and achieves a compromise of a multitude of positions. These complex and delicate negotiations were, among many elements, based on the amount and the nature of the claims filed by the Bar Date. The categorization of these claims and an agreement as to their relative values were essential to the determination of the allocation of settlement funds amongst the differing categories of creditors. Consequently, any decision to authorize the filing of claims after the Bar Date should be taken on the basis of this particular context.

19. In the particular case of the Amended Additional Claims Motion, and on the following assumptions:

- The Plan as eventually approved and sanctioned will provide for the distribution of fixed amounts per category of claims as currently foreseen by its terms; and
- All of the creditors having claims in the category of claims which would be affected by the filing of the late claims described in the Additional Amended Claims Motion agree to such late filings;

the Monitor has no objection to the conclusions sought by the Amended Additional Claims Motion.

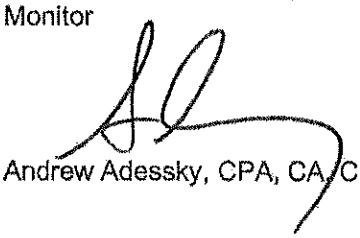
20. If the agreement of the creditors described in paragraph 19 above cannot be ascertained, than the Monitor believes that:

- With respect to the June 2014 Claims:
    - The late filing of the claims that are dated prior to the Bar Date should be authorized inasmuch as the reason for the non-filing of these claims by the Bar Date appears to be due to the inadvertence of Class Counsel and thus it would be unfair to these creditors to not allow them to participate in any distribution under the Plan.
    - The late filing of the claims that are dated after the Bar Date requires additional analysis to determine when the creditors actually provided the information to complete their claims before determining if there are circumstances that would justify the acceptance of these late claims.
- With respect to the January / April 2015 Claims, the Monitor is concerned that there is little justification provided in the Amended Additional Claims Motion to explain why these claims are only being filed seven months or more after the Bar Date.

Further, the Monitor is concerned that if there are no clear and compelling reasons to authorize late filings, the Bar Date may become meaningless and that a significant number of other late claims not yet identified could be filed that would have an impact on the Plan and on the recovery of those creditors who respected the Bar Date.

Respectfully submitted at Montreal, this 24th day of April, 2015.

Richter Advisory Group Inc.
Monitor



Andrew Adessky, CPA, CA, CIRP

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 9

(Nineteenth report of the monitor on the petitioner's plan of arrangement)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF SAINT-FRANÇOIS
No.: 450-11-000167-134

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

IN THE MATTER OF THE PLAN OF ARRANGEMENT WITH RESPECT TO:

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

Petitioner

-and-

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

Monitor

NINETEENTH REPORT OF THE MONITOR ON THE PETITIONER'S PLAN OF ARRANGEMENT
May 14, 2015

INTRODUCTION

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

2. The Stay Period was extended by the Court twelve times with the most recent extension to December 15, 2015 having been granted by the Court on April 15, 2015.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.

4. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in the Plan. All amounts reflected in this report are stated in Canadian currency unless otherwise noted.

5. The purpose of this Nineteenth Report of the Monitor is to inform the Court on the following subjects:

   - Background and Overview of Restructuring Proceedings;
   - CCAA Plan of Compromise and Arrangement;
   - Administration Charge;
   - Chapter 11 Trustee's Plan of Liquidation;
   - Monitor's Recommendations on the Plan.

BACKGROUND AND OVERVIEW OF RESTRUCTURING PROCEEDINGS

6. MMAC operated a shortline railroad of approximately 250 route miles servicing customers in the Province of Quebec. MMAC's parent company, Montreal, Maine & Atlantic Railway Limited ("MMAR") (together the "Companies") operated a shortline railroad of approximately 250 route miles servicing customers in Maine and Vermont.

7. Following the tragic train derailment on July 6, 2013 in the City of Lac-Mégantic, Quebec ("Derailment"), MMAC, on August 6, 2013, filed for protection under the CCAA. MMAR similarly filed for protection under Chapter 11 of the U.S. Bankruptcy Code on August 7, 2013. On August 21, 2013, Robert J. Keach was appointed Chapter 11 Trustee of MMAR ("Trustee").

8. Following the commencement of the restructuring proceedings, the immediate focus was to preserve the operations of the railroad in order to service the many customers and municipalities located along its route and who were dependent on the railway for the operations of their business as well as preserve the employment of the Companies' work force.

9. In September 2013, the Petitioner and the Chapter 11 Trustee engaged an investment banker to conduct a sale process of the assets of the Companies to be sold as a going concern. A purchaser was identified and following an auction, the sale of the operating assets to the purchaser was approved by the Court and the U.S. Bankruptcy Court in January 2014. The sale of assets was

concluded in May/June 2014, and the operations of MMAC were terminated effective June 30, 2014.

10. Following the Derailment, a class action was commenced in Canada against a large number of defendants and multiple law suits were filed in the United States on behalf of the estates and various family members of deceased victims.

11. In order to compensate creditors for damages suffered as a result of the Derailment, it was clear to all concerned from the outset that this could only be accomplished through contributions from potentially liable third parties ("Third Parties") in exchange for full and final releases in respect of all litigation relating to the Derailment.

CCAA PLAN OF COMPROMISE AND ARRANGEMENT

12. On March 31, 2015, the Petitioner filed the Plan. Similarly, on March 31, 2015, the Trustee filed the Trustee's Plan of Liquidation ("U.S. Plan") (collectively the "Plans").

13. The Plan is the result of many months of multilateral discussions between the Petitioner's counsel, the Monitor and its counsel, the Trustee, Petitioner's principal stakeholders, namely the Province of Quebec ("Province"), the Class Representatives, the attorneys for derailment victims in the Chapter 11 case ("US Legal Representatives") and the attorney for the Official Victims Committee (in the Chapter 11 ("Official Committee") (collectively the "Major Stakeholders") and the Third Parties, the purpose of which was to negotiate contributions by the Third Parties to a Settlement Fund to be distributed to derailment victims. Accordingly:

- The allocation of the Settlement Funds, as described in section 4.2 of the Plan, among and within the categories of creditors has been the result of intensive discussions with and compromises among the Major Stakeholders;
- That even if at the time of the filing of the Plan a complete consensus had not been achieved, in particular with the Class Representatives, the Monitor considers the Plan to be fair and reasonable for all creditors and has ensured that the Plan was filed by the end of March 2015 in order to permit a vote and ratification before the summer holiday period and a distribution in October/November 2015;
- In formulating the Plan, consideration was given to the competing interests of the Major Stakeholders with the knowledge that an increased allocation for one category of creditors would result in a reduction of the amounts available for the other categories of creditors;
- The Monitor believes that a consensus will be reached with the Major Stakeholders prior to the meeting of creditors.

14. Pursuant to the Plan, agreements have been executed with most of the Third Parties ("Contributing Third Parties"). Under the terms of these agreements, the Contributing Third Parties will deliver total contributions of CA$182.3 million and US$89.4 million which represent a total contribution of approximately CA$300 million as of the date of the filing of the Plan on March 31, 2015 (USD have been converted at a rate of 1.26 as at March 31, 2015). In exchange for these contributions to the Settlement Funds, Contributing Third Parties will receive a full, complete and final release in both Canada and the United States from all litigation relating to the Derailment.

15. Contributing Third Parties include Irving Oil, the Federal Government and companies that can be described as oil producers, tank car lessors, insurance companies, as well as all of the directors and officers of the Petitioner including Edward Burkhardt and various companies related to Edward Burkhardt. A complete list of Contributing Third Parties is provided in Schedule A to the Plan.

16. Schedule A of the Plan also lists the non-settling third parties which include:

- Canadian Pacific Railway Company;
- World Fuel Services Corporation and related entities;
- SMBC Rail Services, LLC;

which are hereinafter referred to as the Non-Settling Third Parties.

17. If settlements with any or all of the Non-Settling Third Parties are executed before the meeting of creditors, an Amended Plan will be submitted to the creditors. In the event that any or all of the Non-Settling Third Parties do not reach an agreement to contribute to the Settlement Funds, all of the litigation already commenced in Canada and the United States against the Non-Settling Third Parties may be continued and all parties will be free to institute fresh litigation in any jurisdiction.

18. The Plan provides that the Settlement Funds, to the exclusion of the XL Indemnity Payment, shall be subject to an Administration Charge in the amount of $20 million (plus taxes in respect of the Canadian Professionals) to secure the payment of the fees and disbursements owed or which may become owed to the Canadian Professionals in connection with the CCAA Proceedings and to the U.S. Professionals (as defined in the Plan) owed or which may become owed to them in connection with the Chapter 11. We refer to page 11 of this report for further details regarding the Administration Charge.

19. The following is only a summary of important terms of the Plan and creditors should refer to the Plan and its terms for all legal purposes. In the case of any discrepancy between the Plan and this summary, the terms of the Plan shall prevail. For the purpose of this report, we have employed the same terminology as defined and used in the Plan.

Classification, Voting and Related Matters

- Subject to the Plan, the Claims Procedure Order, the Claims Resolution Order and the Meeting Order, each Creditor shall have the right to vote the face value of his claim subject to the following:

  i. The aggregate votes of all "Wrongful Death Claims" shall not represent more than 22.2% of all Creditors' votes or $200,000,000;

  ii. The aggregate votes of all "Bodily Injury and Moral Damages Claims" shall not represent more than 11.1% of all Creditors' votes or $100,000,000;

  iii. The aggregate votes of all "Property and Economic Damages Claims" shall not represent more than 8.3% of all Creditors' votes or $75,000,000;

  iv. The aggregate votes of all "Subrogated Insurer Claims" shall not represent more than 3.8% of all Creditors' votes or $33,701,000;

  v. The aggregate votes of all "Government Claims" shall not represent more than 48.5% of all Creditors' votes or $435,627,000;

  vi. The "Indemnity Claims" shall have no right to vote;

  vii. The aggregate votes of all "Non-Derailment Claims" shall not represent more than 6.1% of all Creditors' votes or $55,000,000;

- The value of each creditors' vote will be calculated in accordance with the following formula:

$$\frac{\text{Face value of the Creditor's Proof of Claim}}{\text{Aggregate face value of all Proofs of Claim in the relevant category}} \times \text{Maximum total value attributed to the vote of the relevant category} = \text{Value of the Creditor's claim for voting purposes}$$

Distributions

- All contributions to the Settlement Funds shall be remitted initially to the Monitor for distribution in accordance with the Plan.
- Based on the information available as of the date hereof, the distribution to the various categories of claims can be summarized as follows:

Montreal, Maine & Atlantic Canada Co. and Montreal, Maine & Atlantic Railway Ltd. Summary of Estimated Distribution				
	Estimated Distribution (prior to redistribution)	% Distribution (prior to redistribution)	Reallocated Dividends from Governments	Total Estimated Distribution [1]
Wrongful Death Claims	$ 66,178,000	24.1%	$ 11,025,000	$ 77,203,000
Bodily Injury and Moral Damages Claims	28,558,000	10.4%	5,512,000	34,070,000
Property and Economic Damages Claims	24,714,000	9.0%	4,134,000	28,848,000
Subrogated Insurer Claims	11,259,000	4.1%	-	11,259,000
Government Claims				
Province	135,198,000	49.2%	(13,735,000)	121,463,000
Attorney General	6,936,000	2.5%	(6,936,000)	-
Lac-Megantic	1,652,000	0.6%	-	1,652,000
CSST	104,000	0.0%	-	104,000
	143,890,000	52.4%	(20,671,000)	123,219,000
Non-Derailment Claims	-	-	-	-
Total	**$ 274,599,000**	**100.0%**	**$ -**	**$ 274,599,000**

[1] Estimated Distribution is net of the provision for the Administration Charge but is prior to any fees that may be payable to (i) Class Counsel for the Class Representatives (for certainty, we note that the amounts payable to Class Counsel are subject to Court approval, and we are advised that pursuant to the engagements executed by the Class Representatives, these amounts will not exceed 25% of the amounts received by Class Members, plus disbursements, plus taxes) or (ii) to the US Legal Representatives (in respect to creditors represented by the US Legal Representatives, they will be subject to fees as indicated in the confidential mandates signed by various creditors).

- We comment as follows on the distributions to the various categories of creditors:

  i. Creditors **holding Wrongful Death Claims** shall in the aggregate receive 24.1% excluding Reallocated Dividends (as defined below) of the Funds for Distribution in full and final satisfaction of their Proven Claims. That portion of the Funds for Distribution will be remitted by the Monitor to the Trustee who in turn will remit that portion of the Funds for Distribution to a trust which is being set up by the Trustee pursuant to the U.S. Plan. The amounts paid to the Creditors holding Wrongful Death Claims will be calculated in accordance with the points based matrix set forth in Schedule E of the Plan. For clarity, this will apply to Wrongful Death Claims filed in the CCAA or as stipulated in the U.S. Plan, in the Chapter 11. Based on the current level of the Settlement Funds, this will result in a distribution of approximately $77.2 million to 230 creditors.

  ii. **Creditors holding Bodily Injury and Moral Damages Claims** shall in the aggregate receive 10.4% excluding Reallocated Dividends (as defined below) of the Funds for Distribution in full and final satisfaction of their Proven Claims. This amount will be distributed by the Monitor in accordance with the points based matrix set forth in Schedule F of the Plan. For clarity, this will apply to Bodily Injury and Moral Damages Claims filed in the CCAA or as stipulated in the U.S. Plan, in the Chapter 11. Based on the current level of Settlement Funds, this will result in a distribution of approximately $34.1 million to approximately 3,700 creditors, with respect to the following types of claims:

- Trouble and Inconvenience – which are assumed to be claimed by all of those claimants who have filed a moral damages claim. The distribution with respect to these damages is estimated at $3,100 per person;
- Evacuation indemnities (based on information provided by the Province) – up to a maximum of 30 days at an estimated amount of $620 per person per day;
- Red Zone / Yellow Zone – for all of those claimants who resided in the red zone / yellow zone at the time of the Derailment (based on information provided by the Province). The distribution with respect to these damages is estimated at $31,000 per person;
- Grandparents / Grandchildren – of the deceased victims of the Derailment. The distribution with respect to these damages is estimated at $9,300 per person;
- Post-Traumatic Stress
    a. Short Term – will require completion of a form signed by a health-care professional confirming treatment lasting between 3 months and one year or can be claimed by persons who were present in the red zone at the time of the Derailment. Estimated at $31,000 per person;
    b. Long Term – will require completion of a form signed by a health-care professional confirming treatment lasting more than one year. Estimated at $62,000 per person;
- Bodily Injury – estimated at $31,000 per person based on claims filed.

The types of claims listed above are cumulative and creditors holding Bodily Injury and Moral Damages Claims may qualify for more than one and potentially for all of those types of claims. However, creditors holding Wrongful Death Claims are not entitled to claim for post-traumatic stress.

Included in the $34.1 million dedicated to this category of claims is a buffer amount of $2 million to allow for an adjustment in the event that post-traumatic stress claims are higher than forecasted.

The above distribution does not take into account any potential dilution should the Class Representatives' motion to allow late claims be approved by the Court nor the impact of higher than forecasted post-traumatic stress claims (i.e. greater than the $2 million buffer).

iii. **Creditors having Property and Economic Damages Claims** shall in the aggregate receive 9.0% excluding Reallocated Dividends (as defined below) of the Funds for Distribution in full and final satisfaction of their Proven Claims. This amount will be

distributed by the Monitor in accordance with the mechanism set forth in Schedule G of the Plan. For clarity, this will apply to Property and Economic Damages Claims filed in the CCAA or as stipulated in the U.S. Plan, in the Chapter 11. Based on the current level of the Settlement Funds and the estimated claims amount of $75 million, a distribution of approximately $28.8 million will be paid to this group of creditors.

Pursuant to the Claims Resolution Order dated April 15, 2015, the Monitor has commenced a review of the Property and Economic Damages Claims filed in both the CCAA and the Chapter 11. As set out in the Plan, in the event that the Property and Economic Damages Claims are reduced below $75 million, the difference between the estimated amount of $75 million and the final aggregate amount of Proven Claims will be redistributed on a pro-rata basis to the other categories of creditors.

The above distribution does not take into account any potential dilution should the Class Representatives motion to allow late claims be approved by the Court.

iv. **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. This amount will be distributed by the Monitor on a pro-rata basis of their Proven Claims. Based on the current level of the Settlement Funds and the current level of estimated claims, a distribution of approximately $11.3 million will be paid to this group of creditors. As noted in the Monitor's Eighteenth Report dated May 8, 2015, six motions have been filed to allow certain late filed subrogated insurer claims to be filed. In the event these motions are granted, this will dilute the amount to be received by the members of this class as described in the Monitor's Eighteenth Report.

v. **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. This amount will be distributed by the Monitor to the Province, the City of Lac-Mégantic ("Lac-Mégantic"), the Attorney General of Canada ("Attorney General") and the Commission de la Santé et de la Sécurité au Travail on a pro-rata basis of their Proven Claims.

vi. **Creditors having Indemnity Claims** shall not receive any distribution in the Plan or in the U.S. Plan from the Settlement Funds.

vii. **Creditors having Non-Derailment Claims** shall not receive any distribution in the Plan. However, creditors having Non-Derailment Claims may be entitled to a distribution in the U.S. Plan in accordance with its terms from any available net proceeds resulting from the liquidation of MMAR's assets.

- Distributions in respect of creditors who are represented by the Class Representatives will be made to the attorneys for the Class Representatives who in turn will distribute the funds to

individual Class Members, net of their fees. The amounts payable to the attorneys of the Class Representatives are subject to Court approval and we are advised that pursuant to the engagements executed by the Class Representatives these fees will not exceed 25% of the amounts received by the Class Members, plus disbursements and plus taxes.

- Distributions in respect of creditors, who are represented by the US Legal Representatives, will be subject to fees as indicated in the confidential mandates as signed by the various creditors. We refer these creditors to their signed mandates to determine the amount that will be withheld from their distributions.
- The Province and the Federal Government of Canada have each agreed to redistribute a portion of the distribution they are to receive ("Reallocated Dividends") as follows:

  i. $13.7 million from the Province from its share of the XL Indemnity Payment;

  ii. The full dividend to be received by the Attorney General (currently estimated at $6.9 million) in respect of their Proven Claim;

  iii. The Reallocated Dividends will be distributed to creditors as follows:
    - 53.3% to Creditors holding Wrongful Death Claims;
    - 26.7% to Creditors holding Bodily Injury and Moral Damages Claims;
    - 20.0% to Creditors holding Property and Economic Damages Claims.

- Under an agreement between the parties, the Reallocated Dividends from the Province from its share of the XL Indemnity Payment are not subject to any fees by the attorneys for the Class Representatives or the US Legal Representatives.

Releases, Implementation and Timeline

- Pursuant to the Plan, all Affected Claims shall be fully, finally, irrevocably and forever compromised, remised, released, discharged, cancelled and barred on the Plan Implementation Date as against the Released Parties.
- The Released Parties are listed in Schedule A of the Plan.
- The current estimated timeline to completion of the process is as follows:

  i. Information sessions at the Centre Sportif Mégantic in Lac-Mégantic on May 27, 2015 and June 3, 2015 to explain the Plan to all interested parties;

  ii. Creditors' Meeting on June 9, 2015 to vote on the Plan;

  iii. Assuming the Plan is approved on June 9, 2015, the Court will hold a hearing on June 17, 2015 to sanction the Plan;

iv. Recognition in the United States of the Canadian Approval Order pursuant to Chapter 15 of the US Bankruptcy Code will be sought in the summer of 2015;

v. A parallel process to approve the U.S. Plan with the following timetable:
   - Hearing to approve the disclosure statement on June 23, 2015 at the Bankruptcy Court in Portland, Maine;
   - Creditors wishing to vote on the U.S. Plan must do so by August 10, 2015. Similar to voting requirements under the CCAA, to be approved, the US Plan must be approved by a majority in number of creditors representing two-thirds in value of the creditors who vote;
   - Assuming the U.S. Plan is approved, the hearing to approve the U.S. Plan will take place on August 20, 2015 at the Bankruptcy Court in Portland, Maine;

vi. Initial distributions to creditors are expected to occur in October/November 2015 to allow for appeal periods to expire, receipt of the Settlement Funds and substantial completion of the Claims Resolution process although distributions could be further delayed in the event of appeals or delays that may be experienced in the review, analysis and final determination of Proven Claims.

Preferences

20. Pursuant to Section 8.11 of the Plan, sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* ("BIA") relating to preferences and transfers at undervalue shall not apply to this Plan, with the exception of the preservation of the ability to potentially avoid and/or recover transfers from the Petitioner, MM&A Railway or Montreal, Maine & Atlantic Corporation to the holders of notes and warrants originally issued pursuant to a Note and Warrant Purchase Agreement dated January 8, 2003. We refer you to section 3.3(b) of the Plan for further details of this transaction.

21. The Monitor confirms that it has performed a review of payments and transfers made in the three months and twelve months (for related parties) prior to August 8, 2013 and has not noted any payments or transfers that could be considered preferential and subject to avoidance. In addition, regarding any potential transfers at undervalue between related parties for the five years prior to the commencement of the CCAA proceedings, the Monitor has reviewed available information and has had discussions with the Chapter 11 Trustee and his financial advisor in order to identify any such transfers. The Monitor is not aware of any transaction that could be a transfer at undervalue other than the transaction referred to in section 3.3(b) of the Plan. In the Monitor's opinion it is reasonable in the circumstances to exclude the application of sections 38 and 95 to 101 of the BIA to the Plan.

ADMINISTRATION CHARGE

22. As set out in the Plan, the Administration Charge will be allocated as follows:

- $12 million of the Administration Charge plus taxes will be allocated to fees and disbursements of the Canadian Professionals;
- $8 million to cover the fees and disbursements of the U.S. Professionals.

23. As of April 30, 2015, the total unpaid fees and disbursements of the Canadian Professionals, prior to unapplied retainers is approximately $5.8 million (including sales taxes) summarized as follows:

• Gowling Lafleur Henderson LLP (counsel to MM&A)	$2,603,000
• Richter Advisory Group Inc. (Monitor)	$2,437,000
• Woods LLP (counsel to the Monitor)	$746,000

24. The Administration Charge in favor of the Canadian Professionals will be used to cover: i) the fees and expenses accrued through the end of April 2015 and ii) the estimated fees and expenses to cover all work required to the completion of the CCAA and full implementation of the Plan which includes, but is not limited to:

- Finalization and implementation of all matters relating to settlements with Contributing Third Parties;
- Potential ongoing negotiations with Non-Settling Third Parties;
- Amendments to the Plan, if required;
- Ongoing and frequent communications and meetings with the Major Stakeholders;
- Coordination of the mailing of the Creditors' Meeting notice, the Meeting Order, the proxy and voting letter, the Plan and related documents to all creditors and other parties;
- Review, analysis and determination of the Property and Economic Damages Claims including meetings and communications with creditors and their representatives;
- Issuance of notices of amendment and/or rejection as required in respect of all claims received and participation in any hearings to be conducted by the Claims Officer and/or the Court;
- Coordination of the claims review and the Plan implementation with the Chapter 11 necessitating frequent communication with the U.S. Professionals;
- The Monitor to act as foreign representative in the Chapter 15 filing including drafting of materials, reporting and attendance as required by the Bankruptcy Court;

- Preparation for and conducting information sessions and Creditors' Meeting in Lac-Mégantic;
- Further extensions as required of the stay period under the CCAA initial order including the preparation of all motions and reports related thereto;
- Distribution of the Funds for Distribution in accordance with the Plan.

25. The Administration Charge will also cover the fees and expenses of the independent Claims Officer to be appointed pursuant to the Claims Resolution Order as well as U.S. counsel to the Monitor in connection with the Chapter 15 proceedings in the Bankruptcy Court.

26. The Administration Charge in favor of the U.S. Professionals covers the accrued and future fees and expenses of the: i) Trustee, ii) his professionals which includes his financial advisor, Canadian counsel and others and iii) Paul Hastings LLP as counsel to the Official Committee. The Trustee's professionals and Paul Hastings are compensated on an hourly basis, whereas the Trustee is paid a 3% commission on funds that are disbursed by the Trustee.

27. Many of the ongoing matters in the Chapter 11 are similar to those in the CCAA including finalization and implementation of settlement agreements, amendments to the U.S. Plan (if required), matters relating to the review and rejection of claims, approval of the disclosure statement, conducting a vote for plan approval, participation in the Chapter 15 proceedings, and other matters. In addition, the Trustee is dealing with various litigation in the Chapter 11 proceedings and is pursuing the Non-Settling Third Parties.

28. We refer to section 7.1 of the Plan for additional details concerning the Administration Charge. For greater clarity, the full amount of the $25 million XL Indemnity Payment will be distributed to creditors without any deduction for any professional fees in either the CCAA or the Chapter 11.

CHAPTER 11 TRUSTEE'S PLAN OF LIQUIDATION

29. The following is only a summary of important terms of the U.S. Plan and creditors should refer to the U.S. Plan and its terms for all legal purposes. In the case of any discrepancy between the U.S. Plan and this summary, the terms of the U.S. Plan shall prevail. For the purpose of this report, we have employed the same terminology as defined and used in the U.S. Plan.

30. As noted above, on March 31, 2015, the Trustee filed the U.S. Plan which is designed to function in tandem with the Plan. The creditors in the U.S. Plan have been separated into 15 classes on which we comment as follows:

- Classes 1 through 7 are designated as secured claims and/or claims that have a priority (such as tax claims) and as such are deemed unimpaired, meaning the amounts claimed will not be

compromised by the U.S. Plan. These creditors will either retain their liens, receive the residual cash value of the assets on which they are secured or may be entitled to be treated as a general unsecured claim in the U.S. Plan. These classes of creditors are not entitled to vote on the U.S. Plan;

- Classes 8 through 12 correspond to the following categories respectively in the Plan: i) Bodily Injury and Moral Damages Claims; ii) Property and Economic Damages Claims; iii) Government Claims; iv) Subrogated Insurer Claims; and v) Wrongful Death Claims. These classes of creditors shall receive the distributions as determined by the Plan. These classes of creditors are entitled to vote on the U.S. Plan;
- Class 13 represents general unsecured claims. According to the Disclosure Statement for the U.S. Plan, general unsecured claims will receive a distribution of between 3% and 71% of the aggregate claim value in this class. The high end of the recovery range assumes a substantial recovery on potential preferential actions that may be initiated by the Trustee. This class of creditors will be entitled to vote on the U.S. Plan;
- Classes 14 and 15 represent subordinated claims and equity interests and will not receive any distribution and are deemed to reject the U.S. Plan.

Chapter 15

31. In accordance with the Plan, the Monitor, in its capacity as the authorized foreign representative under the CCAA Proceeding, will file for the recognition of the Canadian Approval Order under Chapter 15 of the US Bankruptcy Code and seek the recognition in the United States of the releases being provided to Contributing Third Parties.

32. It is expected that these proceedings will be commenced within the next 30 days.

MONITOR'S RECOMMENDATIONS ON THE PLAN

33. The Monitor supports the Plan and recommends its acceptance. As noted above, this Plan has been the subject of intense and very lengthy negotiations involving a wide variety of parties including the Major Stakeholders. The Plan provides for substantial Settlement Funds to be shared by all of the victims of the Derailment.

34. In exchange for contributions to the Settlement Funds, the Plan provides that all Contributing Third Parties will receive full and final releases from all litigation relating to the Derailment in both Canada and the United States. If settlements are not reached with the Non-Settling Third Parties prior to the approval of the Plan, all of the rights and recourses of all the victims are preserved and may be continued or instituted in both Canada and the United States.

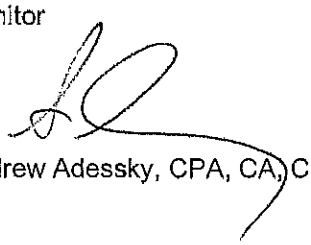
35. The alternative to the approval of the Plan will be the termination of the CCAA process and the continuation of litigation in both Canada and the United States, which litigation will be costly, complex and will most likely take many years before any resolution, which resolution is uncertain at this point in time.

36. In light of the foregoing and the discussions the Monitor has had with the Major Stakeholders, the Monitor believes the Plan and the Settlement Agreements are fair and reasonable in the circumstances.

37. The Monitor will conduct information sessions in Lac-Mégantic in advance of the Creditors' Meeting to enable creditors and residents of Lac-Mégantic to receive a full explanation of the Plan and to respond to any questions that they may have.

Respectfully submitted at Montreal, this 14th day of May, 2015.

Richter Advisory Group Inc.
Monitor



Andrew Adessky, CPA, CA, CIRP

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

Nº:

Nº : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 10

(Twenty-first report of the monitor)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF SAINT-FRANÇOIS
No.: 450-11-000167-134

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

IN THE MATTER OF THE PLAN OF ARRANGEMENT WITH RESPECT TO:

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

Petitioner

-and-

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

Monitor

TWENTY-FIRST REPORT OF THE MONITOR
November 24, 2015

INTRODUCTION

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

2. The Stay Period was extended by the Court twelve times with the most recent extension to December 15, 2015 having been granted by the Court on April 15, 2015.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.

4. On September 15, 2015, the Court Appointed Representatives of the Class Members filed a Motion for an Order Authorizing the Filing of Additional Late Claims ("Additional Late Claims Motion").

5. On September 21, 2015, Royal & Sun Alliance of Canada filed a "*Requête pour être autorisé à déposer une preuve de réclamation hors délai.*" ("RSA Late Claim Motion").

6. On October 13 and 14, 2015, late claim motions were filed in the Chapter 11 case of Montreal Maine & Atlantic Railway, Ltd. ("MMAR") on behalf: i) the estate and heirs of Yvon Ricard ("Ricard Claim"), ii) the estate and heirs of Jean Sebastien Jacques ("Jacques Claim") and iii) Tafisa Canada Inc. ("Tafisa Claim"). On November 20, 2015, an additional late claim motion was filed in the Chapter 11 case of MMAR on behalf of five individual creditors ("Individual Claims") (collectively the "Chapter 11 Late Claims Motions").

7. On November 23, 2015, the Court Appointed Representatives of the Class Members filed a Supplementary Motion for an Order Authorizing the Filing of Additional Late Claims ("Supplementary Late Claims Motion").

8. On November 24, 2015, the Petitioner filed a Motion for the Appointment of a Claims Officer ("Claims Officer Motion"), a Motion for a Thirteenth Extension of the Stay Period ("Thirteenth Extension Motion") and a Motion for the Approval of Professional Fees ("Professional Fee Motion")

9. On or about November 24, 2015, counsel to the Class Representatives will be filing a Motion for the approval of Class Counsel Fees ("Class Counsel Fee Motion").

10. The Additional Late Claims Motion, the Supplementary Late Claims Motion, the RSA Late Claim Motion, the Claims Officer Motion, the Thirteenth Extension Motion, the Professional Fee Motion and the Class Counsel Motion will all be heard on November 26, 2015. The Chapter 11 Late Claims Motions will be heard by the U.S. Bankruptcy Court for the District of Maine ("Bankruptcy Court") as noted below.

11. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in the Amended Plan. All amounts reflected in this report are stated in Canadian currency unless otherwise noted.

12. The purpose of this Twenty-First Report of the Monitor is to inform the Court on the following subjects:

    - Background and Overview of Restructuring Proceedings;

- Additional Late Claims Motion, Supplementary Late Claims Motion, RSA Late Claim Motion and Chapter 11 Late Claims Motions;
- Claims Review Status and the Proposed Claims Officer;
- Plan Implementation and Estimated Distribution;
- Extension Request;
- Approval of Professional Fees;
- Approval of Class Counsel Fees;
- Chapter 15 Proceedings;
- Activities of the Monitor;
- Recommendations of the Monitor and Conclusion.

BACKGROUND AND OVERVIEW OF RESTRUCTURING PROCEEDINGS

13. MMAC operated a shortline railroad of approximately 250 route miles servicing customers in the Province of Quebec. MMAR, which is MMAC's parent company (together the "Companies") operated a shortline railroad of approximately 250 route miles servicing customers in Maine and Vermont.

14. Following the tragic train derailment on July 6, 2013 in the City of Lac-Mégantic, Quebec ("Derailment"), MMAC, on August 6, 2013, filed for protection under the CCAA. MMAR similarly filed for protection under Chapter 11 of the U.S. Bankruptcy Code on August 7, 2013. On August 21, 2013, Robert J. Keach was appointed Chapter 11 Trustee of MMAR ("Trustee").

15. The purpose of these filings was to i) preserve the operations of the railroad in order to service the many customers and municipalities located along its route who were dependent on the railway for the operations of their business, ii) preserve the employment of the Companies' work force, iii) maximize the value of the assets of the Companies and iv) reach a global settlement of the numerous potential liabilities related to the Derailment.

16. Following the commencement of the restructuring proceedings, the immediate focus was to preserve the operations of the railroad in order to service the many customers and municipalities located along its route and who were dependent on the railway for the operations of their business as well as preserve the employment of the Companies' work force.

17. In September 2013, the Petitioner and the Chapter 11 Trustee engaged an investment banker to conduct a sale process of the assets of the Companies to be sold as a going concern. A purchaser was identified and following an auction, the sale of the operating assets to the purchaser was

approved by the CCAA Court and the Bankruptcy Court in January 2014. The sale of the assets was concluded in May/June 2014, and the operations of MMAC were effectively terminated on June 30, 2014.

18. Following the Derailment, a class action was commenced in Canada against a large number of defendants and multiple law suits were filed in the United States on behalf of the estates and various family members of deceased victims.

19. In order to compensate creditors for damages suffered as a result of the Derailment, it was clear to all concerned from the outset of the Restructuring Proceedings that this could only be accomplished through contributions from potentially liable third parties ("Third Parties") in exchange for full and final releases in respect of all litigation and liabilities relating to the Derailment. This lead to complex and lengthy negotiations which resulted in the filing of both the CCAA Plan and the Chapter 11 Plan which were then accepted by the creditors and approved by the CCAA Court and Bankruptcy Court respectively.

ADDITIONAL LATE CLAIMS MOTION, SUPPLEMENTARY LATE CLAIMS MOTION, RSA LATE CLAIM MOTION AND CHAPTER 11 LATE CLAIMS MOTIONS

A) Additional Late Claims Motion

20. We refer to the Monitor's Ninth and Seventeenth Reports dated April 25, 2014 and April 24, 2015 respectively for an overview of the claims process and the procedures taken to inform creditors of the June 13, 2014 Bar Date ("Bar Date") and the assistance provided to creditors to complete their proofs of claim prior to the Bar Date.

21. The Late Claims Motion is the second such late claims motion filed by the Class Representatives. The first late claims motion was filed on April 14, 2015 ("Amended Additional Claims Motion") and sought permission to have 210 late claims filed after the Bar Date. With respect to the late claims included in the Amended Additional Claims Motion:

- 102 claims were categorized by the Class Representatives as June 2014 claims (Exhibit R1 to the Amended Additional Claims Motion) on the basis that such claims were not filed on or before the Bar Date due to a late surge of claims being filed and/or inadvertence on the part of counsel to the Class Representatives;
- 108 claims were categorized by the Class Representatives as January or April 2015 claims based on the date that the claims were actually completed by the respective creditors.

22. The Monitor's comments on the Amended Additional Claims Motion are summarized in its Seventeenth Report dated April 24, 2015. Following an order of this Court dated May 27, 2015

("May 27, 2015 Order"), 127 of the claims included in the Amended Additional Claims Motion (for which detailed affidavits were provided by the creditors filing such claims) were allowed to be filed and included in the claims database maintained by the Monitor.

23. The Additional Late Claims Motion seeks approval for the filing of approximately 476 claims, all of which would be filed in the Bodily Injury and Moral Damages category. However, approximately 125 of the affidavits which have been filed in support of the Additional Late Claims Motion allege economic damages which in the aggregate total approximately $1.2 million and these would be filed in the Property and Economic Damages category. A summary of these additional claims is as follows:

Montreal Maine & Atlantic Canada Co.
Additional Late Claims

Type	Stated Reason for Late Claim	Number of Claims	Less: Duplicates	Less: Claim Already Filed Before the Bar Date	Less: No Claim Attached to the Affidavit	Less: Signed Affidavit Not Provided	Adjusted Number of Additional Late Claims	Property and Economic Damages Late Claims by Type [1]
R1	Minor Claimants Related To Previously Approved June 2014 Claims	40	-	-	-	(2)	38	$ -
R2	June 2014 Claims Whose Affidavits Were Received After The May 27 Judgment	12	-	-	-	-	12	41,000
		52	-	-	-	(2)	50	41,000
R3	New June 2014 Claims	45	-	(2)	(1)	-	42	18,000
R4	Claimants Who Were Unaware Of The Claims Bar Date	187	(1)	(2)	(4)	-	180	355,000
R5	Claimants Who Suffered Signficiant Psychological Trauma	56	(1)	(1)	(1)	-	53	319,000
R6	Claimants Who Mistakenly Believed That They Were Not Eligible To File A Claim	121	(3)	-	(1)	(1)	116	196,000
R7	Claimants Who Did Not File Claims Prior To The Claims Bar Date Due To Other Reasons	36	-	(1)	-	-	35	303,000
		445	(5)	(6)	(7)	(1)	426	1,191,000
R8	Minor Claimants [2]	79	(79)	-	-	-	-	-
		576	(84)	(6)	(7)	(3)	476	$ 1,232,000

(1) Represents claims of approximately 125 claimants.
(2) Minor claimants are already included in categories R3 to R7.

24. Based on its review of the information provided with the Additional Late Claims Motion, the Monitor has identified approximately 21 claims that are either duplicates of claims which have already been filed or for which supporting documentation has not been provided. These claims should not be allowed to be filed.

25. Based on the information provided with respect to the remaining 476 claims, the Monitor has assessed that if these 476 late claims are allowed to be filed and are ultimately determined to be valid, the dilution to the claims filed by the Bar Date or otherwise filed pursuant to the May 27, 2015 Order, in the Bodily Injury and Moral Damages category would be approximately 11%. We refer to Exhibit 1 hereto for additional details on the calculation.

26. The reasons for the late filing of the 476 claims are identified in the table above. The Monitor has reviewed the affidavits of the 476 late claims and notes that the reasons for these late claims are similar to reasons provided by creditors with respect to the January and April 2015 Claims and include:

- Lack of awareness of the Bar Date for many reasons including that the creditor moved subsequent to the Derailment, did not follow events in the media or did not understand the process;
- Creditors who thought the process was only for family members of wrongful death victims, people living in the Red Zone, people who were evacuated, etc.;
- Creditors who were unable to deal with the claims process due to psychological trauma following the Derailment;
- Other reasons including illness, the requirement to look after others, work obligations, etc.

27. The Monitor does not, at the present time, have sufficient information to assess whether any of the approximately $1.2 million of claims that would be filed in the Property and Economic Damages category are valid claims and will ultimately be allowed. Moreover, any allowance of those additional economic claims will decrease any Economic Savings (if any) which are to be reallocated to the other categories of creditors as outlined in section 4.2 of the Amended Plan.

B) <u>Supplementary Late Claims Motion</u>

28. As a result of the filing of the Supplementary Late Claims Motion only on November 23, 2015, the Monitor has not yet reviewed the 68 supplementary late claims nor has it calculated the dilutive effect the claims would have on the different categories.

C) <u>RSA Late Claim Motion</u>

29. The RSA Late Claim Motion for $312,034.82 is in respect of damages paid by RSA to its insured 9079-7481 Quebec Inc. ("9079") in respect of a Subway franchise located in Lac-Mégantic. This is in fact the second late claim motion filed by RSA, with the first having been filed on April 14, 2015 for $2,166,142.74 in respect of other insureds ("Initial RSA Late Claim Motion"). Pursuant to the May 27, 2015 Order, the Initial RSA Late Claim Motion was admitted as a claim in the Property and Economic Damages category. RSA is requesting that the claim of 9079 be treated in the same manner. The claims in this category are still under review and it is premature at this time to consider the impact the inclusion of this late claim might have on the overall distribution. However, as previously discussed, additional economic claims will reduce any Economic Savings and will have a dilutive effect on the other categories of creditors.

30. In respect of the RSA Late Claim Motion, the Monitor notes that the reasons cited by RSA for its failure to file its claim in connection with 9079 prior to the Bar Date are similar to the reasons advanced in support of the Initial RSA Late Claim Motion:

- Lack of familiarity with the claims process under the CCAA by the claims adjustor handling the matter;
- Belief that MMA was bankrupt and that there were no assets available for distribution in respect of RSA's claim;
- Lack of information about the process including the fact that it was less well publicized in Ontario, where the claim was being handled.

31. RSA further notes that, as their claims offices in Quebec and Ontario operate independently, this is why the late claim of 9079 was not included in the Initial RSA Late Claim Motion.

D) <u>Chapter 11 Late Claims Motions</u>

32. We summarize the Chapter 11 Late Claims Motions as follows:

- **Ricard Claim** – a motion was filed by the estate and heirs of Mr. Yvon Ricard on October 13, 2015 and will be heard by the Bankruptcy Court on December 15, 2015. Mr. Ricard is a suicide victim whose recent suicide is being attributed by his heirs to the Derailment. Mr. Ricard had previously filed a moral damage claim in the CCAA, including a claim for long-term post-traumatic stress. The Ricard Claim has been objected to by the Trustee. However the Trustee has agreed to reconsider his objection and negotiate with the estate and heirs if the Trustee is provided with evidence that the Derailment was the cause of the suicide. In addition, another wrongful death claimant who has filed a timely Chapter 11 claim has objected to the allowance of this late claim;
- **Jacques Claim** – a motion was filed by the estate and heirs of Mr. Jean Sebastien Jacques on October 13, 2015 and will be heard by the Bankruptcy Court on December 15, 2015. Mr. Jacques is a suicide victim whose recent suicide is being attributed by his heirs to the Derailment. Prior to the filing of this late claim, no claim had been filed in the CCAA or the Chapter 11 by or on behalf of Mr. Jacques. As is the case with the Ricard Claim, the Trustee has filed an objection but may reconsider if additional information is filed. As well, an objection to this late claim has been filed by the same wrongful death claimant who has objected to the Ricard Claim;
- **Tafisa Claim** – a motion was filed by Tafisa Canada Inc ("Tafisa") on October 14, 2015 in connection with economic losses suffered as a result of the Derailment and will be heard by the Bankruptcy Court on December 15, 2015. Based on the information which has been provided

by Tafisa to the Monitor (but which has not yet been reviewed), Tafisa quantifies its loss at approximately $4.2 million. In its claim, Tafisa states that it was unaware of its ability to file a late claim, and that is was continuing to deal with the impact of the Derailment on the company, its employees and the City of Lac-Mégantic. Furthermore, Tafisa states that is was only recently aware of the true extent of its losses (over and above financial assistance it received from a Federal Government aid program). The Trustee has objected to the allowance of this late claim.

- **Individual Claims** – a motion was filed by Isabelle Beaudry, Gessner Blenkhorn, Steven Halle, Jacques Laprise and the estate of Suzanne Custeau on November 20, 2015 and will be heard by the Bankruptcy Court on December 15, 2015. The first four individuals are all owners of businesses that had filed Chapter 11 economic damages claims prior to the Chapter 11 Bar Date. They now claim that they were unaware that they would have to file individual claims for moral damages claims. The claim for the estate of Suzanne Custeau has already been included as a wrongful death victim despite not having filed a Chapter 11 claim. The Trustee has informed the Monitor that the Trustee will likely be filing an objection to these claims.

33. In the event the Ricard Claim and the Jacques Claim are allowed, these claims would be treated as Wrongful Death Claims and valued in accordance with Schedule E to the Amended Plan. This would result in an effective dilution of approximately 5% to existing Wrongful Death Claims who filed a proof of claim prior to the Bar Date.

34. The Tafisa Claim would be included in the Property and Economic Damages category. The claims in this category are still under review and it is premature at this time to consider the impact the inclusion of this late claim might have on the overall distribution, although as noted above, any additional economic claims will reduce any Economic Savings and will have a dilutive effect on the other categories of creditors.

35. The Individual Claims, except for the Estate of Suzanne Custeau, would be included in the Bodily Injury and Moral Damages category and would have a dilutive impact (albeit minimal) on the total distribution in this category. As previously mentioned, the Estate of Suzanne Custeau is already included in the Wrongful Death Claims category and the allowance of this claim would have no dilutive impact.

CLAIMS REVIEW STATUS AND THE PROPOSED CLAIMS OFFICER

36. Following the receipt of more than 5,000 claims (in both the CCAA Proceeding and Bankruptcy Case) and the valuation and distribution mechanisms established in the Amended Plan, the Monitor is continuing to review the filed claims (save and except for Non-Derailment Claims) and wishes to advise the Court and the creditors of the status of this review process:

- **Wrongful Death Claims:** these claims are to be valued in accordance with Schedule E to the Amended Plan. The calculation of the amounts to each claimant in this category is substantially complete;
- **Bodily Injury and Moral Damage Claims:** these claims are to be valued in accordance with Schedule F to the Amended Plan. The calculation of the amounts to each claimant in this category is significantly advanced. The Monitor notes that the deadline for the submission of forms in respect of post-traumatic stress claims is November 30, 2015. As noted below, the Monitor is working on detailed statements of distribution for each creditor in this category;
- **Property and Economic Damages Claims:** the Monitor has performed a preliminary review of the more significant claims in this category and is in contact with the creditors and / or their legal counsel to both provide preliminary comments and request additional information to enable a proper review of the amounts claimed. There remains considerable work to be performed in order to complete the review of these claims;
- **Subrogated Insurer Claims:** the Monitor has received detailed statements of account in respect of all claims in this category and is determining the nature of additional information that may be required to complete the review of these claims;
- **Government Claims:** the review of these claims is in process.

37. The Monitor fully supports the appointment of former Court of Appeal Justice André Rochon to act as the claims officer as set out in the Claims Resolution Order. While the Monitor will endeavor to resolve disputes consensually, the aid of an independent claims officer may be required in order to deal with disputes in an expedited and efficient manner. The fees of the claims officer will be covered by the Administration Charge.

PLAN IMPLEMENTATION AND ESTIMATED DISTRIBUTION

38. Pursuant to Section 6.2 of the Amended Plan, the Plan Implementation Date shall occur upon the Monitor filing a certificate with the Court and the Trustee that all conditions precedent in Section 6.1 of the Amended Plan have been satisfied.

39. We will comment on the status of the conditions precedent set out in Section 6.1:

Condition Precedent	Status
a) Entry of the Canadian Approval Order	Completed
b) Confirmation by the Trustee of the entry of the U.S. Approval Order	Completed (see comment below)
c) Entry of the Class Action Order	Completed
d) Expiry of Appeal Periods	Completed with the exception of the expiry of the appeal period for the entry of the Class Action Order which will occur on December 16, 2015.
e) Contributions	In process. As of the date of this report, settling parties have remitted CDN$32.4 million and US$51.5 million for a total of approximately CDN$101 million at current exchange rates. The majority of the settlement funds are expected to be received on or about December 21, 2015. However, certain settlement funds are only due following the expiry of the appeal period for the Class Action Order and thus may only be remitted by early January 2016.
f) Completion of Necessary Documentation	Substantially completed

40. The Chapter 11 Plan (paragraph 9.3) contains similar but not identical conditions precedent to the occurrence of the Effective Date. The Trustee has confirmed to the Monitor that all conditions precedent to the Effective Date have occurred save and except for the requirement that the implementation of the CCAA Plan has occurred.

41. The Plan Implementation Date is now dependent on the receipt of all of the contributions to the Settlement Funds as noted above.

42. At present, the distribution by category of creditors can be summarized as follows:

Montreal, Maine & Atlantic Canada Co. and Montreal, Maine & Atlantic Railway Ltd. Summary of Estimated Distribution [1]		Amended Plan
Wrongful Death Claims	$	113,168,000
Bodily Injury and Moral Damages Claims		49,685,000
Property and Economic Damages Claims		42,281,000
Subrogated Insurer Claims		17,142,000
Government Claims		
Province		181,194,000
Attorney General		-
Lac-Megantic		9,502,000
CSST		5,133,000
		195,829,000
Non-Derailment Claims		-
Total	**$**	**418,105,000**

[1] Estimated Distribution is net of the provision for the Administration Charge and Risk Premium but is prior to any fees that may be payable to (i) Class Counsel for the Class Representatives (for certainty, we note that the amounts payable to Class Counsel are subject to Court approval, and we are advised that pursuant to the engagements executed by the Class Representatives, these amounts will not exceed 25% of the amounts received by Class Members, plus disbursements, plus taxes) or (ii) to the US Legal Representatives (in respect to creditors represented by the US Legal Representatives, they will be subject to fees as indicated in the confidential mandates signed by various creditors).

43. The above noted estimated distribution does not take into account potential priority claims of approximately US$7.5 million (CAD$10 million) in respect of administrative/secured claims filed in the Chapter 11 for which a reserve is required although the Trustee is currently contesting these claims. The above noted estimated distribution is based on current exchange rates and includes the recent settlement with Great American.

44. As noted in the Monitor's Twentieth Report to Court dated June 11, 2015, the Settlement Agreements were entered into with all potentially liable third parties with the exception of the Canadian Pacific Railway Company ("CP"). It is expected that litigation against CP will continue in both Canada and the U.S.

45. Section 4.4 of the Amended Plan states that the Monitor shall make distributions to or on behalf of the Creditors within 45 calendar days following the Plan Implementation Date and receipt by the Monitor of any applicable tax ruling or clearance certificate. Based on the state of the claims review as summarized above, and assuming there are no tax matters which may delay distribution, it is

anticipated that the Monitor will proceed with the payment of dividends to categories of creditors (commencing in January 2016) as follows:

- **Wrongful Death Claims:** the Monitor will disburse the allocated amount to the Trustee in accordance with section 4.2(a) of the Amended Plan;
- **Bodily Injury and Moral Damage Claims**: the Monitor will make an interim dividend distribution to this category of creditors and will forward to each creditor a statement of distribution to explain the calculation of their claim amount in accordance with Schedule F to the Amended Plan and to enable creditors to notify the Monitor if they believe an error has been made in the calculation of their claim. The interim distribution will thus allow for the rebalancing of claims in the event of errors in the valuation of claims;
- **Property and Economic Damages Claims:** No interim distribution on account of this category of claims is expected to occur for several months following the Plan Implementation Date due to the scope of work remaining to review and evaluate the claims. Further, this could be further delayed in the event that the valuation of claim values are contested;
- **Subrogated Insurer Claims:** the Monitor expects to make an interim dividend distribution subject to completing a review of the claims;
- **Government Claims:** the Monitor expects to make an interim dividend distribution subject to completing a review of the claims.

EXTENSION REQUEST

46. The Thirteenth Extension Motion seeks an extension of the stay of proceedings through June 17, 2016 to enable the implementation of the Plan, the ongoing review of claims and the distributions of the Settlement Fund to the creditors.

APPROVAL OF PROFESSIONAL FEES

A) Fees Subject to Administration Charge

47. The Professional Fee Motion seeks approval for the payment of the fees secured by the Administration Charge as defined in the Amended Plan. The Administration Charge provided for the following:

- $12 million plus applicable taxes for the Canadian Professionals (defined as the Monitor, Woods (Monitor's legal counsel), Gowling (Petitioner's legal counsel) and the Claims Officer).
- $8 million for the U.S. Professionals (defined as the Trustee, the Trustee's professionals and Paul Hastings as counsel for the Official Committee of Victims in the Chapter 11).

Collectively, the Canadian and U.S. Professionals are referred to as the Professionals.

48. As of October 31, 2015, the amounts owing to the Canadian Professionals can be summarized as follows:

Montreal, Maine & Atlantic Canada Co. Professional Fee Summary As of October 31, 2015	Fees / Disbursements	Sales Taxes	Total
Richter	$ 3,686,000	$ 552,000	$ 4,238,000
Gowling	3,307,000	495,000	3,802,000
Woods	1,016,000	152,000	1,168,000
Verrill Dana [1]	158,000	-	158,000
	8,167,000	1,199,000	9,366,000
Administration Charge	12,000,000	1,797,000	13,797,000
Balance of Administration Charge to complete the CCAA	$ 3,833,000	$ 598,000	$ 4,431,000

[1] US counsel for Chapter 15, no sales taxes applicable.

49. As of October 31, 2015, there remains approximately $3.8 million to cover the remaining work to be performed by the Canadian Professionals (which will include the engagement of a Claims Officer) to fully implement the Amended Plan and to complete the administration of the CCAA. The remaining work can be summarized as follows:

- Preparation of motion materials / reports to court;
- Claims analysis (as noted above): requiring communication and dealings with creditors and analysis of supporting documentation, in particular with respect to the more than 3,000 claims included in the Property and Economic Damages category;
- Claims objections: including notification to creditors, resolution discussions and where necessary, hearings with the Claims Officer / Court in both the CCAA and the Chapter 11;
- Dividend distributions including creation of statements of distribution for all creditors (in excess of 4,000) and responding to creditors inquiries regarding the distributions;
- Communications and meetings with major stakeholders including the Province of Quebec ("Province"), Class Representatives, US Legal Representatives as well as frequent communications with and response to creditors inquiries;
- Litigation support regarding claims against CP;

- Ensuring compliance with releases and injunctions provided in the Amended Plan.

50. As of October 31, 2015, the amounts owing to the U.S. Professionals can be summarized as follows:

Montreal, Maine & Atlantic Railway Ltd. Professional Fee Summary As of October 31, 2015	
(in Canadian $)	Fees / Disbursements
Trustee [1]	$ 3,679,000
Trustee's Professionals [2]	1,887,000
Paul Hastings [3]	999,000
	6,565,000
Administration Charge	8,000,000
Balance of Administration Charge to complete the Chapter 11	$ 1,435,000

[1] The Trustee is paid a 3% commission on funds disbursed plus disbursements.

[2] Consists of the Trustee's financial advisor, Canadian counsel and other U.S. based counsel.

[3] Fee Application has not yet been filed by Paul Hastings. An estimate of US $750,000 was used for this summary.

51. As of October 31, 2015, there remains approximately $1.4 million to cover the remaining work to be performed by the Trustee and his professionals to fully implement the Chapter 11 Plan and to complete the administration of the Chapter 11. The remaining work can be summarized as follows:

- Preparation of motion materials / reports to court;
- Claims analysis where required including assistance to the Monitor;
- Claims objections: including notification to creditors, resolution discussions and where necessary, hearings with the Court in the Chapter 11;
- Coordination of matters and assistance where required to the WD Trustee in connection with the payment of dividends in respect of Wrongful Death Claims;
- Litigation regarding claims against CP in the U.S. Court;
- Pursuit of preference actions in the Chapter 11;
- Communications with and response to creditors' inquiries;

- Litigation regarding the scope of Wheeling Lake & Erie's security interest and objection to their claims;
- Ensuring compliance with releases and injunctions provided in the Chapter 11 Plan.

52. With the exception of Paul Hastings who has not yet filed their fee application, the Trustee and the other U.S. Professionals will seek approval of their fees from the Bankruptcy Court on December 8, 2015.

53. At the present time, based on the remaining work to be completed, it is expected that the unused portions of the Administration Charge in support of the Canadian and U.S. Professionals will be fully utilized to complete the administration of the respective estates. Further, in light of the Risk Premium discussed below, the Canadian and U.S. Professionals will not seek any further payment from the Settlement Funds in the event that the work to be performed exceeds the remaining balance under the Administration Charge except in the event of further recoveries from CP. In the event that the Administration Charge is not fully utilized, the unused portion will, as specified under the Amended Plan be added to the Settlement Funds and used to pay dividends to the Derailment creditors.

B) Risk Premium

54. In addition to the above noted fees, the Canadian Professionals are also seeking a risk premium in the amount of $10 million to be allocated among the Canadian Professionals ("Risk Premium") excluding the Claims Officer. As the Trustee is compensated on a commission basis and as the commission being sought exceeds the fees of the Trustee on an hourly rate basis, the Trustee has indicated he is not seeking a similar type risk premium in the Chapter 11.

55. As this Court is aware, since the commencement of both the CCAA Proceedings and the Bankruptcy Case and as a result of the insufficient cash flow of the Petitioner and MMAR, the fees of the Canadian Professionals (as well as the U.S. Professionals) have not been paid by the Petitioner in order to preserve cash flow to enable the continued operations to service the Petitioner's many clients and enable the continued payment of the Petitioner's employees through to the sale of the assets in June 2014. Although part of the fees of the Canadian Professionals were paid further to the sale of the assets of the Companies and with the sale proceeds thereof as well as the collection of business interruption insurance, the Canadian Professionals have not been paid since then and have for the past 18 months been at risk of not being paid at all for their work which has led to the Amended Plan.

56. Notwithstanding, the Canadian Professionals have since the commencement of the CCAA (through to October 31, 2015) devoted in excess of 20,000 hours to achieve the following:

- **Stabilization and continued operations of MMAC and MMAR** – following the commencement of the CCAA Proceedings and the Bankruptcy Case considerable efforts were deployed to enable MMAC and MMAR to continue their operations to the fullest extent possible while the various restructuring alternatives were considered. This required the intervention of the Canadian Professionals (in coordination with the Trustee) in many areas including the maintenance of MMAC's operating certificate, insurance matters, coordination and negotiation with the City of Lac-Mégantic as well as the Province. The failure to continue the operations of MMAC would have resulted in the potential loss of employment among the thousands of employees who work for the many companies that rely on the railroad for their operations;

- **Sale of assets of MMAC and MMAR** – as it was evident that both MMAC and MMAR could not continue their operations, the Professionals and MMAC immediately launched a sale process which included the utilization of an investment banker to sell the companies on a going concern basis. Following an expedited sale process including an auction in Portland, Maine, approval to sell the assets from both the CCAA Court and the Bankruptcy Court was obtained in January 2014 with an eventual closing in May and June 2014. The Professionals remained actively involved to ensure the successful closing of the sale transactions and the transition of operations;

- **Creation of an Indemnity Fund** – it was also obvious from early in the restructuring process that the sale of the assets would be wholly insufficient to enable the Derailment creditors to obtain any meaningful recovery, or indeed any recovery at all. As a result, from the early stages of the restructuring process, the Professionals engaged in settlement discussions with the various parties identified as potentially liable third parties for the damages resulting from the Derailment (and who were named in litigation in both Canada and the U.S.). The alternative to settlements was litigation in both Canada and the U.S. which would be both lengthy (estimated at five to ten years), extremely expensive and uncertain. These negotiations which took place over an extended period of time, ultimately resulted in approximately twenty-five (25) entities or groups of affiliated entities entering into settlement agreements, under the terms of which, in exchange for a contribution to the Settlement Funds, the settling party will receive a full and final release of all claims arising out of the Derailment, which releases were incorporated into the Amended Plan as well as the Chapter 11 Plan. The result was the recovery of the Settlement Funds of approximately $452 million (based on current exchange rates) which will be used to compensate the many victims of the Derailment;

- **Claims Administration** – in order to ascertain the quantum of the damages which would be sought as a result of the Derailment and which would be a key element in the negotiation of the many settlements, the Court approved a comprehensive claims process which the Monitor implemented. As part of this claims process, the Canadian Professionals working with the Trustee first identified the types of damages which could have been incurred and then created

a detailed and tailored claims package which was made available to the residents of Lac-Mégantic and the surrounding areas. The claims package also allowed for the filing of claims in the CCAA to be deemed filed in the Chapter 11 thereby making it easier for creditors to also file their claim in the Chapter 11. Extensive efforts were undertaken to ensure that all potential claimants were identified including the issuance of area wide mailings via Canada Post, social media, coordination of publicity with the Class Representatives and the City of Lac-Mégantic, newspaper advertisements (in Canada by the Monitor and in the U.S. by the Trustee) and a general media campaign. Further, in order to assist creditors in the completion of their claims, the Monitor conducted four (4) public information sessions in Lac-Mégantic and staffed a temporary office in Lac-Mégantic to aid and assist creditors in the completion of their claim forms. The Monitor also worked closely with the Class Representatives throughout the claims process. Following the receipt of more than 5,000 claims, the Monitor has created a comprehensive data base of all potential creditors, which information was extensively relied upon in the construction of the Plan. The Monitor has and continues to review the claims filed and is in frequent contact with creditors and their representatives to obtain information to enable a complete evaluation of all claims filed. This work is ongoing;

- **Filing of Plan of Arrangement** – on March 31, 2015, MMAC filed its Plan, in coordination with the Trustee's Chapter 11 Plan which was filed on the same date. Following the successful negotiation of additional and important settlement agreements, and based on input from various stakeholders, MMAC filed the Amended Plan on June 8, 2015. The Canadian Professionals conducted two information sessions in Lac-Mégantic to explain the Amended Plan to creditors and to respond to their questions. At the meeting of creditors held in Lac-Mégantic on June 9, 2015, the Amended Plan was unanimously approved by the creditors with 3,879 positive votes representing approximately $694 million of claims. Similarly, the Chapter 11 Plan was approved by the creditors in the Chapter 11 in August 2015 (again unanimously save for a negative vote by CP). Following CCAA Court approval of the Amended Plan, Bankruptcy Court approval of the Chapter 11 Plan and the Chapter 15 recognition order, the Professionals responded to the various appeals filed by CP and ultimately resolved the appeals with the addition of certain agreed upon judgment reduction language, such that the Plan Implementation Date may potentially occur in late December 2015 with interim distributions expected to follow in January 2016;

- **Chapter 15** – in support of the Plan, on July 20, 2015, the Monitor, acting as Foreign Representative filed a voluntary Chapter 15 proceeding as well as a motion for the recognition of the Amended Plan. The Bankruptcy Court granted the motion and issued an order recognizing the Amended Plan including the releases provided therein in the U.S.;

- **CCAA Administration** – the Canadian Professionals have worked closely with the U.S. Professionals to carefully coordinate and advance the proceedings in both countries to ensure

the most efficient and effective outcome possible. Included in these efforts are the implementation of a Cross Border Protocol approved by both courts in September 2013 to assist in the coordination and harmonization of proceedings in the two courts, the holding of a historic cross-border settlement conference involving both courts in Bangor, Maine in February 2014, the availability of documentation for both the CCAA and Chapter 11 proceedings on the Monitor's website, as well as a dedicated 1-800 number to respond to creditors' inquiries.

57. It should be noted that the Canadian Professionals did ultimately obtain a $4 million administrative charge (taxes included) on certain assets of MMAC (despite the vigorous and continuous objections of the Federal Railroad Administration) which enabled them to pay a portion of their fees for the first time in July 2014, a full year after the commencement of the CCAA Proceedings. Similarly, the Trustee negotiated a carve-out to secure partial payment of the U.S. professional fees at approximately the same time. Nonetheless, the administrative charge was insufficient to cover the actual costs incurred to the date of payment of the various professionals. Further, after the partial payment of fees, the Canadian Professionals have continued their extensive work which was required to enable the recovery and ultimate distribution of the $452 million Settlement Funds without any assurance of being paid. The respective professionals have invested substantial resources since the commencement of the CCAA and have done so completely at risk. The Derailment creditors have benefitted greatly by the significant efforts of the Canadian Professionals since the beginning of the CCAA Proceedings.

58. In total, the fees for the Canadian Professionals ($12 million Administration Charge and $10 million Risk Premium) amounts to approximately 5% of the Settlement Funds, rising to 7% with the inclusion of the $8 million Administration Charge for the U.S. Professional's fees.

59. The Canadian Professionals have discussed this Risk Premium with both the Province and Class Counsel to the Class Representatives. While the Province has not provided a formal response, Class Counsel to the Class Representatives have indicated that they fully support the payment of a Risk Premium to the Canadian Professionals.

APPROVAL OF CLASS COUNSEL FEES

60. The Monitor has been informed that Class Counsel, with the approval of the Class Representatives is seeking fees of 25% of the dividends paid to creditors who are represented by the Class Representatives plus disbursements plus taxes. As the claims review is ongoing (in particular the Property and Economic Damage Claims), a definitive calculation, using the 25% is not possible, however, based on the claims review process to date, we estimate that based on a fee of 25%, this would result in a fee of approximately $12 million if calculated on the expected dividend which will be payable with respect to Wrongful Death and Bodily Injury and Moral Damage Claims and an

estimate of $2 million to $4 million in respect of Property and Economic Damage Claims, the whole prior to taxes and disbursements and with no fees being charged on the portion of the Settlement Funds related to the XL Insurance proceeds ($25 million).

61. The Monitor recognizes the extensive efforts undertaken by Class Counsel throughout these proceedings including but not limited to the claims process, both the filing of claims and assistance to creditors in calculation of claim amounts, communications with creditors, and involvement in the approval of the various settlement agreements negotiated by the Professionals, and the drafting of the Amended Plan.

62. As well, the ability for the Derailment creditors to communicate effectively through the Class Representatives and Class Counsel enabled decisions to be taken in a more efficient and expedited manner that might otherwise have necessitated more timely, costly and broader based consultation.

CHAPTER 15 PROCEEDINGS

63. On July 20, 2015, the Monitor filed a Verified Petition for Recognition of Foreign Proceedings and Related Relief pursuant to Chapter 15 of the U.S. Bankruptcy Code. On August 20, 2015, the Bankruptcy Court issued the Order Granting Recognition and Relief.

64. The Monitor, in its capacity as the authorized foreign representative under the CCAA Proceeding, filed for the recognition of the Canadian Approval Order under Chapter 15 of the U.S. Bankruptcy Code and sought the recognition in the United States of the releases being provided to Contributing Third Parties. On August 26, 2015, the Bankruptcy Court granted the Order Recognizing and Enforcing the Plan Sanction Order of the CCAA Court.

65. On September 8, 2015, CP filed a Notice of Appeal of the Order Recognizing the Enforcing the Plan Sanction Order of the CCAA Court.

66. Following resolution of the CP appeals and the October 9, 2015 Amended Plan Order, on October 21, 2015, the Bankruptcy Court entered an Order Supplementing Order Recognizing and Enforcing the Plan Sanction Order of the Quebec Superior Court, thus incorporating the revised language contained in the Amended Plan.

ACTIVITIES OF THE MONITOR

67. The Monitor's activities have included the following:

- Continued frequent contact with the Trustee and his professionals and Petitioner's legal counsel all with a view to keeping apprised of material developments and to seek input with

respect to the restructuring process. In addition, the Monitor has kept apprised of the restructuring proceedings of MMAR through the review of Chapter 11 motions and orders;

- Maintaining regular contact with the major stakeholders in this restructuring process to seek their input and provide assistance in various areas;
- The Monitor has devoted substantial resources to its preliminary review of all claims filed before the Bar Date as well as those claims admitted pursuant to the May 27, 2015 Order, including communicating with creditors and/or their representatives to obtain additional information required to review their claim;
- The Monitor has responded to numerous queries from creditors regarding the status of their claim, the filing of post-traumatic stress forms, and timing of distributions;
- The Monitor has participated in settlement discussions with CP, as well as the drafting and resolution of language in respect of amendments to the Amended Plan to enable the successful resolution of appeals to both the Amended Plan and the Chapter 15 recognition order;
- The Monitor has been coordinating the receipt of the Settlement Funds;
- The Monitor continues to post copies of Court materials filed in the CCAA and Chapter 11 Proceedings on its website;
- The Monitor has prepared and filed this Twenty-First Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR AND CONCLUSION

A) Claims Officer and Extension Motion

68. The appointment of an independent Claims Officer to review the decisions of the Monitor will provide a mechanism for creditors who see their claims reduced or disallowed in its entirety to efficiently appeal those decisions.

69. The Monitor is of the opinion that the Court should grant the extension request to June 17, 2016 for the following reasons:

- Since the commencement of the CCAA proceedings, the Petitioner has and continues to act in good faith and with diligence;
- Further time is required for the Plan implementation which includes the collection of the balance of the Settlement Funds, the continued review and final determination of claims and the distribution of the Settlement Fund;

- The extension will not cause any prejudice to the various stakeholders.

B) Additional Late Claim Motions / RSA Late Claims Motion

70. The Monitor believes the following factors should be considered in determining whether the additional late claims and the RSA late claim should be allowed to be filed:

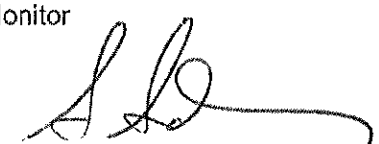
- The reasons included with the affidavits filed in support of the additional late claim are similar to the affidavits filed with the admitted late claims in the May 27, 2015 Order:
- The RSA late claim cites similar reasoning to the other insurers late claims admitted in the May 27, 2015 Order:
- The dilution impact of claims in the Property and Economic Damages category if the additional late claims belonging to that category are allowed to be filed; and
- The consent of the Class Representatives to the filing of the other late claims in the Bodily Injury and Moral Damages category.

C) Professional Fee Motion

71. The Monitor fully supports the Motion for the approval of professional fees and believes that it is the work performed by the Canadian Professionals (in coordination with the Trustee) that has enabled the recovery of the extraordinary amount of Settlement Funds which shall be shortly used to pay the distribution to the Derailment victims far ahead of any timeline which litigation could have produced. The Canadian Professionals have devoted enormous resources to achieve the results expressed in the Amended Plan and have done so despite the risk of not being paid. As mentioned in the Motion for the approval of professional fees, the Canadian Professionals will devote all the time required to complete the full implementation of the Amended Plan, including the review and resolution of all claims, in order to bring these CCAA Proceedings to closure without requiring any further financial resources.

Respectfully submitted at Montreal, this 24th day of November, 2015.

Richter Advisory Group Inc.
Monitor



Andrew Adessky, CPA, CA, CIRP

Exhibit 1

Montreal, Maine & Atlantic Canada Co.
Potential allocation of moral claims / Répartition potentielle des réclamations pour dommages moraux

	Points	As Per Amended Plan including the impact of the 127 Court Approved Late Claims and Other Adjustments / Selon le Plan alternatif, compte tenu de l'incidence des 127 réclamations hors délai approuvées par la Cour et d'autres ajustement			Number of claims per Additional Late Claims Motion / Nombre de réclamations selon la Requête visant à autoriser le dépôt de réclamations hors délai supplémentaires
			$ 431 MM Settlement / Règlement de 431 M$		
		Estimated # of claimants / Nombre estimatifs de réclamants	Estimated Distribution / Distribution estimative	Dist. per claim / Dist. par réclamation	
Trouble & Inconvenience / Troubles et inconvénients	**5.0**	3,835	$ 12,164,000	$ 3,172	476
Evacuations / Évacuations					
Per day of displacement / par jour de déplacement	**1.0**	1,963	7,748,000	634	224
Maximum	**30.0**			par jour	
Red Zone/Yellow Zone / Zone rouge et zone jaune	**50.0**	159	5,044,000	31,723	16
Grandparents and grandchildren / Grands-parents et					

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 11

(Twenty-second report of the monitor)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF SAINT-FRANÇOIS
No.: 450-11-000167-134

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

IN THE MATTER OF THE PLAN OF ARRANGEMENT WITH RESPECT TO:

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

Petitioner

-and-

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

Monitor

TWENTY-SECOND REPORT OF THE MONITOR
April 19, 2016

INTRODUCTION

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

2. The Stay Period was extended by the Court thirteen times with the most recent extension to June 17, 2016 having been granted by the Court on November 30, 2015.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.

4. On April 19, 2016, the Petitioner filed a Motion for a Fourteenth Extension of the Stay Period and for the Approval of Professional Fees ("Fourteenth Extension Motion")

5. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in the Amended Plan (as defined below). All amounts reflected in this report are stated in Canadian currency unless otherwise noted.

6. The purpose of this Twenty-Second Report of the Monitor is to inform the Court on the following subjects:

- Background and Overview of Restructuring Proceedings;
- Claims Review and Status of Distributions;
- Extension Request;
- Approval of Professional Fees;
- Chapter 11;
- Activities of the Monitor;
- Recommendations of the Monitor.

BACKGROUND AND OVERVIEW OF RESTRUCTURING PROCEEDINGS

7. MMAC operated a shortline railroad of approximately 250 route miles servicing customers in the Province of Quebec. Montreal Maine & Atlantic Railway Ltd. ("MMAR"), which is MMAC's parent company (together the "Companies") operated a shortline railroad of approximately 250 route miles servicing customers in Maine and Vermont.

8. Following the tragic train derailment on July 6, 2013 in the City of Lac-Mégantic, Quebec ("Derailment"), MMAC, on August 6, 2013, filed for protection under the CCAA. MMAR similarly filed for protection under Chapter 11 of the U.S. Bankruptcy Code on August 7, 2013. On August 21, 2013, Robert J. Keach was appointed Chapter 11 Trustee of MMAR ("Trustee"). We refer to the Monitor's prior reports for an overview of the restructuring proceedings.

9. MMAC'S Plan of Compromise and Arrangement filed on March 31, 2015 and amended on June 8, 2015 (the "Amended Plan") and MMAR's Plan of Liquidation filed on March 31, 2015 and amended on July 7, 2015 (the "U.S. Plan") (collectively the "Plans") were approved by their creditors and the CCAA Court and the Bankruptcy Court respectively. Following the approval of the Plans, , the

various Third Party Defendants who had entered into Settlement Agreements remitted the Settlement Funds to the Monitor. On December 22, 2015 the Monitor issued a certificate declaring that the Plan Implementation Date had occurred. Similarly, on the same date, the Chapter 11 Trustee issued a notice of the occurrence of the Effective Date under the U.S. Plan.

CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS

10. The status of the claims review and the payment of distributions under the Plans is as follows:

- **Wrongful Death Claims:** approximately US$81.7 million (CDN$114 million) was transferred by the Monitor to the Chapter 11 Trustee who then remitted those funds to the WD Trustee for the benefit of the WD beneficiaries. The WD Trustee has confirmed that virtually all of the funds received have been distributed in accordance with Schedule E of the Amended Plan;
- **Bodily Injury and Moral Damage Claims:** on February 26, 2016, the Monitor commenced[1] the payment of an interim distribution of approximately $25 million representing 50% of the amount estimated to be paid to each claimant, as valued in accordance with Schedule F to the Amended Plan. To date, 4,265 distributions have been made, each accompanied by a detailed statement of distribution (see Exhibit 1). The payment of an interim distribution was to permit the Monitor to retain sufficient funds to be able to pay the final amounts owing to each claimant upon the receipt of corrected information. A further 215 interim distributions remain on hold pending the receipt of information to complete an analysis of the creditors claim.

  In accordance with the Claims Resolution Order (dated April 15, 2015), claimants are being reminded that they have twenty (20) days to notify the Monitor in writing of any contestation they have with respect to a distribution. To date, the Monitor has received 443 contestations. The Monitor is reviewing these contestations and is consulting with Class Counsel with respect to Class Members and counsel to other claimants. The Monitor believes that the majority of the contestations are unfounded for many reasons, including but not limited to:

  - Contestations filed by individuals who had not filed a proof of claim prior to the Bar Date and did not seek a court order to allow a late filing;
  - Misunderstanding of the terms of the Amended Plan;
  - Ineligible for amounts claimed;
  - Belief that the amount paid is insufficient to compensate them for their loss despite the terms of the Amended Plan which determine those amounts.

[1] Pursuant to section 4.5 of the Amended Plan, distributions to class Members were to be made by Class Counsel. Pursuant to a letter of direction from Class Counsel, the Monitor is making these payments on its behalf.

As a result of these contestations, the Monitor is unable at this time to proceed with the payment of the balance of the distribution for Bodily Injury and Moral Damages but instead has issued a payment of a further 25% of each claimants estimated distribution (in respect of accepted claims) during the week of April 11, 2016.

The Monitor has provided information to the Public Curator in respect of payments to minors;

- **Property and Economic Damages Claims:** the Monitor is continuing its review of the approximately 1,600 claims filed in the CCAA or in the Chapter 11 and is reviewing its findings with the creditors or their counsel. The Monitor is seeking additional information where required. Based on the Monitor's review, approximately 1,200 of the Property and Economic Damage Claims are under $10,000, and of these, approximately 900 claims are for an amount of $1,000 or less. Depending on the time period required to review all claims and resolve contestations, a distribution to this category is not likely until at least June 2016 and possibly not until next fall;
- **Subrogated Insurer Claims:** a distribution to these creditors should be made in April or May 2016;
- **Government Claims:** a distribution with respect to these claims is expected in April or May 2016. The *Commission des normes, de l'équité, de la santé et de la sécurité du travail* or CNESST (formerly the CSST), whose claim was established and valued at approximately $4.9 million in the Amended Plan has amended their claim to zero. This will increase the distribution to the other creditors in this category.

EXTENSION REQUEST

11. The Fourteenth Extension Motion seeks an extension of the stay of proceedings through December 15, 2016 in order to finalize the review of claims and the distribution of the Settlement Fund to the creditors.

APPROVAL OF PROFESSIONAL FEES

A) Fees Subject to Administration Charge

12. The Fourteenth Extension Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of November 1, 2015 to February 29, 2016 which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co.
Administration Charge Summary
As of February 29, 2016

	Fees / Disbursements	Sales Taxes	Total
Administration Charge [1]	$ 12,000,000	$ 1,797,000	$ 13,797,000
Payment of Accrued Professional Fees to October 31, 2015	(8,167,000)	(1,199,999)	(9,366,999)
Balance of Administration Charge as of October 31, 2015	3,833,000	597,001	$ 4,430,001
Accrued Fees and Disbursements (Nov. 1/15 to Feb. 29/16)			
Richter	1,079,485	161,653	1,241,138
Gowlings	198,324	29,693	228,017
Woods	183,275	27,445	210,720
Verrill Dana [2]	5,235	-	5,235
	1,466,319	218,791	1,685,110
Balance of Administration Charge to complete the CCAA [3]	$ 2,366,681	$ 378,210	$ 2,744,891

[1] As per the Amended Plan of Compromise and Arrangement dated June 8, 2015.

[2] US counsel for Chapter 15, no sales taxes applicable.

[3] In addition, the Monitor and its counsel still retain a $150,000 retainer which will be applied to their final invoices.

13. As of February 29, 2016 there would remain approximately $2.7 million tax included (plus a pre-filing retainer of $150,000) to cover the remaining work to be performed by the Canadian Professionals (including the Claims Officer) to complete the claims Process and the administration of the CCAA. The majority of the remaining work for the Canadian Professionals (which was previously set out in our Twenty-First Report to Court) can be summarized as follows:

- Finalize claims analysis (as noted above): communication and dealings with creditors and analysis of supporting documentation, in particular with respect to the claims included in the Property and Economic Damages category;
- Claims objections: notification to creditors, discussions to consensually resolve disputes and where necessary, hearings with the Claims Officer;

- Dividend distributions: creation of 4,265 statements of distribution for all creditors and responding to creditors inquiries regarding the distributions;
- Communications and meetings with major stakeholders including the Province of Quebec ("Province"), Class Counsel and US Legal Representatives.

14. Following the implementation of the Chapter 11 Plan, all of the US Professionals have filed final fee applications. The Chapter 11 Trustee has confirmed to the Monitor that all final fee applications have been allowed and the balance of the Administration Charge remaining for US Professionals (after the payment of all final fee applications) will be $735,000 (USD$574,000) which will be used to cover further fees of the US Professionals.

CHAPTER 11

15. As noted in the Monitor's twenty-first report to court dated November 24, 2015, various administrative/secured claims have been filed in the Chapter 11 and a reserve has been added in the event these claims are admitted. These claims are being contested by the Chapter 11 Trustee.

ACTIVITIES OF THE MONITOR

16. The Monitor's activities have included the following:

- The Monitor has devoted substantial resources to its ongoing review of all claims filed before the Bar Date as well as those claims admitted pursuant to the May 27, 2015 and November 26, 2015 Orders, including communicating with creditors and/or their representatives to obtain additional information required to review their claim;
- The Monitor has proceeded to the payment of interim dividends to holders of Bodily Injury and Moral Damage Claims, has responded to numerous queries from creditors regarding the calculation of their distributions and has received and begun an analysis of the many contestations filed in respect of these distributions;
- Continued contact with the Estate Representative and his professionals and Petitioner's legal counsel to keep apprised of the Chapter 11 proceedings of MMAR;
- Maintaining regular contact with the major stakeholders to seek their input and provide assistance in various areas;
- The Monitor continues to post copies of Court materials filed in the CCAA and Chapter 11 Proceedings on its website;
- The Monitor has prepared and filed this Twenty-Second Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Extension of Stay Period

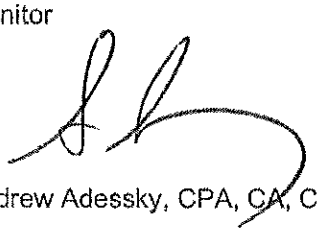
17. The Monitor is of the opinion that the Court should grant the extension request to December 15, 2016 in order to finalize the review of claims and the distribution of the Settlement Fund to the Creditors.

B) Professional Fees

18. The Monitor supports the approval of professional fees for the period of November 1, 2015 to February 29, 2016, which fees are fair and reasonable and are secured by the Administration Charge.

Respectfully submitted at Montreal, this 19th day of April, 2016.

Richter Advisory Group Inc.
Monitor



Andrew Adessky, CPA, CA, CIRP

Exhibit 1

C A N A D A
PROVINCE DE QUÉBEC
DISTRICT DE SAINT-FRANÇOIS

C O U R S U P É R I E U R E
(Chambre commerciale)
(Siégeant en tant que tribunal désigné en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* L.R.C. (1985), ch. C-36, telle qu'amendée)

N^{O} DE COUR : 450-11-000167-134
N^{O} DE DOSSIER : 0000164-2013-QC

DANS L'AFFAIRE DU PLAN DE COMPROMIS ET D'ARRANGEMENT DE :
MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE

AVIS DE CALCUL DE VOTRE DISTRIBUTION ET OU

AVIS DE REJET TOTAL OU PARTIEL DE VOTRE RÉCLAMATION

Montréal, le ___ février 2016

Nom
Adresse
Ville (Province) Code Postal

Madame, Monsieur,

Nous faisons référence au Plan de compromis et d'arrangement amendé de Montréal, Maine & Atlantique Canada Cie qui a été approuvé par l'honorable juge Gaétan Dumas de la Cour Supérieure du Québec le 9 octobre 2015 et qui est entré en vigueur le 22 décembre 2015 (le « Plan »).

Vous trouverez ci-joint un chèque de ____ $ représentant votre première distribution intérimaire à l'égard de votre preuve de réclamation admise dans la catégorie des « Réclamations en raison de lésions corporelles et de dommages moraux ». Les honoraires de votre conseiller juridique (y compris les taxes et les débours), le cas échéant, ont été déduits du montant de votre chèque. Le calcul de votre distribution est expliqué plus en détail dans l'annexe ci-jointe.

Si votre preuve de réclamation incluait une réclamation liée à des dommages économiques, vous recevrez une lettre distincte vous expliquant le montant de la distribution qui pourrait découler de cette autre réclamation. Le présent avis et le paiement ci-joint ne concernent que la portion de votre réclamation relative aux lésions corporelles et aux dommages moraux.

Conformément au Plan, le calcul des distributions relatives aux « Réclamations en raison de lésions corporelles et de dommages moraux » doit être effectué selon la méthode prévue à l'Annexe F du Plan, selon les informations vous concernant qui nous ont été communiquées et indépendamment du montant inscrit au départ dans votre preuve de réclamation.

Veuillez prendre note que le montant total prévu des distributions payables à l'égard des « Réclamations en raison de lésions corporelles et de dommages moraux » pourrait être modifié et que le montant final de votre quote-part pourrait être ajusté lors des prochaines distributions.

Montréal, Maine & Atlantique Canada Cie
Calcul de votre distribution

Si vous n'êtes pas d'accord avec le montant de votre preuve de réclamation qui a été classé dans la catégorie « Réclamations en raison de lésions corporelles et de dommages moraux » ou avec le montant de votre preuve de réclamation qui a été admis selon le calcul ci-joint, vous devez faire parvenir au Contrôleur un avis *écrit* de contestation qui décrit le fondement de votre contestation dans les 20 jours de la réception des présentes. Vous devez également transmettre une copie de cet avis au conseiller juridique de Montréal, Maine & Atlantique Canada Cie. Si vous ne faîtes pas parvenir votre avis de contestation dans ce délai de 20 jours vous serez réputé avoir accepté le montant de votre preuve de réclamation qui a été classé dans la catégorie « Réclamations en raison de lésions corporelles et de dommages moraux » et le montant de votre preuve de réclamation qui a été admis selon le calcul ci-joint.

Votre avis écrit de contestation doit être transmis aux personnes suivantes par messager, courriel, poste ou télécopieur :

(a) Contrôleur :

Richter Groupe Conseil Inc.
1981, av. McGill Collège, 11e étage
Montréal (Québec) H3A 0G6

À l'attention de : M. Gilles Robillard (grobillard@richter.ca)
À l'attention de : M. Andrew Adessky (aadessky@richter.ca)
Télécopieur : 1-800-246-1125

Avec copie par télécopieur ou courriel à
Me Sylvain Vauclair (svauclair@woods.qc.ca)
Télécopieur : 514-284-2046

(b) conseiller juridique de la Requérante :

Gowling Lafleur Henderson S.E.N.C.R.L.
3700 – 1, Place Ville Marie
Montréal (Québec) H3B 3P4

À l'attention de : Me Patrice Benoit (patrice.benoit@gowlings.com)
À l'attention de : Me Pierre Legault (pierre.legault@gowlings.com)
Télécopieur : 514-876-9550

Si vous avez reçu la présente lettre à titre de tuteur, entre autres, d'un enfant mineur, soyez avisés que le *Code civil du Québec* (article 217) requiert que le Contrôleur avise le Curateur Public des indemnités payées par le Contrôleur à des mineurs et que vous pouvez avoir des obligations en vertu de cet article 217 du *Code civil du Québec*.

Si vous avez des questions, n'hésitez pas à communiquer avec votre conseiller juridique ou avec le Contrôleur au 1-866-845-8958.

Veuillez agréer, Madame, Monsieur, nos salutations distinguées.

Richter Groupe Conseil Inc.
Contrôleur nommé par la Cour

Montréal, Maine & Atlantique Canada Cie
Calcul de votre distribution

CALCUL DE LA DISTRIBUTION RELATIVE AUX « RÉCLAMATIONS EN RAISON DE LÉSIONS CORPORELLES ET DE DOMMAGES MORAUX »

Nous vous référons à l'annexe F du Plan quant au calcul des distributions relatives aux « Réclamations en raison de lésions corporelles et de dommages moraux ».

Suite à l'examen de votre preuve de réclamation, celle-ci a été admise pour le montant suivant :

	Preuve de réclamation soumise	Preuve de réclamation admise
Réclamations relatives à des lésions corporelles ou à des dommages moraux résultant du déraillement du 6 juillet 2013	$	$

	Êtes-vous admissible à cette catégorie? (Oui/Non)	**Distribution**
Troubles et inconvénients (note 1)	____	_____ $
Évacuation (note 2) - _____ $ par jour - nombre de jours (max. 30 jours) : _____	____	_____ $
Zone rouge/Zone jaune (note 3)	____	_____ $
Grands-parents ou petits-enfants de personnes décédées	____	_____ $
Stress post-traumatique – courte durée (note 4)	____	_____ $
Stress post-traumatique – longue durée (note 4)	____	_____ $
Lésions corporelles (note 5)	____	_____ $
Distribution totale (note 6)		_____ $
Déduction de la CSST (note 7)	_____	_____ $
Distribution nette avant les honoraires professionnels et les débours		_____ $
Première distribution intérimaire (note 8) (50 % de la distribution nette avant les honoraires professionnels et les débours)		_____ $
Moins : Honoraires du conseiller juridique (note 9)		_____ $
Débours du conseiller juridique (note 9)		_____ $
Taxes de vente (note 9)		_____ $
Distribution nette		_____ $

Montréal, Maine & Atlantique Canada Cie
Calcul de votre distribution

Note 1 : Tous les créanciers qui demeurent dans la MRC du Granit et qui ont déposé une réclamation en raison de dommages moraux sont admissibles à une distribution au titre des troubles et des inconvénients.

Note 2 : Les données utilisées pour calculer les distributions au titre des évacuations proviennent des preuves de réclamation déposées ainsi que des dossiers du gouvernement.

Note 3 : Pour avoir droit à une distribution dans cette catégorie, votre adresse résidentielle au moment du déraillement doit se trouver dans la Zone rouge ou la Zone jaune (voir plan ci-joint).

Note 4 : Pour être admissible à une distribution pour stress post-traumatique, de courte ou de longue durée, vous devez respecter les conditions suivantes :

A) Vous devez avoir déposé une preuve de réclamation avant la date limite (13 juin 2014) ou le dépôt de votre réclamation hors délai doit avoir été approuvé par une ordonnance de la Cour; et

B) Vous devez avoir dûment rempli et déposé, auprès du Contrôleur, le formulaire de réclamation pour stress post-traumatique au plus tard le 30 novembre 2015.

Note 5 : Une preuve de lésion corporelle est exigée.

Note 6 : La distribution totale qui sera payable à chaque créancier tiendra compte de plusieurs facteurs et pourra être modifiée lorsque le Contrôleur aura obtenu des renseignements supplémentaires auprès de certains créanciers et que toutes les preuves de réclamation auront été examinées et déterminées.

Conséquemment, les distributions totales sont estimées et seront payées en plusieurs distributions intérimaires afin de permettre de recalculer les distributions totales finales, si besoin est, au fur et à mesure de la révision des preuves de réclamations.

Conformément à l'article 4.3 du Plan, le montant que vous recevez inclut la part de l'indemnité de la police d'assurance de XL payable au gouvernement du Québec et la totalité de l'indemnité payable au gouvernement du Canada qui, avec le consentement de ces derniers, est redistribuée aux Créanciers.

Note 7 : Si un créancier a fait une réclamation à la Commission de la santé et de la sécurité du travail (la « CSST »), le montant que la CSST lui a déjà versé ou lui versera a été déduit puisque la CSST a déposé une réclamation à l'égard de ces montants.

Note 8 : La première distribution intérimaire représente 50 % de votre distribution totale estimée. Une deuxième distribution est prévue vers la fin du mois de mars 2016.

Note 9 : En vertu de l'ordonnance de la Cour datée du 26 novembre 2015, des honoraires plus les taxes et débours seront payés par chaque Membre du groupe de créanciers au conseiller juridique. Aucuns honoraires professionnels n'ont été facturés sur la portion de la distribution liée à l'indemnité de la police d'assurance de XL, qui représente 7,5 % de votre distribution totale.

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 12

(Twenty-third report of the monitor)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS
No.: 450-11-000167-134

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

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.) a duly incorporated legal person having its principal place of business at 1981 McGill College, 12th Floor, in the city and district of Montreal, Quebec, H3A 0G6

Monitor

TWENTY-THIRD REPORT OF THE MONITOR
August 31, 2016

INTRODUCTION

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. ("MMAC") filed a Motion for the Issuance of an Initial Order pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "CCAA"). On August 8, 2013, the Honourable Martin Castonguay, J.S.C., issued an initial order (the "Initial Order") which *inter alia* appointed Richter Advisory Group Inc. as the Monitor in these CCAA proceedings (the "Monitor"). An initial stay of proceedings was ordered until September 6, 2013 ("Stay Period").

2. The CCAA proceedings have since been supervised by the Honourable Gaétan Dumas, J.S.C. and the Stay Period has been extended fourteen times with the most recent extension having been granted to December 15, 2016.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.

4. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in MMAC's Plan of Compromise and Arrangement filed on March 31, 2015 and amended on June 8, 2015 (the "Amended Plan"). All amounts reflected in this report are stated in Canadian currency unless otherwise noted.

5. The purpose of this Twenty-Third Report of the Monitor is to inform the Court with respect to the claims review and the status of distributions.

CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS

6. The status of the claims review and the payment of distributions under the Amended Plan is as follows:

- **Wrongful Death Claims:** as reported in the Monitor's Twenty-Second Report dated April 19, 2016, the WD Trustee (in the United States) has confirmed that nearly all of the approximately US$81.7 million (approx. CDN$114 million) which were transferred by the Monitor to the Chapter 11 Trustee and then to the WD Trustee have been distributed to the WD claimants. An amount of approximately US$1.6 million is being held pending the resolution of one disputed claim and the final payment of the expenses incurred by the WD Trust.

- **Bodily Injury and Moral Damage Claims:** to date, the Monitor has made interim distributions totalling 75% of Proven Claims in this category, as valued in accordance with Schedule F to the Amended Plan.

  Further to more than 4,250 distributions (see the Monitor's Twenty-Second Report), the Monitor received 443 contestations and has been working to resolve these disputes. To date, 262 of these disputes have been resolved or are no longer being pursued and the Monitor believes that a further 116 contestations are close to resolution based on negotiations with Class Counsel (with respect to Class Members) and counsel to other claimants. The Monitor is still attempting to resolve the remaining 65 contestations. If these remaining contestations cannot be consensually resolved, the Monitor will refer them to the claims officer and possibly seek directions from this Court in order to proceed with certain claims as test cases.

  Based on the status of the discussions concerning the resolution of the various contestations, the Monitor hopes to proceed with the payment of the balance of the distribution payable on account of Bodily Injury and Moral Damages, with respect to Proven Claims, in September or October of 2016.

- **Property and Economic Damages Claims:** Approximately 1,800 claims were filed in the CCAA and the Chapter 11.

  The Monitor's review of those claims is ongoing but as of August 2016 the Monitor has allowed approximately 1,200 of the claims, as filed (or as amended). The remaining claims are still under review but the Monitor expects that the majority of those claims will be totally or partially disallowed.

  The Monitor has determined that it can proceed with the payment of interim distributions to claimants holding Proven Claims. This interim distribution will be equal to 50% of the projected total distribution for each Proven Claim.

  In the upcoming weeks, the Monitor will also begin to issue notices of total or partial disallowance in respect of the claims that are still under review. As those disallowances are resolved and the claims relating thereto become Proven Claims, the Monitor will pay out further interim distributions until a full distribution has been paid to all Proven Claims and all other claims have been finally disallowed.

- **Subrogated Insurer Claims:** the distribution with respect to these claims was made in May, 2016.

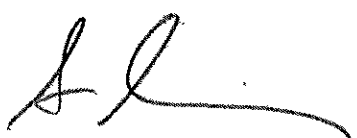
- **Government Claims:** a distribution with respect to these claims was made in June, 2016.

CHAPTER 11

7. As noted in the Monitor's twenty-first report to court dated November 24, 2015, various administrative/secured claims have been filed in the Chapter 11 which the Chapter 11 Trustee has contested. A hearing in respect of many of these contested claims is scheduled for October, 2016 in the U.S. Bankruptcy Court in Portland, Maine.

Respectfully submitted at Montreal, this 31st day of August, 2016.

Richter Advisory Group Inc.
Monitor



Andrew Adessky, CPA, CA, CIRP

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

Nº:

Nº : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 13

(Twenty-fifth report of the monitor)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS
No.: 450-11-000167-134

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

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.) a duly incorporated legal person having its principal place of business at 1981 McGill College, 12th Floor, in the city and district of Montreal, Quebec, H3A 0G6

Monitor

TWENTY- FIFTH REPORT OF THE MONITOR
February 22, 2017

INTRODUCTION

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. ("MMAC") filed a Motion for the Issuance of an Initial Order pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "CCAA"). On August 8, 2013, the Honourable Martin Castonguay, J.S.C., issued an initial order (the "Initial Order") which *inter alia* appointed Richter Advisory Group Inc. as the Monitor in these CCAA proceedings (the "Monitor"). An initial stay of proceedings was ordered until September 6, 2013 ("Stay Period").

2. The CCAA proceedings have since been supervised by the Honourable Gaétan Dumas, J.S.C. and the Stay Period has been extended fifteen times with the most recent extension having been granted to June 30, 2017.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.

4. On December 1, 2016, the Canadian Pacific Railway Company ("CP") filed the Requête pour Divulgation de Documents Concernant les Sommes d'Argent Versées à des Membres du Groupe ("CP Document Motion"). The CP Document Motion was filed in connection with the Class Action and was heard on January 25, 2017 by the Honourable Martin Bureau, J.S.C.

5. On February 22, 2017, the Petitioner filed a Motion for the Approval of Professional Fees and for an increase in the Administration Charge ("Fee Motion"). The Fee Motion will be heard on March 3, 2017 or on March 14, 2017, if it is contested

6. Depending on ongoing discussions, the Monitor may file a Motion seeking directions on the treatment of interest earned on Funds for Distribution ("Interest Motion"). The Interest Motion would be served on February 24, 2017 and would be heard on March 3, 2017 or on March 14, 2017, if it is contested.

7. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in MMAC's Plan of Compromise and Arrangement filed on June 8, 2015 (the "Amended Plan"). All amounts reflected in this report are stated in Canadian currency unless otherwise noted.

8. The purpose of this Twenty-Fifth Report of the Monitor is to inform the Court on the following subjects:

   - Claims Review and Status of Distributions;
   - Approval of Professional Fees;
   - Increase in Administration Charge;
   - CP Document Motion;
   - Interest Motion;
   - Chapter 11;
   - Activities of the Monitor;
   - Recommendations of the Monitor.

CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS

9. The status of the claims review and the payment of distributions under the Amended Plan is as follows:

- **Wrongful Death Claims:** as reported in the Monitor's Twenty-Third Report dated August 31, 2016 ("Twenty-Third Report") and the Monitor's Twenty-Fourth Report dated October 20, 2016 ("Twenty-Fourth Report"), all the projected distributions have been paid by the WD Trustee and the WD Trustee is holding an amount of approximately US$0.2 million for the payment of future fees and expenses of the WD Trust.

- **Bodily Injury and Moral Damage Claims:** On or about December 19, 2016, the Monitor made a final 25% interim distribution to holders of Proven Claims in this category, as valued in accordance with Schedule F to the Amended Plan and thereby finalized the payment of 100% of the total distribution payable to those claimants (before any possible reallocation under section 4.2 of the Amended Plan).

  In total, as of the date hereof, approximately $45.8 million has been distributed to 4,324 claimants (see the Monitor's Twenty-Second Report dated April 19, 2016). As noted in the Twenty-Fourth Report, the Monitor reviewed 4,324 claims as filed, prepared and issued 4,324 Avis de Calcul de Votre Distribution et ou Avis de Rejet Total ou Partiel de Votre Réclamation ("Notices") and has received 457 contestations with respect to the Notices. The Monitor has been working to consensually resolve these 457 contestations. To date, 388 of these disputes have been resolved or have been abandoned based on negotiations with individual claimants, Class Counsel (with respect to the claims of Class Members) and counsel to other claimants. The Monitor is still attempting to resolve the remaining 69 disputes. If these remaining disputes cannot be consensually resolved, the Monitor will refer them to the Claims Officer and possibly seek directions from this Court in order to proceed with certain claims as test cases.

  A small proportion of the distribution payments (72 payments totalling $317,000) have not yet been released (due to missing information) or have been returned because some claimants have moved and not notified the Monitor of their new address. The Monitor will continue to try and obtain the necessary information to ensure the payments are received, failing which, the funds will be treated in accordance with Section 8.8 of the Amended Plan and donated to charity.

- **Property and Economic Damages Claims:** A total of 1,807 claims were filed in the CCAA and the Chapter 11. Based on the terms of the Amended Plan and the Monitor's review of 1,787 of these 1,807 claims, it is estimated as of the date hereof, that the distribution to holders

of each Proven Claim will be 56.6%. As of the date of this Report, the status of the review of the Property and Economic Damages Claims is as follows:

Montreal, Maine & Atlantic Canada Co.
Property and Economic Damages Claims Summary
As of February 13, 2017

	# of claims	Claims Value as Filed	Claims Value - as accepted/estimated (by the Monitor)	Estimated distribution amount
Review finalized - distribution paid	1,631	$ 108,922,699	$ 10,994,630	$ 6,222,961
Review finalized - disallowance issued and still within 20 day contestation period	70	37,620,184	9,131,004	5,168,148
Review finalized - disallowance contested	79	28,543,455	2,818,106	1,595,048
Review finalized - distribution held	7	11,367,115	10,132,228	5,734,841
Review finalized	1,787	186,453,453	33,075,968	18,720,998
Review not completed	20	17,309,823	2,504,911	1,417,779
Sub-total	1,807	203,763,276	35,580,879	20,138,777
Potential reallocation	-	-	**39,419,121**	**22,428,670**
Total	**1,807**	**$ 203,763,276**	**$ 75,000,000**	**$ 42,567,447**

As noted above, the Monitor has completed a review of 1,787 of the 1,807 claims filed in the category of Property and Economic Damages Claims. Of these, 1,631 claims have been allowed and their holders have received an interim distribution of 50% (approximately $6.2 million) of the estimated total distribution payable to the holders of Proven Claims. These distributions are on account of claims that have been allowed, in full or in part, as filed or as amended.

In respect of the 79 claimants which to date have filed notices of contestation, the Monitor will review the reasons provided for the contestations and attempt to resolve those contestations directly with the claimants prior to referring these disputes to the Claims Officer or to the Court.

As noted in the table, there are 20 claims in respect of which the Monitor has not yet issued Notices. While the Monitor has completed a preliminary review of these claims, notices have not yet been issued for various reasons including i) claimants attempting to provide additional documentation in support of the amounts claimed, ii) ongoing legal analysis of the claim and iii) the Monitor is waiting on information to be received from the Province as to the final amounts paid under a provincial aid program to some of the claimants. The Monitor expects to issue Notices with respect to all of the remaining claims in the next few months.

As noted above and as stated in the Twenty-Fourth Report, based on the current review of the Property and Economic Damage Claims, it appears very likely that the total amount of Proven Claims in this category will be significantly below the $75 million threshold referred to in Section 4.2 of the Amended Plan. Should this be the case, this would entail, under the terms of Section 4.2 of the Amended Plan, a redistribution of the distribution related to the difference

between the amount of $75 million and the final amount of Proven Claims ("Economic Savings") to other claimants and categories of claimants as follows:

- Firstly, an amount of $884,000 to pay $17,000 to each of the grandparents and grandchildren of the deceased;
- Secondly, an amount of $4.2 million to increase the distribution to parents, siblings, grandparents and grandchildren of WD victims so that the total of such distribution equals 12.5% of the total of the distribution to all claimants in the wrongful death category;
- Thirdly, the balance of the Economic Savings, on a pro-rata basis to all of the holders of Proven Claims in the categories described in Sections 4.2(a) (b) (d) and (e) of the Amended Plan.

The timing of further interim distributions and the redistribution of the Economic Savings are dependent upon the resolution of all contested claims.

- **Government Claims:** Claims in the government category have been dealt with as follows:
  - City of Lac-Mégantic - the distribution in respect of its $20 million claim was paid in 2016;
  - Attorney General of Canada – as previously reported in the Monitor's Fifteenth Report dated January 9, 2015 and the Monitor's Nineteenth Report dated May 14, 2015, the Federal Government has agreed to the reallocation of the distributions payable to it under the Amended Plan in favour of certain other categories of creditors and this has been factored into the amounts being paid to the other categories of creditors as noted in this report;
  - Province of Quebec ("Province") – an interim amount of 50% of the projected distribution in respect of the $409 million claim filed by the Province was paid in 2016. The Province has informed counsel to the Monitor that it continues to incur costs related to the derailment and the Monitor is awaiting further updates with respect to the final amount of the Province's claim.
- **Subrogated Insurer Claims:** The subrogated insurer claims received their distributions in accordance with the terms of the Amended Plan in 2016.

APPROVAL OF PROFESSIONAL FEES

10. The Fee Motion seeks the approval of the payment of the fees of the Canadian Professionals incurred for the period of October 1, 2016 to December 31, 2016 which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co.
Canadian Professionals Fee Summary
October 1, 2016 to December 31, 2016

	Fees / Disbursements	Sales Taxes	Total
Richter	$ 411,550	$ 61,630	$ 473,179
Woods	90,529	13,557	104,086
Gowlings	57,271	8,563	65,833
	$ 559,349	$ 83,749	$ 643,098

11. After the payment of the fees outstanding as of December 31, 2016, approximately $436,000 (plus a pre-filing retainer of $150,000) will remain to cover the costs (including taxes) of the remaining work to be performed by the Canadian Professionals (including the Claims Officer) to complete the claims process and the administration of the CCAA.

INCREASE IN ADMINISTRATION CHARGE

12. The effective date of the Amended Plan was December 22, 2015. In the year that has passed, the Canadian Professionals have diligently implemented the Amended Plan and over 95% of the claimants have received full or partial distributions on account of their claims, with many of the claimants having received payments in multiple categories. But as noted below, there remains work to be done to enable the complete distribution of the Funds for Distribution in accordance with the terms of the Amended Plan.

13. The following table summarizes the fees incurred by the Canadian Professionals from November 2015 to December 2016:

Montreal, Maine & Atlantic Canada Co. Administration Charge Summary As of December 31, 2016	Fees / Disbursements	Sales Taxes	Total
Administration Charge [1]	$ 12,000,000	$ 1,797,000	$ 13,797,000
Accrued Professional Fees as of October 31, 2015 [2]	(8,167,000)	(1,199,999)	(9,366,999)
Balance of Administration Charge to implement the Plan	3,833,000	597,001	4,430,001
Fees and Disbursements - Nov. 1, 2015 to Dec. 31, 2016			
Richter	2,624,707	393,050	3,017,756
Woods	515,271	77,162	592,433
Gowling	317,576	47,538	365,113
Verrill Dana [2]	5,235	-	5,235
Claims Officer	11,979	1,794	13,773
	3,474,767	519,543	3,994,310
Balance of Administration Charge to complete the CCAA [3]	$ 358,233	$ 77,458	$ 435,691

[1] As per the Amended Plan of Compromise and Arrangement dated June 8, 2015.

[2] US counsel, so no sales tax applicable.

[3] In addition, the Monitor and its counsel still retain a $150,000 retainer which will be applied to their final invoices.

14. During this period, the bulk of the work related to the analysis and treatment of the claims by the Monitor and the fees of the Monitor consequently represent approximately 76% of the total fees for the period. The work of the Monitor consists of approximately 8,000 hours of work and can be broken down into three major categories:

- Claims Analysis:
  - 4,324 claims in the Bodily Injury and Moral Damages category;
  - 1,807 claims in the Property and Economic Damages category;
  - Communications with hundreds of the claimants to explain the valuation of their claim and resolve their questions thereby limiting the number of formal contestations;
  - 536 formal contestations and communications with claimants to resolve these contestations.

  This category of work represented approximately 60% of the Monitor's work or an average of less than an hour per claim;
- The preparation and issuance of approximately 14,500 individual distributions to creditors in accordance with the terms of the Amended Plan, including the preparation of detailed

statements of account and responses to creditors' queries. This represented approximately 30% of the Monitor's work;

- Other acts of administration including reporting to Court, analysis of various tax matters, interaction with the Estate Representative and the WD Trustee in the Chapter 11 proceedings, communications with the Public Curator, ongoing posting of documents to the website and other tasks which represent approximately 10% of the Monitor's work.

15. Despite the significant work performed by the Canadian Professionals since October 2015, the estimated cost of the work remaining to be done to complete the administration of the CCAA and the full distribution of the settlement funds exceeds the remaining amount of the charge which secures the payment of the fees of the Canadian Professionals. This is due to the exceptional nature of this case and the complexity of the work involved. Indeed, despite best efforts to foresee the amount of time which would be required to analyze the claims, the fact that the claims are individualized damage claims, the fact that most claimants are not represented by counsel for the purposes of discussing and documenting their individual claims with representatives of the Monitor and the fact that those discussions between individual claimants and representatives of the Monitor have been very extensive, have all contributed to the insufficiency of the projected fees and amount of the administrative charge. We summarize the remaining work to be done and the estimated cost thereof as follows:

Montreal, Maine & Atlantic Canada Co.
Additional Administration Charge - Work to Complete

	Low		High	
	Hours	Total	Hours	Total
1 Finalize economic claim analysis	90	$ 39,000	100	$ 42,000
2 Economic and moral claims contestations resolution	1,760	796,000	2,320	1,125,000
3 Dividend distribution - economic claims	120	34,000	120	34,000
4 Economic savings reallocation	290	71,000	590	142,000
5 Dealing with Chapter 11 Estate Representative	50	26,000	60	35,000
6 Tax Matters	190	98,000	590	143,000
7 Other administrative matters	240	76,000	320	152,000
	2,740	**$ 1,140,000**	**4,100**	**$ 1,673,000**

In respect of the remaining work, we comment as follows:

- Finalize analysis of Property and Economic Damages claims: represents the work required to issue Notices in respect of 20 claims (including communication and dealings with claimants, analysis of supporting documentation);

- Contestations Resolution: as at the date hereof, there are 69 unresolved contestations filed by claimants following the receipt of Notices in the category of Moral Damages and Bodily Injury and 79 contestations similarly filed by claimants in the category of Property and Economic Damages. It is estimated that another 50 contestations will be received in connection with Notices recently issued or which will be issued shortly in the category of Property and Economic Damages. The contestation process will include communications with claimants to attempt to consensually resolve disputes and where necessary, preparation of claims packages and attendance at hearings before the Claims Officer and/or before the Court;
- Dividend distributions: issuance of a final distribution to 1,807 claimants in the category of Property and Economic Damages and responding to creditors inquiries;
- Economic savings reallocation: assumes the issuance of one or two additional distributions (in excess of 6,000 distributions each time) including the calculation of amounts due per claimant, all resulting from the expected reallocation of savings in the category of Property and Economic Damages, pursuant to Section 4.2 of the Amended Plan;
- Chapter 11: dealing with outstanding issues including treatment of late filed Chapter 11 claims, Carmack claim litigation[1], resolution of Chapter 11 administrative claims (see below) and other matters;
- Tax matters: analysis of the tax treatment of the interest earned on Funds for Distribution (approximately $2 million as of the date of this report) including communications with the Federal and Provincial revenue agencies regarding reporting requirements and the potential issuance of relevant tax forms to individual claimants for each of calendar years 2015, 2016 and 2017 and the possible filing of a motion for directions with the Court if the Monitor cannot conclude its discussions with the Federal revenue agency;
- Other administrative matters: includes reports to court, creditor queries, dealing with unclaimed funds in accordance with the Amended Plan, likely extension of the stay of proceedings past June 30, 2017, communications with major stakeholders, termination of the CCAA and other statutory matters.

16. The estimated cost to complete the administration of the CCAA should range from a low of $1.1 million to a high of $1.7 million ($1.26 million to $1.95 million tax included) based on different assumptions regarding the number of contested claims and the time involved to resolve matters (including in particular the level of involvement of the Claims Officer). Thus, the estimated cost under either scenario to complete exceeds the remaining charge and retainer of $587,000.

[1] 49 U.S. Code § 14706 - Liability of carriers under receipts and bills of lading.
The Carmack Amendment governs the liability of carriers that transport interstate shipments and shipments between the United States and a foreign country.

Accordingly, the Fee Motion currently seeks a $1.5 million increase (plus taxes) in the Administration Charge.

17. The following factors need to be considered in respect of the additional charge being sought because these factors could not be foreseen at the time the initial Administration Charge of $12 million plus taxes was granted:

- The analysis of claims in the category of Property and Economic Damages has required extraordinary levels of direct communication by the Monitor with creditors (particularly with members of the Class) to obtain details supporting the calculation of their damages, to assess the information provided and to explain the Monitor's value of each claim to respective creditors;
- The Monitor has received thousands of communications from creditors regarding the statements of distribution and the Notices in order to understand the assessment of their claim. Subsequently, the Monitor has been dealing with the many contestations that have been filed;
- In order to issue distributions to creditors as quickly as possible, the Monitor issued interim distributions as opposed to waiting for all claims to be reviewed and all contestations to be resolved. This has resulted in increased costs which were not foreseen;
- The treatment of distributions to over 600 minors has required additional resources to obtain the necessary information regarding identification of guardians and reporting to the Public Curator;
- The Monitor, aided by its legal counsel and counsel to MMAC, has had to devote unplanned resources to the treatment of interest earned on the Funds for Distribution as discussed elsewhere in this report.

CP DOCUMENT MOTION

18. On December 1, 2016, CP filed a motion in the Class Action proceedings seeking access to the proofs of claim filed by all creditors with the Monitor as well as all medical declarations in support of post-traumatic stress claims, copies of all contestations filed by creditors, as well as details relating to distributions to all creditors.

19. On February 6, 2017, the Honorable Martin Bureau, J.S.C. issued an order granting CP's motion to provide the information requested to CP's attorneys along with monthly updates with the requirement that CP's attorneys hold in escrow that portion of the information that does not relate to creditors who are not members of the Class Action.

INTEREST MOTION

20. As noted above, approximately $2 million of interest has been earned on the Funds for Distribution since the effective date of the Amended Plan. The Monitor along with its legal counsel and counsel to MMAC have had numerous communications with both the Federal and Provincial revenue agencies and have devoted various resources in order to determine the tax treatment of this interest and whether or not T5 and R3 tax slips need to be issued to the creditors who will receive their pari passu share of the interest.

CHAPTER 11

21. The Estate Representative has advised the Monitor on the following matters which have an impact on the Amended Plan both in terms of distribution and in respect of the overall administration:

- Proceedings were instituted in 2016 by the WD Trustee against CP and related entities for approximately US$177 million in the United States District of North Dakota under the Carmack Amendment. Under the settlement agreements with the World Fuel entities (the shipper of the oil) and Irving Oil (the consignee) approved pursuant to and incorporated into the U.S. Chapter 11 plan (and the CCAA plan), the World Fuel entities and Irving Oil assigned to the WD Trust (as the agent for all of the Derailment victim classes) all causes of action against CP, including those arising under the Carmack Amendment. In response, CP has filed a motion for judgment on the pleadings and for a partial summary judgment, which motion has not yet been heard;

- As noted in the Monitor's Twenty-First Report to Court dated November 24, 2015 and in the Twenty-Second Report to Court dated April 19, 2016, in calculating the Funds for Distribution, a $10 million reserve (approximately US$7.5 million) was taken into account for potential administrative/secured claims filed in the Chapter 11. These claims and their quantum continue to be contested by the Estate Representative and it will be at least another six months before these claims are definitively determined and thus the disposition of the reserve will not be known for some time;

- The Estate Representative's separate litigation against CP for damages suffered by MMAR continues forward. CP has filed its third motion to dismiss the case. The motion has been briefed and argued and is sub judice.

- On September 28, 2016 the US District Court for the District of Maine ("US Court") granted CP's Amended Motion to Dismiss the wrongful death claimants' lawsuits against CP on the basis, *inter alia*, that the US Court had no personal jurisdiction over CP with respect to that lawsuit, and because Quebec courts provided the more convenient forum for adjudication of those suits. The claimants' motion for reconsideration of that decision was denied, and an

appeal has been filed to the United States Court of Appeals for the First Circuit. Resolution of that appeal will take several months.

ACTIVITIES OF THE MONITOR

22. The Monitor's activities have included the following:

- The Monitor has continued its review of Property and Economic Damage Claims including communicating with creditors and/or their representatives to obtain additional information required to review their claims;
- The Monitor has commenced a review of 79 contestations filed in respect of Notices issued to holders of Property and Economic Damages;
- The Monitor has proceeded to the payment of the final dividend to holders of Bodily Injury and Moral Damage Claims, has responded to numerous queries from creditors regarding the calculation of their distributions;
- The Monitor has resolved a further 91 contestations filed by holders of Bodily Injury and Moral Damage Claims and is continuing its analysis of the remaining 69 contestations filed in respect of these distributions;
- The Monitor has proceeded to the payment of interim dividends to another 800 holders of Property and Economic Damages Claims and has issued Notices to a further 344 holders of Property and Economic Damages Claims and has responded to numerous inquiries from creditors regarding the calculation of their Property and Economic Damages Claims;
- The Monitor has continued to cooperate with the Estate Representative and his professionals and with Petitioner's legal counsel to keep apprised of the Chapter 11 proceedings of MMAR;
- The Monitor has maintained regular contact with the major stakeholders to seek their input and discuss various issues;
- The Monitor continues to post copies of Court materials filed in the CCAA and Chapter 11 Proceedings on its website;
- The Monitor has prepared and filed the Twenty-Fifth Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Increase of the Administration Charge

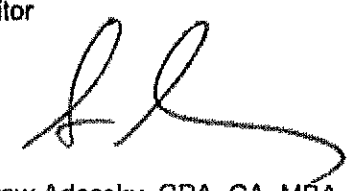
23. The Monitor is of the opinion that the Court should grant an increase in the Administration Charge of $1.5 million (plus taxes) in order to secure the payment of the fees to be incurred to finalize the administration of the claims review and of these CCAA proceedings.

B) Professional Fees

24. The Monitor supports the approval of professional fees for the period of October 1, 2016 to December 31, 2016, which fees are fair and reasonable and are secured by the Administration Charge.

Respectfully submitted at Montreal, this 22nd day of February, 2017.

Richter Advisory Group Inc.
Monitor



Andrew Adessky, CPA, CA, MBA, CIRP, LIT

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

Nº:

Nº : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 14

(Twenty-sixth report of the monitor)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS
No.: 450-11-000167-134

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

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.) a duly incorporated legal person having its principal place of business at 1981 McGill College, 12th Floor, in the city and district of Montreal, Quebec, H3A 0G6

Monitor

TWENTY-SIXTH REPORT OF THE MONITOR
June 8, 2017

INTRODUCTION

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. ("MMAC") filed a Motion for the Issuance of an Initial Order pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "CCAA"). On August 8, 2013, the Honourable Martin Castonguay, J.S.C., issued an initial order (the "Initial Order") which *inter alia* appointed Richter Advisory Group Inc. as the Monitor in these CCAA proceedings (the "Monitor"). An initial stay of proceedings was ordered until September 6, 2013 ("Stay Period").

2. The CCAA proceedings have since been supervised by the Honourable Gaétan Dumas, J.S.C. and the Stay Period has been extended fifteen times with the most recent extension having been granted to June 30, 2017.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.

4. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in MMAC's Plan of Compromise and Arrangement filed on June 8, 2015 (the "Amended Plan"). All amounts reflected in this report are stated in Canadian currency unless otherwise noted.

5. On December 1, 2016, the Canadian Pacific Railway Company ("CP") filed the Requête pour Divulgation de Documents Concernant les Sommes d'Argent Versées à des Membres du Groupe ("CP Document Motion"). The CP Document Motion was filed in connection with the Class Action. Following a hearing on January 25, 2017 before the Honourable Martin Bureau, J.S.C., an order was rendered on February 6, 2017 granting the CP Document Motion ("CP Document Order").

6. On May 3, 2017 the Province of Quebec ("Province") filed the Demande pour Obtenir la Levée de la Suspension des Procédures ("Province Lift Stay Motion") strictly in relation to the legal action filed by the Province against CP. On May 11, 2017, the Court granted the Lift Stay Motion.

7. On June 8, 2017, the Petitioner filed a Motion for a Sixteenth Extension of the Stay Period and for the Approval of Professional Fees ("Sixteenth Extension Motion"). The Sixteenth Extension Motion will be heard on June 16, 2017.

8. The purpose of this Twenty-Sixth Report of the Monitor is to inform the Court on the following subjects:

   - Claims Review and Status of Distributions;
   - Extension Request;
   - Approval of Professional Fees;
   - CP Document Order;
   - Interest Treatment;
   - Chapter 11;
   - Activities of the Monitor;
   - Recommendations of the Monitor.

CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS

9. The status of the claims review and the payment of distributions under the Amended Plan is as follows:

- **Wrongful Death Claims:** as reported in the Monitor's Twenty-Fifth Report dated February 22, 2017 ("Twenty-Fifth Report") all the projected distributions have been paid by the WD Trustee and the WD Trustee continues to hold an amount of approximately US$0.2 million for the payment of future fees and expenses of the WD Trust.

- **Bodily Injury and Moral Damage Claims:** as reported in the Monitor's Twenty-Fifth Report, 100% of the total distribution payable to claimants who have Proven Claims in this category have been paid (prior to any possible reallocation under section 4.2 of the Amended Plan). In total, as of the date hereof, an amount of approximately $46.3 million has been distributed to 4,324 claimants.

  As summarized most recently in the Twenty-Fifth Report, following the Monitor's review of 4,324 claims and the issuance of 4,324 Avis de Calcul de Votre Distribution et/ou Avis de Rejet Total ou Partiel de Votre Réclamation ("Notices"), the Monitor received 457 contestations with respect to the Notices. Over the past several months, the Monitor has been able to resolve 410 of those contestations through negotiations with individual claimants, Class Counsel (with respect to the claims of Class Members) and counsel to other claimants.

  In respect of the remaining unresolved 47 contestations, hearings before the Claims Officer have been scheduled for June 13 to 15, 2017 in Lac-Mégantic for the adjudication of those contestations.

  A small number of the distribution payments (approximately 30 payments totalling approximately $90,000) have either not yet been released (due to missing information) or have been returned because some claimants have moved and not notified the Monitor of their new address. The Monitor will continue to try and obtain the necessary information to ensure the payments are received, failing which, the funds will be treated in accordance with Section 8.8 of the Amended Plan and donated to charity.

- **Property and Economic Damages Claims:** As of the date of this Report, the status of the review of the Property and Economic Damages Claims is as follows:

Montreal, Maine & Atlantic Canada Co. Property and Economic Damages Claims Summary As of May 31, 2017	# of claims	Claims Value as Filed	Claims Value - as accepted/estimated (by the Monitor)	Estimated distribution amount
Review finalized - distribution paid	1,712	$ 156,891,057	$ 31,714,760	$ 17,950,554
Review finalized - disallowance issued and still within 20 day contestation period	3	883,189	336,688	190,565
Review finalized - disallowance contested	82	33,284,484	3,586,073	2,029,717
Review finalized	1,797	191,058,730	35,637,520	20,170,836
Review not completed	10	9,865,220	799,216	452,356
Sub-total	1,807	200,923,950	36,436,736	20,623,193
Difference between $75M and current estimated claim value	-	-	**38,563,264**	-
Potential reallocation	-	-	-	**21,944,254**
Total	**1,807**	**$ 200,923,950**	**$ 75,000,000**	**$ 42,567,447**

As noted above, the Monitor has completed a review of 1,797 of the 1,807 claims filed in the category of Property and Economic Damages Claims. Of these, 1,712 claims have become Proven Claims and their holders have received an interim distribution of 50% (approximately $8.9 million) of the estimated total distribution payable to the holders of Proven Claims. These distributions are on account of claims that have been allowed, in full or in part, as filed or as amended.

As noted in the Twenty-Fifth Report, the Monitor had received contestations from 79 claimants in respect of Property and Economic Damages Claims. Since that time, the Monitor has resolved 12 of those 79 contestations, but has received a further 15 contestations. Currently, 82 total or partial disallowances are contested. The Monitor continues and will continue its efforts to resolve those contestations directly with the claimants before the Monitor refers these disputes to the Claims Officer or to the Court. In this respect, the Monitor has scheduled approximately 30 meetings with various claimants with disputed claims in Lac-Mégantic from June 13 to 15, 2017 and anticipates scheduling additional meetings in the near future.

As noted in the Twenty-Fifth Report, 20 claims had not been at that time allowed or disallowed by the Monitor. As noted in the table above, there now remains only 10 claims which have not been allowed or disallowed. As noted in the Twenty-Fifth Report, the Monitor has completed a preliminary review of these claims but has not allowed or disallowed those claims for various reasons including i) that claimants have requested more time to provide additional documentation in support of their claims and ii) that the Monitor is waiting on information to be received from the Province as to the final amounts paid to certain claimants under a provincial aid program. The Monitor expects to issue Notices with respect to all of the remaining claims in the next few months.

As previously reported including most recently in the Twenty-Fifth Report, based on the current review of the Property and Economic Damage Claims, it appears very likely that the total amount of Proven Claims in this category will be significantly below the $75 million threshold referred to in Section 4.2 of the Amended Plan. Should this be the case, this would entail, under the terms of Section 4.2 of the Amended Plan, a reallocation of the distribution relating to the difference between the amount of $75 million and the final amount of Proven Claims ("Economic Savings") to other claimants and categories of claimants. As appears in the table above, the amount to be reallocated is currently estimated to be approximately $22 million.

The timing of further interim distributions and the redistribution of the Economic Savings are dependent upon the resolution of all contested claims.

- **Government Claims:** We refer to the Twenty-Fifth Report for a summary of the treatment of claims in the government category. The Monitor is still awaiting an update from the Province of Quebec in respect of the final amount of their claim.
- **Subrogated Insurer Claims:** We refer to the Twenty-Fifth Report for a summary of the treatment of claims in the subrogated insurer category.

EXTENSION REQUEST

10. The Sixteenth Extension Motion seeks an extension of the Stay Period to January 31, 2018, to allow for the completion of the ongoing review and adjudication of claims as more fully discussed in this report and the distribution of the remaining Settlement Funds to claimants.

APPROVAL OF PROFESSIONAL FEES

11. The Sixteenth Extension Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of January 1, 2017 to May 31, 2017 which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co. Administration Charge Summary As of May 31, 2017	Fees / Disbursements	Sales Taxes	Total
Administration Charge [1]	$ 13,500,000	$ 2,022,000	$ 15,522,000
Accrued Professional Fees as of December 31, 2016	(11,641,767)	(1,719,542)	(13,361,309)
Balance of Administration Charge to implement the Plan	1,858,233	302,458	2,160,691
Fees and Disbursements - January 1, 2017 to May 31, 2017			
Richter	549,023	82,216	631,239
Woods	178,158	26,679	204,837
Gowling	131,368	19,672	151,040
Claims Officer	11,844	1,774	13,618
	870,393	130,341	1,000,734
Balance of Administration Charge to complete the CCAA [2]	$ 987,840	$ 172,117	$ 1,159,957

[1] As per the Amended Plan of Compromise and Arrangement dated June 8, 2015 and Order dated March 3, 2017.

[2] In addition, the Monitor and its counsel still retain a $150,000 retainer which will be applied to their final invoices.

CP DOCUMENT ORDER

12. Pursuant to the issuance of the CP Document Order, on or about February 28, 2017, the Monitor remitted to CP's attorneys (as well as Class Counsel) the requested documents which were received by the Monitor as of January 31, 2017. These documents consisted of:

- proofs of claim filed by all creditors with the Monitor;
- all medical declarations in support of post-traumatic stress claims;
- copies of all contestations filed by creditors; and
- the amounts distributed to the creditors.

13. Furthermore, as of the date of this report, the Monitor has provided monthly updates (for February 2017 to April 2017) to CP's attorneys (as well as to Class Counsel).

INTEREST TREATMENT

14. Approximately $2.3 million of interest has been earned on the Funds for Distribution since the effective date of the Amended Plan. Following communications between the Monitor, its legal counsel and counsel to MMAC with both the Federal and Provincial revenue agencies, the Monitor

has been informed that it will be required to issue tax slips to all creditors whose *pari passu* share of the interest exceeds $50 in a given calendar year. The issuance of the tax slips can only occur once all claims have been settled and the final allocation of interest can be calculated.

CHAPTER 11

15. The Monitor refers to the Twenty-Fifth Report for a summary of various matters which have an impact on the Amended Plan both in terms of distribution and in respect of the overall administration and provides the following update from the Estate Representative:

- Proceedings under the Carmack Amendment: a CP motion to dismiss the case was granted in part. The WD Trustee has appealed that decision to the United States Court of Appeals for the Eighth Circuit. Briefing has begun and a decision is expected late this year, at the earliest.
- Estate Representative's separate litigation against CP: The court has indicated that a decision will be issued within the next month or two on a CP motion to dismiss.
- Potential administrative/secured claims filed in the Chapter 11: these claims and their quantum continue to be contested by the Estate Representative and it will be at least another six months before these claims are definitively determined and thus the disposition of the reserve will not be known for some time.

ACTIVITIES OF THE MONITOR

16. The Monitor's activities have included the following:

- The Monitor has continued its review of Property and Economic Damage Claims including communicating with creditors and/or their representatives to obtain additional information required to review their claims.
- The Monitor has continued its review of contestations filed in respect of Notices issued to holders of Property and Economic Damages including the resolution of 12 contestations and the receipt of 15 new contestations.
- The Monitor has continued to issue payments of interim dividends or Notices to holders of Property and Economic Damages Claims and to respond to numerous inquiries from creditors regarding the calculation of their Property and Economic Damages Claims.
- On April 20, 2017, the Monitor met with representatives of the Chambre de Commerce Région de Mégantic, Commerce Lac-Mégantic and the SADC (Sociéte d'aide du développement de la collectivité de la région de Mégantic) to respond to their questions and concerns regarding the treatment and evaluation of economic claims.

- The Monitor has resolved a further 21 contestations filed by holders of Bodily Injury and Moral Damage Claims.
- The Monitor has communicated with the Claims Officer to organize formal hearings in Lac-Mégantic from June 13 to 15, 2017 in respect of unresolved contestations relating to Bodily Injury and Moral Damage Claims and has prepared and issued 48 dispute packages in connection with the hearings.
- The Monitor has also scheduled meetings in Lac- Mégantic from June 13 to 15, 2017 with claimants who have unresolved economic contestations to see if they can be resolved consensually without the involvement of a claims officer.
- The Monitor has continued to cooperate with the Estate Representative and his professionals and with Petitioner's legal counsel to keep apprised of the Chapter 11 proceedings of MMAR;
- The Monitor has maintained regular contact with the major stakeholders to seek their input and discuss various issues.
- The Monitor continues to post copies of Court materials filed in the CCAA and Chapter 11 Proceedings on its website.
- The Monitor has prepared and filed the Twenty-Sixth Report.
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Extension

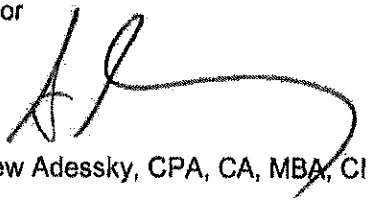
17. The Monitor is of the opinion that the Court should grant the extension request to at least January 31, 2018 in order to pursue the review of claims and the distribution of the Settlement Fund to the Creditors.

B) Professional Fees

18. The Monitor supports the approval of professional fees for the period of January 1, 2017 to May 31, 2017, which fees are fair and reasonable and are secured by the Administration Charge.

Respectfully submitted at Montreal, this 8th day of June, 2017.

Richter Advisory Group Inc.
Monitor



Andrew Adessky, CPA, CA, MBA, CIRP, LIT

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 15

(Twenty-seventh report of the monitor)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS
No.: 450-11-000167-134

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

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.) a duly incorporated legal person having its principal place of business at 1981 McGill College, 12th Floor, in the city and district of Montreal, Quebec, H3A 0G6

Monitor

TWENTY-SEVENTH REPORT OF THE MONITOR
December 5, 2017

INTRODUCTION

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. ("MMAC") filed a Motion for the Issuance of an Initial Order pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "CCAA"). On August 8, 2013, the Honourable Martin Castonguay, J.S.C., issued an initial order (the "Initial Order") which *inter alia* appointed Richter Advisory Group Inc. as the Monitor in these CCAA proceedings (the "Monitor"). An initial stay of proceedings was ordered until September 6, 2013 ("Stay Period").

2. The CCAA proceedings have since been supervised by the Honourable Gaétan Dumas, J.S.C. and the Stay Period has been extended sixteen times with the most recent extension having been granted to January 31, 2018.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.

4. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in MMAC's Plan of Compromise and Arrangement filed on June 8, 2015 (the "Amended Plan"). All amounts reflected in this report are stated in Canadian currency unless otherwise noted.

5. On August 31, 2017, Promutuel Centre-Sud, Desjardins Assurances Générales Inc., La Personnelle Assurances Générales Inc., L'Unique Assurances Générales Inc., La Capitale Assurances Générales Inc., Intact Assurance, La Compagnie D'Assurance Bélair Inc. and La Garantie Compagnie D'Assurance De L'Amérique du Nord (hereafter "the Insurers") filed the Demande pour Obtenir la Levée de la Suspension des Procédures ("Insurers Lift Stay Motion"). On September 15, 2017 the Court granted the Insurers Lift Stay Motion.

6. On November 16, 2017, MMAC filed an Application for Approval of an Agreement and to Amend a Settlement Agreement ("Settlement Agreement Amendment Motion"). On November 23, 2017, The Court granted MMAC's Settlement Agreement Amendment Motion.

7. On December 5, 2017, the Petitioner filed a Motion for a Seventeenth Extension of the Stay Period and for the Approval of Professional Fees ("Seventeenth Extension Motion"). The Seventeenth Extension Motion will be heard on December 15, 2017.

8. The purpose of this Twenty-Seventh Report of the Monitor is to inform the Court on the following subjects:

   - Claims Review and Status of Distributions;
   - Extension Request;
   - Approval of Professional Fees;
   - CP Document Order;
   - Interest Treatment;
   - Chapter 11;
   - Activities of the Monitor;
   - Recommendations of the Monitor.

CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS

9. The status of the claims review and the payment of distributions under the Amended Plan is as follows:

- **Wrongful Death Claims**: as reported in the Monitor's Twenty-Fifth Report dated February 22, 2017 ("Twenty-Fifth Report") all the projected distributions have been paid by the WD Trustee and the WD Trustee continues to hold an amount of approximately US$0.2 million for the payment of future fees and expenses of the WD Trust.

- **Bodily Injury and Moral Damage Claims:** as reported in the Monitor's Twenty-Fifth Report, 100% of the total distribution payable to claimants who have Proven Claims in this category have been paid (prior to any possible reallocation under section 4.2 of the Amended Plan). In total, as of the date hereof, an amount of approximately $47.1 million has been distributed to 4,327 claimants.

  As summarized most recently in the Monitor's Twenty-Sixth Report dated June 8, 2017 ("Twenty-Sixth Report"), following the Monitor's review of 4,327 claims and the issuance of 4,327 Avis de Calcul de Votre Distribution et/ou Avis de Rejet Total ou Partiel de Votre Réclamation ("Notices"), the Monitor received 457 contestations with respect to the Notices. The Monitor resolved 410 of those contestations through negotiations with individual claimants, Class Counsel (with respect to the claims of Class Members) and counsel to other claimants.

  In respect of the remaining unresolved 47 contestations, hearings before the Claims Officer were held on June 13 to 15, 2017 in Lac-Mégantic for the adjudication of those contestations. Following the hearings, the Claims Officer rendered his decisions on July 27, 2017 and directly notified all claimants of his decision to either allow the contestation or deny the contestation and uphold the decision of the Monitor. Pursuant to the terms of the Claims Resolution Order dated April 15, 2015, claimants whose contestations were denied are able to appeal the decision of the Claims Officer to the Court. Three such appeals have been filed within the prescribed delay. The Monitor has since resolved one of the appeals and is attempting to resolve the remaining two appeals, failing which, a hearing date for the appeals will be established with the Court. In addition, there remains one contestation which was not the subject of a hearing before the Claims Officer.

  Consequently, there remain 3 unresolved claims out of a total of 4,327 filed with the Monitor.

  As a result of all of the contestations, the Monitor established various reserves to ensure it could pay all Bodily Injury and Moral Damage Claims once the claim amount was finalized. Consequently, once the 3 unresolved claims are finalized, the Monitor will make a supplemental distribution to the category of Bodily Injury and Moral Damages. This supplementary distribution will likely occur in the first quarter of 2018.

A small number of the distribution payments (approximately 30 payments totalling approximately $90,000) have either not yet been released (due to missing information) or have been returned because some claimants have moved and not notified the Monitor of their new address. The Monitor will continue to try and obtain the necessary information to ensure the payments are received, failing which, the funds will be treated in accordance with Section 8.8 of the Amended Plan and donated to charity.

- **Property and Economic Damages Claims:** As of the date of this Report, the status of the review of the Property and Economic Damages Claims is as follows:

Montreal, Maine & Atlantic Canada Co.
Property and Economic Damages Claims Summary
As of November 30, 2017

	# of claims	Claims Value as Filed	Claims Value - as accepted/estimated (by the Monitor)	Estimated distribution amount
Review finalized - distribution paid	1,796	$ 190,152,883	$ 42,482,275	$ 24,044,968
Review finalized - disallowance contested	14	5,571,323	850,359	481,303
Sub-total	1,810	195,724,206	43,332,634	24,526,271
Difference between $75M and current estimated claim value	-	-	**31,667,366**	-
Potential reallocation	-	-	-	**18,041,176**
Total	**1,810**	**$ 195,724,206**	**$ 75,000,000**	**$ 42,567,447**

As noted above, the Monitor has completed a review of 1,810 claims filed in the category of Property and Economic Damages Claims. Of these, 1,796 claims have become Proven Claims (which includes 84 claims which were resolved since the issuance of the Twenty-Sixth Report as noted below) and their holders have received both their first interim distribution of 50% and the second and final distribution of 50% (issued in the week of November 13, 2017) for a total of $24.0 million. These distributions are on account of claims that have been allowed, in full or in part, as filed or as amended.

As noted in the Twenty-Sixth Report, there remained 92 unresolved contestations from claimants in respect of total or partial disallowances of Property and Economic Damages Claims as well as claims where the review was not yet completed. As part of the Monitor's efforts to resolve these contestations directly with the claimants before the Monitor would have needed to refers these disputes to the Claims Officer or to the Court, the Monitor scheduled meetings in respect of these contested claims in Lac-Mégantic, which meetings took place either from June 13 to 15, 2017 or from August 15 to 16, 2017. Following these meetings, 78 of the 92 claims were resolved and these claims have been paid in full as noted above.

Consequently, there remain 14 claims which if not resolved, will be the subject of a hearing before the Claims Officer, likely in the first quarter of 2018.

As previously reported including most recently in the Twenty-Sixth Report, based on the current review of the Property and Economic Damage Claims, the total amount of Proven Claims in this category will be significantly below the $75 million threshold referred to in Section 4.2 of the Amended Plan. As a result, under the terms of Section 4.2 of the Amended Plan, this will entail a reallocation of the distribution relating to the difference between the amount of $75 million and the final amount of Proven Claims ("Economic Savings") to other claimants and categories of claimants. As appears in the table above, the amount to be reallocated is currently estimated at $18 million.

- **Government Claims:** We refer to the Twenty-Fifth Report for a summary of the treatment of claims in the government category. The Province of Quebec ("Province") initially filed a $409 million claim ("Initial Claim") which amount was used in the preparation of the Amended Plan and in the allocation of funds amongst the different categories.

  On December 1, 2017, the Province submitted a "Sommaire détaillé des dépenses (incluant les salaires réguliers)" totalling $340,195,223.56 and confirmed that this will be their final claim ("Final Claim"). The Final Claim can be summarized as follows:

  - Expenses incurred to March 31, 2017: $260,242,387.80
  - Provision for future expenses: $79,952,835.76

- **Subrogated Insurer Claims:** We refer to the Twenty-Fifth Report for a summary of the treatment of claims in the subrogated insurer category.

EXTENSION REQUEST

10. The Seventeenth Extension Motion seeks an extension of the Stay Period to June 29, 2018, to allow for the completion of the ongoing review and adjudication of claims as more fully discussed in this report, the distribution of the remaining Settlement Funds to claimants including the reallocation of Economic Savings and the advancement of various litigation in the Chapter 11 as more fully discussed below.

APPROVAL OF PROFESSIONAL FEES

11. The Seventeenth Extension Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of June 1, 2017 to November 30, 2017 which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co. Administration Charge Summary As of November 30, 2017	Fees / Disbursements	Sales Taxes	Total
Administration Charge [1]	$ 13,500,000	$ 2,022,000	$ 15,522,000
Accrued Professional Fees as of May 31, 2017	(12,512,160)	(1,849,883)	(14,362,043)
Balance of Administration Charge to implement the Plan	987,840	172,117	1,159,957
Fees and Disbursements - June 1, 2017 to November 30, 2017			
Richter	479,030	71,735	550,765
Woods	100,673	15,076	115,748
Gowling WLG	102,920	15,412	118,332
Claims Officer	46,360	6,942	53,302
	728,983	109,165	838,148
Balance of Administration Charge to complete the CCAA [2]	$ 258,858	$ 62,952	$ 321,809

[1] As per the Amended Plan of Compromise and Arrangement dated June 8, 2015 and Order dated March 3, 2017.

[2] In addition, the Monitor and its counsel still retain a $150,000 retainer which will be applied to their final invoices.

CP DOCUMENT ORDER

12. We refer to the Twenty-Sixth Report for a summary of the CP Document Order. As of the date of this Report, the Monitor has provided monthly updates (for February 2017 to October 31, 2017) to CP's attorneys as well as to the Class Counsel.

INTEREST TREATMENT

13. As of the date of this report, approximately $3.0 million has been earned on the Funds for Distribution since the effective date of the Amended Plan.

14. As noted in the Twenty-Sixth Report, following communications between the Monitor, its legal counsel and counsel to MMAC with both the Federal and Provincial revenue agencies, the Monitor has been informed that it will be required to issue tax slips to all creditors whose *pari passu* share of the interest exceeds $50 in a given calendar year. The issuance of the tax slips can only occur once all claims have been settled and the final allocation of interest can be calculated.

15. Based on the current information, the Monitor estimates that it will issue tax slips to at least an estimated 900 individuals and corporations for each of the 2016 and 2017 taxation years. In addition, as it is unlikely that this can be done prior to March 1, 2018, the Monitor will also have to pay a prescribed tax to the Federal and Provincial tax authorities at a combined rate of 65% for the 2016 tax year on behalf of all claimants.

CHAPTER 11

16. The Monitor refers to the Twenty-Fifth Report for a summary of various matters which have an impact on the Amended Plan both in terms of distribution and in respect of the overall administration and provides the following update from the Estate Representative:

- Proceedings under the Carmack Amendment: a CP motion to dismiss the case was granted in part. The WD Trustee has appealed that decision to the United States Court of Appeals for the Eighth Circuit. Briefing is complete, and the parties are awaiting the scheduling of oral argument. A decision is expected in mid-2018.
- Estate Representative's separate litigation against CP: The bankruptcy court denied CP's motion to dismiss based upon *forum non conveniens* and other grounds. The United States District Court for the District of Maine also denied CP's motion for leave to appeal the bankruptcy court's order denying the motion to dismiss. The case is now in the discovery phase.
- Potential administrative/secured claims filed in the Chapter 11: these claims and their quantum continue to be contested by the Estate Representative and it is uncertain if these claims will be definitively determined by the end of the extension period.

ACTIVITIES OF THE MONITOR

17. The Monitor's activities have included the following:

- The Monitor has continued its review of Property and Economic Damage Claims including communicating with creditors and/or their representatives to obtain additional information required to review their claims.
- The Monitor has continued its review of contestations filed in respect of Notices issued to holders of Property and Economic Damages including the resolution of 84 contestations.
- The Monitor met with 82 holders of Property and Economic Damage Claims either from June 13 to 15, 2017 or August 15 to 16, 2017 in Lac-Mégantic.

- The Monitor has issued the second and final interim dividend to 1,796 holders of Proven Claims in the category of Property and Economic Damages Claims and has responded to numerous inquiries from creditors regarding the calculation of their Property and Economic Damages Claims.
- The Monitor has resolved a further 45 contestations filed by holders of Bodily Injury and Moral Damage Claims.
- The Monitor attended at formal hearings presided over by the Claims Officer in Lac-Mégantic from June 13 to 15, 2017 in respect of unresolved contestations relating to Bodily Injury and Moral Damage Claims and reviewed the decisions issued by the Claims Officer in connection therewith.
- The Monitor has continued to provide monthly updates (for May 2017 to October, 2017) to CP's attorneys as well as to Class Counsel, the whole pursuant to the CP Document Order (as more fully described in the Twenty-Sixth Report).
- The Monitor has continued to cooperate with the Estate Representative and his professionals and with Petitioner's legal counsel to keep apprised of the Chapter 11 proceedings of MMAR;
- The Monitor has maintained regular contact with the major stakeholders to seek their input and discuss various issues.
- The Monitor continues to post copies of Court materials filed in the CCAA and Chapter 11 Proceedings on its website.
- The Monitor has prepared and filed the Twenty-Seventh Report.
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Extension

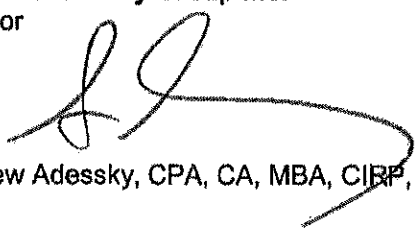
18. The Monitor is of the opinion that the Court should grant the extension request to at least June 29, 2018 in order to allow for the completion of the ongoing review and adjudication of remaining claims as more fully discussed in this report, the distribution of the remaining Settlement Funds to claimants including the reallocation of Economic Savings and the advancement of various litigation in the Chapter 11.

B) **Professional Fees**

19. The Monitor supports the approval of professional fees for the period of June 1, 2017 to November 30, 2017, which fees are fair and reasonable and are secured by the Administration Charge.

Respectfully submitted at Montreal, this 5th day of December, 2017.

Richter Advisory Group Inc.
Monitor



Andrew Adessky, CPA, CA, MBA, CIRP, LIT

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 16

(Twenty-eighth report of the monitor)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS
No.: 450-11-000167-134

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

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.) a duly incorporated legal person having its principal place of business at 1981 McGill College, 12th Floor, in the city and district of Montreal, Quebec, H3A 0G6

Monitor

TWENTY-EIGHTH REPORT OF THE MONITOR
June 7, 2018

INTRODUCTION

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. ("MMAC") filed a Motion for the Issuance of an Initial Order pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "CCAA"). On August 8, 2013, the Honourable Martin Castonguay, J.S.C., issued an initial order (the "Initial Order") which *inter alia* appointed Richter Advisory Group Inc. as the Monitor in these CCAA proceedings (the "Monitor"). An initial stay of proceedings was ordered until September 6, 2013 ("Stay Period").

2. The CCAA proceedings have since been supervised by the Honourable Gaétan Dumas, J.S.C. and the Stay Period has been extended seventeen times with the most recent extension having been granted to June 29, 2018.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.

4. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in MMAC's Plan of Compromise and Arrangement filed on June 8, 2015 (the "Amended Plan"). All amounts reflected in this report are stated in Canadian currency unless otherwise noted.

5. On May 31, 2018, counsel to the Petitioner was served with a Demande Introductive D'Instance filed with the Superior Court, Civil Division, District of Megantic ("Demande Introductive").

6. On June 6, 2018, the Petitioner filed a Motion for an Eighteenth Extension of the Stay Period and for the Approval of Professional Fees ("Eighteenth Extension Motion"). The Eighteenth Extension Motion will be heard on June 19, 2018.

7. On June 7, 2018, Class Counsel filed a Motion entitled Application for a Direction of Payment to Counsel for the Court-Appointed Representatives of the Class Members ("Class Counsel Motion"). The Class Counsel Motion will be heard on June 19, 2018.

8. The purpose of this Twenty-Eighth Report of the Monitor is to inform the Court on the following subjects:

   - Claims Review and Status of Distributions;
   - Extension Request;
   - Demande Introductive D'Instance;
   - Approval of Professional Fees;
   - Class Counsel Motion;
   - CP Document Order;
   - Interest Treatment;
   - Chapter 11;
   - Activities of the Monitor;
   - Recommendations of the Monitor.

CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS

9. The status of the claims review and the payment of distributions under the Amended Plan is as follows:

- **Wrongful Death Claims:** as reported in the Monitor's Twenty-Fifth Report dated February 22, 2017 ("Twenty-Fifth Report") all the projected distributions have been paid by the WD Trustee and the WD Trustee continues to hold an amount of approximately US$0.2 million for the payment of future fees and expenses of the WD Trust;

- **Bodily Injury and Moral Damage Claims:** as reported in the Monitor's Twenty-Fifth Report, 100% of the total distribution payable to claimants who have Proven Claims in this category have been paid (prior to any possible reallocation under section 4.2 of the Amended Plan). In total, as of the date hereof, an amount of approximately $47.2 million has been distributed to 4,327 claimants.

  As summarized most recently in the Monitor's Twenty-Seventh Report dated December 5, 2017 ("Twenty-Seventh Report"), all unresolved contestations were the subject of hearings before the Claims Officer from June 13, 2017 to June 15, 2017. Following the decisions rendered by the Claims Officer, three claimants appealed the decision of the Claims Officer to the Court. All three of these appeals have been resolved directly by the Monitor and Class Counsel and the appeals have been withdrawn. In addition, a contestation which was not the subject of a hearing before the Claims Officer has now been resolved.

  Consequently, with all claims now resolved, the Monitor will be proceeding to the issuance of a supplemental distribution in the approximate amount of $2.8 million ("Supplemental Moral Distribution") to the category of Bodily Injury and Moral Damages. As noted in the Twenty-Seventh Report, this Supplemental Moral Distribution emanates from the release of various reserves established by the Monitor to ensure it could pay all Bodily Injury and Moral Damage Claims once each claim amount was finalized.

  A small number of the distribution payments (24 payments totalling approximately $62,000) have either not yet been released (due to missing information) or have been returned because some claimants have moved and not notified the Monitor of their new address. The Monitor will continue to try and obtain the necessary information to ensure the payments are received, failing which, the funds will be treated in accordance with Section 8.8 of the Amended Plan and donated to charity;

- **Property and Economic Damages Claims:** The status of the review of the Property and Economic Damages Claims is as follows:

Montreal, Maine & Atlantic Canada Co. Property and Economic Damages Claims Summary As of May 31, 2018	# of claims	Claims Value as Filed	Claims Value - as accepted (by the Monitor)	Distribution amount
Final claim values	1,810	$ 197,124,012	$ 45,288,760	$ 25,633,438
Difference between $75M and final claim values	-	-	29,711,240	-
Reallocation	-	-	-	16,770,364
Total	**1,810**	**$ 197,124,012**	**$ 75,000,000**	**$ 42,403,802**

As noted above, the Monitor has now completed and finalized its review of the 1,810 claims filed in the category of Property and Economic Damages Claims. As of the issuance of the Twenty-Seventh Report, there remained 14 contested claims which had not yet been resolved. The Monitor with the assistance of Class Counsel and other counsel has now resolved all of these contested claims with the corresponding distributions issued to all claimants in this category.

Consequently pursuant to Section 4.2 of the Amended Plan, the difference between the $45.3 million of Proven Claims and the allocated claims value of $75 million for this category will result in a reallocation of approximately $16.8 million in distributions to other claimants and categories of claimants ("Economic Savings"), summarized as follows:

Montreal, Maine & Atlantic Canada Co. Reallocation of Economic Savings As of May 31, 2018	Distribution
Breakdown of redistribution by category:	
Wrongful Death Claims	$ 8,193,000
Bodily Injuries and Moral Damages Claims	1,335,000
Government Claims [1]	6,725,000
Subrogated Insurer Claims	526,000
Total	**$ 16,779,000**

[1] Amount is prior to the Reallocated Dividends as set out in section 4.3 of the Amended Plan.

The Monitor will review the reallocation with Class Counsel and other counsel prior to distributing the Economic Savings;

- **Government Claims:** We refer to the Twenty-Fifth Report for a summary of the treatment of claims in the government category. In our Twenty-Seventh Report, we advised that the Province of Quebec ("Province") submitted an amended and final proof of claim ("Final Claim") on December 1, 2017 in the approximate amount of $340.2 million (versus an initial claim of $409 million) which consisted of actual expenses to March 31, 2017 of approximately $260.2 million and a provision of future expenses of approximately $80.0 million ("Expense Provision").

On May 10, 2018, in response to information requested by the Monitor to support the Expense Provision, the Province provided certain limited explanations and advised that the Expense Provision as of March 31, 2018 now approximated $68.9 million.

The Monitor is continuing its review both in terms of the reasonableness of the Expense Provision as well the implications to all claimants of the Final Claim in the context of the Amended Plan;

- **Subrogated Insurer Claims:** We refer to the Twenty-Fifth Report for a summary of the treatment of claims in the subrogated insurer category.

EXTENSION REQUEST

10. The Eighteenth Extension Motion seeks an extension of the Stay Period to December 14, 2018, to allow for the issuance of the Supplemental Moral Distribution, the reallocation of the Economic Savings, the finalization of the treatment of the Final Claim of the Province, allocation and distribution of interest income (as discussed below) and the advancement of various litigation in the Chapter 11 (as discussed below).

DEMANDE INTRODUCTIVE D'INSTANCE

11. The Demande Introductive was filed against Canadian Pacific Railway Company, the Petitioner and Thomas Harding seeking approximately $5.2 million in respect of economic and moral damages on behalf of 48 plaintiffs (versus 49 in paragraph 1 of the Demande Introductive).

12. The Monitor has reviewed the Demande Introductive and provided the Plaintiffs obtain *nunc pro tunc* a lifting of the stay of proceedings against MMA the Monitor will not take a position with respect to this proceeding.

APPROVAL OF PROFESSIONAL FEES

13. The Eighteenth Extension Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of December 1, 2017 to April 30, 2018 which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co. Administration Charge Summary As of April 30, 2018	Fees / Disbursements	Sales Taxes	Total
Administration Charge [1]	$ 13,500,000	$ 1,998,000	$ 15,498,000
Accrued Professional Fees as of November 30, 2017	(13,172,900)	(1,948,761)	(15,121,661)
Balance of Administration Charge to implement the Plan	327,100	49,239	376,339
Richter	144,431	21,629	166,060
Woods	34,897	5,226	40,122
Gowling WLG	14,425	2,161	16,586
Claims Officer [2]	2,451	367	2,818
	196,203	29,382	225,586
Balance of Administration Charge to complete the CCAA [3]	$ 130,896	$ 19,857	$ 150,753

[1] As per the Amended Plan of Compromise and Arrangement dated June 8, 2015 and Order dated March 3, 2017.

[2] The work of the Claims Officer is now complete as all contested claims have been resolved.

[3] In addition, the Monitor and its counsel still retain a $150,000 retainer which will be applied to their final invoices.

The balance of the Administration Charge will likely not be sufficient to cover the work required to complete the administration of the CCAA, which work can be summarized as follows:

- Issuance of the Supplemental Moral Distribution to approximately 4,300 claimants having Bodily Injury and Moral Damage Claims including the follow-up communications with claimants regarding the distribution;
- Reallocation of the Economic Savings from Property and Economic Damages Claims category to the other claims categories and proceeding to the issuance of these distributions (approximately 4,300) as well as responding to queries regarding the distributions;
- Ongoing analysis and communications with the Province regarding the Final Claim and Expense Provision;
- Allocation and distribution of interest income to the claimants including preparation and issuance of tax slips (approximately 900), communications with the Federal and Provincial revenue agencies and responding to claimant inquiries;
- Monitoring proceedings in the Chapter 11 case including communications with the Estate Representative and resulting implications in terms of the outcome of various litigation;
- Other administrative matters.

Neither the Monitor, its counsel nor Debtor's counsel will seek a further increase to the Administration Charge at this time. Rather, the Petitioner will submit the future professional fees of the Canadian Professionals to the Court for review and approval on a regular basis.

CLASS COUNSEL MOTION

14. Pursuant to the Class Counsel Motion, Class Counsel will be seeking the approval of a payment of approximately $1.2 million of accrued fees as of May 31, 2018, summarized as follows:

	Distribution to Class Members on which class counsel fees were calculated [1]	Fees @ 25%	Total estimated fees
Fees earned to date			
Moral claims	$ 39,301,312	25%	$ 9,825,328
Economic claims	8,820,239	25%	2,205,060
Total fees earned to date pursuant to Class Counsel Fee order dated Nov 26/15 [2]			**12,030,388**
Class counsel fees paid to date			**10,802,872**
Total Class Counsel Fees owing as at May 31, 2018 (excluding taxes)			**$ 1,227,516**

[1] No fees on XL indemnity portion of distribution
[2] Excludes fees earned on WD payments as fees were paid directly by the WD Trustee.

CP DOCUMENT ORDER

15. We refer to the Twenty-Sixth Report of the Monitor dated June 8, 2017 for a summary of the CP Document Order. As of the date of this Report, the Monitor has provided monthly updates (for February 2017 to April 2018) to CP's attorneys as well as to the Class Counsel.

INTEREST TREATMENT

16. As of the date of this report, approximately $3.9 million has been earned on the Funds for Distribution since the effective date of the Amended Plan.

17. Further to our update in the Twenty-Seventh Report, the Monitor has continued its discussions with both the Federal and Provincial revenue agencies and provides the following update regarding the treatment of interest and tax reporting by the claimants:

- Revenu Quebec: Revenu Quebec has informed the Monitor that after further analysis, it is of the view that the Monitor must issue a single tax slip to each claimant only for the calendar year in which each claimant actually receives the interest and not for each calendar year that interest was earned. Thus, at the conclusion of the CCAA, when the Monitor distributes the

interest earned, it will issue a single tax slip to each claimant who receives more than $50 of interest;

- Canada Revenue Agency: to date, the Canada Revenue Agency ("CRA") has maintained its position that tax slips should be issued to all creditors whose *pari passu* share of the interest exceeds $50 in a given calendar year. As a result, based on tax advice received by the Monitor, a payment of $883k was made on March 1, 2018 to ensure that penalties are not charged to claimants on late payment of taxes relating to the 2016 tax year. CRA has confirmed to the Monitor that it is continuing to review the file and the Monitor's request that CRA harmonize their tax position with that of Revenu Quebec. The Monitor will provide an update in a future report.

18. The issuance of the tax slips can only occur once all claims have been settled and the final allocation of interest can be calculated. Based on the current information, the Monitor estimates that it will issue tax slips to at least an estimated 900 individuals and corporations in connection with interest earned.

CHAPTER 11

19. The Monitor refers to the Twenty-Seventh Report for a summary of various matters which have an impact on the Amended Plan both in terms of distribution and in respect of the overall administration and provides the following update from the Estate Representative:

- Proceedings under the Carmack Amendment: a CP motion to dismiss the case was granted in part. The WD Trustee has appealed that decision to the United States Court of Appeals for the Eighth Circuit. Briefing is complete, and oral argument was held. A decision is expected in mid-2018;
- Estate Representative's separate litigation against CP: The case is now in the discovery phase;
- Potential administrative/secured claims filed in the Chapter 11: these claims and their quantum continue to be contested by the Estate Representative and it is uncertain if these claims will be definitively determined by the end of the current extension period. Hearings are scheduled on the Wheeling claims on May 24 and 25, 2018, but those dates could be affected by rulings on certain interlocutory motions (when a decision will be rendered following the hearings, if any, cannot be determined at this time.). The Irving Railroads claims are awaiting decisions by the Bankruptcy Court, but those decisions are likely to be followed by a direct appeal to the United States Court of Appeals for the First Circuit on a remaining legal issue. The Monitor continues to maintain a $10 million reserve in connection with these claims.

ACTIVITIES OF THE MONITOR

20. The Monitor's activities have included the following:

- The Monitor has completed its review of Property and Economic Damage Claims including communicating with creditors and/or their representatives to obtain additional information required to review their claims and has resolved the remaining 14 contestations;
- The Monitor has issued the second and final interim dividend to 810 holders of Proven Claims in the category of Property and Economic Damages Claims and has responded to numerous inquiries from creditors regarding the calculation of their Property and Economic Damages Claims;
- The Monitor has resolved the remaining 4 contestations filed by holders of Bodily Injury and Moral Damage Claims and issued the final dividend in respect thereto;
- The Monitor has been in contact with the Province in connection with the analysis of the Final Claim and the Expense Provision;
- The Monitor has been in contact with representatives of the Quebec and Federal revenue agencies in connection with the treatment of interest owed to claimants;
- The Monitor has continued to provide monthly updates (for November, 2017 to April, 2018) to CP's attorneys as well as to Class Counsel, the whole pursuant to the CP Document Order (as more fully described in the Twenty-Sixth Report);
- The Monitor has continued to cooperate with the Estate Representative and his professionals and with Petitioner's legal counsel to keep apprised of the Chapter 11 proceedings of MMAR;
- The Monitor has maintained regular contact with the major stakeholders to seek their input and discuss various issues;
- The Monitor continues to post copies of Court materials filed in the CCAA and Chapter 11 Proceedings on its website;
- The Monitor has prepared and filed the Twenty-Eighth Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Extension

21. The Monitor is of the opinion that the Court should grant the extension request to at least December 14, 2018 in order to allow for the redistribution of the remaining Settlement Funds to

claimants including the reallocation of Economic Savings, the payment of interest and the advancement of various litigation in the Chapter 11.

B) Professional Fees

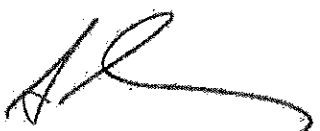
22. The Monitor supports the approval of professional fees for the period of December 1, 2017 to April 30, 2018, which fees are fair and reasonable and are secured by the Administration Charge.

C) Class Counsel Fees

23. The Monitor supports the approval of the further payment of $1,227,516 plus applicable sales taxes to Class Counsel.

Respectfully submitted at Montreal, this 7th day of June, 2018.

Richter Advisory Group Inc.
Monitor



Andrew Adessky, CPA, CA, MBA, CIRP, LIT

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 17

(Twenty-ninth report of the monitor)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS
No.: 450-11-000167-134

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

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.) a duly incorporated legal person having its principal place of business at 1981 McGill College, 12th Floor, in the city and district of Montreal, Quebec, H3A 0G6

Monitor

TWENTY-NINTH REPORT OF THE MONITOR
November 14, 2018

INTRODUCTION

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. ("MMAC") filed a Motion for the Issuance of an Initial Order pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "CCAA"). On August 8, 2013, the Honourable Martin Castonguay, J.S.C., issued an initial order (the "Initial Order") which *inter alia* appointed Richter Advisory Group Inc. as the Monitor in these CCAA proceedings (the "Monitor"). An initial stay of proceedings was ordered until September 6, 2013 ("Stay Period").

2. The CCAA proceedings have since been supervised by the Honourable Gaétan Dumas, J.S.C. and the Stay Period has been extended eighteen times with the most recent extension having been granted to December 14, 2018.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.

4. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in MMAC's Plan of Compromise and Arrangement filed on June 8, 2015 (the "Amended Plan"). All amounts reflected in this report are stated in Canadian currency unless otherwise noted.

5. On November 14, 2018, the Petitioner filed a Motion for a Nineteenth Order Extending the Stay Period for an increase in the Administration Charge and for Approval of Professional Fees ("Nineteenth Extension and Fee Motion"). The Nineteenth Extension and Fee Motion will be heard on November 21, 2018.

6. It is our understanding that Class Counsel will file an Application for a direction of payment to counsel for the Court-Appointed Representatives of the Class Members ("Class Counsel Motion"). The Class Counsel Motion will be heard on November 21, 2018.

7. The purpose of this Twenty-Ninth Report of the Monitor is to inform the Court on the following subjects:

- Claims Review and Status of Distributions;
- Extension Request;
- Approval of Professional Fees and Increase in Administration Charge;
- Class Counsel Motion;
- CP Document Order;
- Interest Treatment;
- Chapter 11;
- Activities of the Monitor;
- Recommendations of the Monitor.

CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS

8. We summarize the status of the distributions by category as follows:

Montreal, Maine & Atlantic Canada Co.
Summary of Distributions
As of October 31, 2018

	Distribution Paid	Distribution Pending	Total
Wrongful Death Claims	$ 121,561,892	$ -	$ 121,561,892
Bodily Injury and Moral Damage Claims	51,137,401	-	51,137,401
Property and Economic Damages Claims	25,634,715	-	25,634,715
Government Claims	103,460,319	98,060,399	201,520,718
Subrogated Insurer Claims	17,641,913	-	17,641,913
	$ 319,436,240	$ 98,060,399	$ 417,496,639

- **Distribution Paid:** this represents amounts paid to date prior to the deduction of fees and disbursements that were paid by claimants to their attorneys. In total, approximately $100,000 of the distribution payments have either not yet been released (due to missing information), have been returned because some claimants have moved and not notified the Monitor of their new address or have not yet been cashed. The Monitor will continue to try and obtain the necessary information to ensure the payments are received/deposited, failing which, the funds will be treated in accordance with Section 8.8 of the Amended Plan and donated to charity;
- **Distribution Pending:** this represents the balance of the distribution which would be payable to the Province of Quebec ("Province") in respect of their original claim of $409 million filed in June 2014 ("Original Claim"). As noted in prior reports including the Twenty-Eighth Report to Court dated June 7, 2018 ("Twenty-Eighth Report), the amended and final claim submitted by the Province on December 1, 2017 (Final Claim) was approximately $340.7 million including a provision of $80 million for future expenses ("Expense Provision").

  The Amended Plan was based upon the Original Claim of the Province and did not foresee the possibility that the actual costs of the Province would be lower. The Monitor has had discussions with the Province regarding the implications of this lower claim and is considering next steps should an agreed upon solution not be reached. Discussions have been delayed due to the recent election but in the interim the Province continues to work on updating the Expense Provision and the Monitor is awaiting a further update prior to completing its review of the Province's claim.

  In addition to the funds being held for the Province, the Monitor continues to hold approximately $17 million, which is primarily composed of the $10 million reserve for litigation regarding

various administrative claims in the Chapter 11 (see prior reports of the Monitor), approximately $4.8 million of interest earned on the funds held for distribution (which amount includes the reimbursement of $0.8 million of taxes by the Canada Revenue Agency - see below) which will be distributed at the end of the CCAA proceedings and other reserves.

EXTENSION REQUEST

9. The Nineteenth Extension and Fee Motion seeks an extension of the Stay Period to June 19, 2019, to allow for the finalization of the treatment of the Final Claim of the Province, the advancement of various litigation in the Chapter 11 (as discussed below) and the eventual allocation and distribution of interest income (as discussed below) prior to the conclusion of the CCAA.

APPROVAL OF PROFESSIONAL FEES AND INCREASE IN ADMINISTRATION CHARGE

10. The Nineteenth Extension and Fee Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of May 1, 2018 to October 31, 2018 which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co.
Administration Charge Summary
As of October 31, 2018

	Fees / Disbursements	Sales Taxes	Total
Administration Charge [1]	$ 13 500 000	$ 1 998 000	$ 15 498 000
Accrued Professional Fees as of April 30, 2018	(13 369 104)	(1 978 143)	(15 347 247)
Balance of Administration Charge to implement the Plan	130 896	19 857	150 753
Richter	195 278	29 243	224 521
Woods	22 560	3 378	25 938
Gowling WLG	36 015	5 344	41 360
Verrill Dana [2]	1 681	-	1 681
	255 534	37 966	293 500
Balance of Administration Charge to complete the CCAA [3]	(124 638)	(18 109)	(142 747)

[1] As per the Amended Plan of Compromise and Arrangement dated June 8, 2015 and Order dated March 3, 2017.

[2] US counsel to the Monitor, no sales taxes are charged.

[3] In addition, the Monitor and its counsel still retain a $150,000 retainer which will be applied to their final invoices.

As noted above, and as predicted in the Twenty-Eighth Report, the Administration Charge has now been fully utilized and there is a need to seek a further increase both to cover costs incurred to October 31, 2018 as well as for ongoing work to complete the administration of the CCAA, which work can be summarized as follows:

- Ongoing analysis and communications with the Province regarding the Final Claim and Expense Provision;
- Allocation and distribution of interest income to the claimants including preparation and issuance of Federal T5 slips and Provincial Relevé 3 slips (approximately 3,200), communications with the Federal and Provincial revenue agencies and responding to claimant inquiries;
- Potential allocation of any reserve funds to the extent they are not required;
- Ongoing communications with claimants regarding queries they may have;
- Monitoring proceedings in the Chapter 11 case including communications with the Estate Representative and resulting implications in terms of the outcome of various litigation;
- Other administrative matters.

Based on the foregoing, an increase to the Administration Charge of $650,000 plus taxes is being sought to cover amounts currently owing as well as for the work required to complete the administration of the CCAA.

CLASS COUNSEL MOTION

11. Pursuant to the Class Counsel Motion, Class Counsel will be seeking the approval of a payment of approximately $0.8 million of accrued fees as of October 31, 2018, summarized as follows:

	Distribution to Class Members on which class counsel fees were calculated[1]	Fees @ 25%	Total estimated fees
Fees earned to date			
Moral claims	$ 42,575,533	25%	$ 10,643,883
Economic claims	8,877,080	25%	2,210,547
Total fees earned to date pursuant to Class Counsel Fee order dated Nov 26/15 [2]			**12,854,430**
Class counsel fees paid to date			**12,030,516**
Total Class Counsel Fees owing as at October 31, 2018 (excluding taxes)			**$ 823,914**

[1] No fees on XL indemnity portion of distribution
[2] Excludes fees earned on WD payments as fees were paid directly by the WD Trustee.

CP DOCUMENT ORDER

12. We refer to the Twenty-Sixth Report of the Monitor dated June 8, 2017 for a summary of the CP Document Order. As of the date of this Report, the Monitor has provided monthly updates (for February 2017 to October 2018) to CP's attorneys as well as to the Class Counsel.

INTEREST TREATMENT

13. As of the date of this report, approximately $4.8 million has been earned on the Funds for Distribution since the effective date of the Amended Plan ("Interest").

14. Further to our update in the Twenty-Eighth Report, the Monitor provides the following update regarding the fiscal treatment of the Interest and of the income tax reporting by the claimants:

    - Revenu Quebec: Revenu Quebec has agreed that at the conclusion of the CCAA, after the Monitor has distributed the Interest the Monitor will issue a Relevé 3 to each claimant who has received $50 or more of Interest;

    - Canada Revenue Agency ("CRA"): In July 2018, CRA notified the Monitor that it will adopt the same position as Revenu Quebec. CRA has also agreed to refund the Monitor an amount of approximately $883k of income tax that was paid by the Monitor on March 1, 2018 while CRA was reviewing its position. That payment was made to avoid any penalties being charged to the funds held for distribution.

15. The issuance of the tax slips (see above) can only occur once all claims have been finally determined and the final allocation of interest can be calculated. Based on the information currently available, the Monitor estimates that it will need to issue tax slips (see above) to at least 3,200 individuals and corporations.

CHAPTER 11

16. The Monitor refers to the Twenty-Eighth Report for a summary of various matters which have an impact on the Amended Plan both in terms of distribution and in respect of the overall administration and provides the following update from the Estate Representative:

    - Proceedings under the Carmack Amendment: a CP motion to dismiss the case was granted in part. The WD Trustee appealed that decision to the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit issued a decision dated September 14, 2018 which reversed the lower court and reinstated the case. CP has moved for a rehearing *en banc* but the court has not yet ruled on that motion;

- Estate Representative's separate litigation against CP: There has been no further update since our Twenty-Eighth Report. The case is in the discovery phase;
- Potential administrative/secured claims filed in the Chapter 11: these claims and their quantum continue to be contested by the Estate Representative and it is uncertain if these claims will be definitively determined by the end of the requested extension period. Hearings were held on the Wheeling claims on May 24 and 25, 2018, and the Bankruptcy Court issued a decision that Wheeling did not have a security interest in any settlement proceeds. Wheeling has appealed the decision. The Irving Railroads claims are the subject of a joint request for a direct appeal to the United States Court of Appeals for the First Circuit on a remaining legal issue. A decision on that request is pending. The Monitor continues to maintain a $10 million reserve in connection with these claims.

ACTIVITIES OF THE MONITOR

17. The Monitor's activities have included the following:

- The Monitor has issued supplemental distributions to 4,445 claimants including review of calculations with both Class Counsel and their representatives as well as responding to queries from claimants with respect to the supplemental distribution;
- The Monitor has been in contact with the Province in connection with the analysis of the Final Claim and the Expense Provision;
- The Monitor has been in contact with representatives of the Federal and Provincial revenue agencies in connection with the treatment of interest owed to claimants;
- The Monitor has continued to provide monthly updates (for May, 2018 to October, 2018) to CP's attorneys as well as to Class Counsel, the whole pursuant to the CP Document Order (as more fully described in the Twenty-Sixth Report dated June 8, 2017);
- The Monitor has continued to cooperate with the Estate Representative and his professionals and with Petitioner's legal counsel to keep apprised of the Chapter 11 proceedings of MMAR;
- The Monitor has maintained regular contact with the major stakeholders to seek their input and discuss various issues;
- The Monitor continues to post copies of Court materials filed in the CCAA and Chapter 11 Proceedings on its website;
- The Monitor has prepared and filed the Twenty-Ninth Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Extension

18. The Monitor is of the opinion that the Court should grant the extension request to at least June 19, 2019 in order to allow for the final review and treatment of the claim of the Province, the redistribution of the remaining Settlement Funds to claimants, the payment of interest and the advancement of various litigation in the Chapter 11.

B) Professional Fees and Increase in Administration Charge

19. The Monitor supports the approval of the professional fees for the period of May 1, 2018 to October 31, 2018, which fees are fair and reasonable and the increase in the Administration Charge to enable the completion of the administration and the full implementation of the Amended Plan under the CCAA.

C) Class Counsel Fees

20. The Monitor supports the approval of the further payment of $823,914 plus applicable sales taxes to Class Counsel.

Respectfully submitted at Montreal, this 14th day of November, 2018.

Richter Advisory Group Inc.
Monitor

Andrew Adessky, CPA, CA, MBA, CIRP, LIT

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 18

(Thirtieth report of the monitor)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS
No.: 450-11-000167-134

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

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.) a duly incorporated legal person having its principal place of business at 1981 McGill College, 12th Floor, in the city and district of Montreal, Quebec, H3A 0G6

Monitor

THIRTIETH REPORT OF THE MONITOR
June 4, 2019

INTRODUCTION

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. ("MMAC") filed a Motion for the Issuance of an Initial Order pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "CCAA"). On August 8, 2013, the Honourable Martin Castonguay, J.S.C., issued an initial order (the "Initial Order") which *inter alia* appointed Richter Advisory Group Inc. as the Monitor in these CCAA proceedings (the "Monitor"). An initial stay of proceedings was ordered until September 6, 2013 ("Stay Period").

2. The CCAA proceedings have since been supervised by the Honourable Gaétan Dumas, J.S.C. and the Stay Period has been extended nineteen times with the most recent extension having been granted to June 19, 2019.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.

4. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in MMAC's Plan of Compromise and Arrangement filed on June 8, 2015 (the "Amended Plan"). All amounts reflected in this report are stated in Canadian currency unless otherwise noted.

5. On June 4, 2019, the Petitioner filed a Motion for a Twentieth Order Extending the Stay Period and for Approval of Professional Fees ("Twentieth Extension and Fee Motion"). The Twentieth Extension and Fee Motion will be heard on June 17, 2019.

6. The purpose of this Thirtieth Report of the Monitor is to inform the Court on the following subjects:

- Claims Review and Status of Distributions;
- Extension Request;
- Approval of Professional Fees;
- CP Document Order;
- Interest Treatment;
- Chapter 11;
- Activities of the Monitor;
- Recommendations of the Monitor.

CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS

7. We summarize the status of the distributions by category as follows:

Montreal, Maine & Atlantic Canada Co. Summary of Distributions As of May 31, 2019			
	Distribution Paid	Distribution Pending	Total
Wrongful Death Claims	$ 121,561,892	$ -	$121,561,892
Bodily Injury and Moral Damage Claims	51,137,401	-	51,137,401
Property and Economic Damages Claims	25,634,715	-	25,634,715
Government Claims	103,460,319	98,060,399	201,520,718
Subrogated Insurer Claims	17,641,913	-	17,641,913
	$ 319,436,240	$98,060,399	$417,496,639

- **Distribution Paid:** this represents amounts paid to date prior to the deduction of fees and disbursements that were paid by claimants to their attorneys. In total, approximately $46,000 of the distribution payments have either not yet been released (due to missing information), have been returned because some claimants have moved and not notified the Monitor of their new address or have not yet been cashed. The Monitor will continue to try and obtain the necessary information to ensure the payments are received/deposited, failing which, the funds will be treated in accordance with Section 8.8 of the Amended Plan and donated to charity;

- **Distribution Pending:** this represents the balance of the distribution which would be payable to the Province of Quebec ("Province") in respect of their original claim of $409 million filed in June 2014 ("Original Claim"). As noted in prior reports including the Twenty-Eighth Report to Court dated June 7, 2018 ("Twenty-Eighth Report), the amended and final claim submitted by the Province on December 1, 2017 (Final Claim) was approximately $340.7 million including a provision of $80 million for future expenses ("Expense Provision").

  The Amended Plan was based upon the Original Claim of the Province and did not foresee the possibility that the actual costs of the Province would be lower. The Monitor is continuing to have discussions with the Province regarding the implications of this lower claim and is considering next steps should an agreed upon solution not be reached. The Province has advised that it is working on updating its actual expenses through March 31, 2019 and will then update its Expense Provision. The Province has indicated that a full updated provision may not be available before September 2019. Once this information is received, the Monitor will work with the Province to determine the next steps. A full review of the Province's claim will only be performed once the claim amount is finalized.

  In addition to the funds being held for the Province, the Monitor continues to hold approximately $17 million, which is primarily composed of the $10 million reserve for litigation regarding various administrative claims in the Chapter 11 (see prior reports of the Monitor), approximately

$5.9 million of interest earned on the funds held for distribution (which amount includes the reimbursement of $0.9 million of taxes by the Canada Revenue Agency in May 29,2019) which will be distributed at the end of the CCAA proceedings and other reserves.

EXTENSION REQUEST

8. The Twentieth Extension and Fee Motion seeks an extension of the Stay Period to December 12, 2019, to allow for the finalization of the treatment of the Final Claim of the Province, the advancement of various litigation in the Chapter 11 (as discussed below) and the eventual allocation and distribution of interest income (as discussed below) prior to the conclusion of the CCAA.

APPROVAL OF PROFESSIONAL FEES

9. The Twentieth Extension and Fee Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of November 1, 2018 to May 31, 2019 which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co.
Administration Charge Summary
As of May 31, 2019

	Fees / Disbursements	Sales Taxes	Total
Administration Charge [1]	$ 14,150,000	$ 2,096,000	$ 16,246,000
Accrued Professional Fees as of October 31, 2018	(13,624,638)	(2,016,108)	(15,640,746)
Balance of Administration Charge to implement the Plan	525,362	79,892	605,254
Richter	37,326	5,590	42,915
Woods	3,460	518	3,978
Gowling WLG	11,321	1,695	13,015
	52,106	7,802	59,909
Balance of Administration Charge to complete the CCAA [2]	$ 473,256	$ 72,089	$ 545,345

[1] As per the Amended Plan of Compromise and Arrangement dated June 8, 2015, the Order dated March 3, 2017 and the Order dated November 21, 2018.

[2] In addition, the Monitor and its counsel still retain a $150,000 retainer which will be applied to their final invoices.

CP DOCUMENT ORDER

10. We refer to the Twenty-Sixth Report of the Monitor dated June 8, 2017 for a summary of the CP Document Order. As of the date of this Report, the Monitor has provided monthly updates (for February 2017 to April 2019) to CP's attorneys as well as to the Class Counsel.

INTEREST TREATMENT

11. As of the date of this report, approximately $5.9 million has been earned on the Funds for Distribution since the effective date of the Amended Plan ("Interest").

12. Further to our update in the Twenty-Ninth Report dated November 14, 2018, the Monitor will ultimately issue provincial and federal tax slips to each claimant who will receive $50 or more of interest.

13. The issuance of the tax slips can only occur once all claims have been finally determined and the final allocation of interest can be calculated. Based on the information currently available, the Monitor estimates that it will need to issue tax slips (see above) to at least 3,200 individuals and corporations.

CHAPTER 11

14. The Monitor provides the following update from the Estate Representative regarding various matters which have an impact on the Amended Plan in respect of the timing and distribution of certain funds and the overall administration of the CCAA:

    - Proceedings under the Carmack Amendment: a CP motion to dismiss the case was granted in part. The WD Trustee appealed that decision to the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit issued a decision dated September 14, 2018 which reversed the lower court and reinstated the case. CP has moved for a rehearing *en banc* but the court has not yet ruled on that motion;
    - Estate Representative's separate litigation against CP: There has been no further update since our Twenty-Eighth Report. The case is in the discovery phase;
    - Potential administrative/secured claims filed in the Chapter 11: these claims and their quantum continue to be contested by the Estate Representative and it is uncertain if these claims will be definitively determined by the end of the requested extension period. Hearings were held on the Wheeling claims on May 24 and 25, 2018, and the Bankruptcy Court issued a decision that Wheeling did not have a security interest in any settlement proceeds. Wheeling has appealed the decision. The Irving Railroads claims are the subject of a joint request for a direct appeal to the United States Court of Appeals for the First Circuit on a remaining legal issue. A decision

on that request is pending. The Monitor continues to maintain a $10 million reserve in connection with these claims.

ACTIVITIES OF THE MONITOR

15. The Monitor's activities have included the following:

- The Monitor has issued distributions to various claimants as well as responding to queries from claimants with respect to the distributions;
- The Monitor has been in contact with the Province in connection with the analysis of the Final Claim and the Expense Provision;
- The Monitor has been in contact with representatives of the Federal revenue agency in connection with the treatment of interest owed to claimants and has successfully recovered approximately $900K of taxes paid to the Federal revenue agency on behalf of the claimants;
- The Monitor has continued to provide monthly updates (for November 2018 to April 2019) to CP's attorneys as well as to Class Counsel, the whole pursuant to the CP Document Order (as more fully described in the Twenty-Sixth Report dated June 8, 2017);
- The Monitor has continued to cooperate with the Estate Representative and his professionals and with Petitioner's legal counsel to keep apprised of the Chapter 11 proceedings of MMAR;
- The Monitor has maintained regular contact with the major stakeholders to seek their input and discuss various issues;
- The Monitor continues to post copies of Court materials filed in the CCAA and Chapter 11 Proceedings on its website;
- The Monitor has prepared and filed the Thirtieth Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Extension

16. The Monitor is of the opinion that the Court should grant the extension request to December 12, 2019 in order to allow additional time for the resolution and finalization of the claim of the Province, the redistribution of the remaining Settlement Funds to claimants, the payment of interest and the advancement of various litigation in the Chapter 11.

B) Professional Fees

17. The Monitor supports the approval of the professional fees for the period of November 1, 2018 to May 31, 2019, which fees are fair and reasonable.

Respectfully submitted at Montreal, this 4th day of June, 2019.

Richter Advisory Group Inc.
Monitor

Andrew Adessky, CPA, CA, MBA, CIRP, LIT

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 19

(Thirty-first report of the monitor)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS
No.: 450-11-000167-134

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

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.) a duly incorporated legal person having its principal place of business at 1981 McGill College, 12th Floor, in the city and district of Montreal, Quebec, H3A 0G6

Monitor

THIRTY-FIRST REPORT OF THE MONITOR
November 25, 2019

INTRODUCTION

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. ("MMAC") filed a Motion for the Issuance of an Initial Order pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "CCAA"). On August 8, 2013, the Honourable Martin Castonguay, J.S.C., issued an initial order (the "Initial Order") which *inter alia* appointed Richter Advisory Group Inc. as the Monitor in these CCAA proceedings (the "Monitor"). An initial stay of proceedings was ordered until September 6, 2013 ("Stay Period").

2. The CCAA proceedings have since been supervised by the Honourable Gaétan Dumas, J.S.C. and the Stay Period has been extended twenty times with the most recent extension having been granted to December 12, 2019.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.

4. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in MMAC's Plan of Compromise and Arrangement filed on June 8, 2015 (the "Amended Plan"). All amounts reflected in this report are stated in Canadian currency unless otherwise noted.

5. On November 25, 2019, the Petitioner filed a Motion for a Twenty-First Order Extending the Stay Period and for Approval of Professional Fees ("Twenty-First Extension and Fee Motion"). The Twenty-First Extension and Fee Motion will be heard on December 2, 2019, 2019.

6. The purpose of this Thirty-First Report of the Monitor is to inform the Court on the following subjects:

- Claims Review and Status of Distributions;
- Extension Request;
- Approval of Professional Fees;
- CP Document Order;
- Interest Treatment;
- Chapter 11;
- Activities of the Monitor;
- Recommendations of the Monitor.

CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS

7. We summarize the status of the distributions by category as follows:

Montreal, Maine & Atlantic Canada Co. Summary of Distributions As of October 31, 2019			
	Distribution Paid	Distribution Pending	Total
Wrongful Death Claims	$ 121,561,892	$ -	$121,561,892
Bodily Injury and Moral Damage Claims	51,137,401	-	51,137,401
Property and Economic Damages Claims	25,634,715	-	25,634,715
Government Claims	103,460,319	98,060,399	201,520,718
Subrogated Insurer Claims	17,641,913	-	17,641,913
	$ 319,436,240	$98,060,399	$417,496,639

- **Distribution Paid:** this represents amounts paid to date prior to the deduction of fees and disbursements that were paid by claimants to their attorneys. In total, approximately $33,000 of the distribution payments have either not yet been released (due to missing information), have been returned because some claimants have moved and not notified the Monitor of their new address or have not yet been cashed. The Monitor will continue to try and obtain the necessary information to ensure the payments are received/deposited, failing which, the funds will be treated in accordance with Section 8.8 of the Amended Plan and donated to charity;
- **Distribution Pending:** this represents:
  - the balance of the distribution payable to the Province of Quebec ("Province") in respect of their original claim of $409 million filed in June 2014 ("Original Claim"). As noted in prior reports including the Twenty-Eighth Report to Court dated June 7, 2018 ("Twenty-Eighth Report), the amended and final claim submitted by the Province on December 1, 2017 (Final Claim) was approximately $340.7 million including a provision of $80 million for future expenses ("Expense Provision").
  - The Amended Plan was based upon the Original Claim of the Province and did not foresee the possibility that the actual costs of the Province would be significantly lower. The Monitor and the Province have scheduled a meeting for November 25, 2019 to consider next steps given the lower claim amount and will provide an update in its next report. A full review of the Province's claim will only be performed once the claim amount is finalized.
  - Approximately $18.0 million composed of the $10 million reserve for litigation regarding various administrative claims in the Chapter 11 (see prior reports of the Monitor), approximately $7.0 million of interest earned on the funds held for distribution which will be distributed at the end of the CCAA proceedings and approximately $1.0 million of other reserves.

EXTENSION REQUEST

8. The Twenty-First Extension and Fee Motion seeks an extension of the Stay Period to June 12, 2020, to allow for the finalization of the treatment of the Final Claim of the Province, the advancement of various litigation in the Chapter 11 (as discussed below) and the eventual allocation and distribution of interest income (as discussed below) prior to the conclusion of the CCAA.

APPROVAL OF PROFESSIONAL FEES

9. The Twenty-First Extension and Fee Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of June 1, 2019 to October 31, 2019 which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co.
Administration Charge Summary
As of October 31, 2019

	Fees / Disbursements	Sales Taxes	Total
Administration Charge [1]	$ 14,150,000	$ 2,096,000	$ 16,246,000
Accrued Professional Fees as of May 31, 2019	(13,676,744)	(2,023,911)	(15,700,655)
Balance of Administration Charge to implement the Plan	473,256	72,089	545,345
Richter	14,472	2,167	16,639
Woods	1,914	287	2,200
Gowling WLG	4,908	735	5,643
	21,293	3,189	24,482
Balance of Administration Charge to complete the CCAA [2]	$ 451,962	$ 68,901	$ 520,863

[1] As per the Amended Plan of Compromise and Arrangement dated June 8, 2015, the Order dated March 3, 2017 and the Order dated November 21, 2018.

[2] In addition, the Monitor and its counsel still retain a $150,000 retainer which will be applied to their final invoices.

CP DOCUMENT ORDER

10. We refer to the Twenty-Sixth Report of the Monitor dated June 8, 2017 for a summary of the CP Document Order. As of the date of this Report, the Monitor has provided monthly updates (for February 2017 to October 2019) to CP's attorneys as well as to the Class Counsel.

INTEREST TREATMENT

11. As of the date of this report, approximately $7.0 million has been earned on the Funds for Distribution since the effective date of the Amended Plan ("Interest").

12. Further to our update in the Twenty-Ninth Report dated November 14, 2018, the Monitor will ultimately issue provincial and federal tax slips to each claimant who will receive $50 or more of interest.

13. The issuance of the tax slips can only occur once all claims have been finally determined and the final allocation of interest can be calculated. Based on the information currently available, the Monitor estimates that it will need to issue tax slips (see above) to at least 3,200 individuals and corporations.

CHAPTER 11

The Monitor provides the following update from the Estate Representative regarding various matters which have an impact on the Amended Plan in respect of the timing and distribution of certain funds and the overall administration of the CCAA:

- Proceedings under the Carmack Amendment: a CP motion to dismiss the case was granted in part. The WD Trustee appealed that decision to the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit issued a decision dated September 14, 2018 which reversed the lower court and reinstated the case. CP moved for a rehearing *en banc* and the Eighth Circuit denied that motion. CP also petitioned for a *writ of certiorari* from the Supreme Court of the United States and that petition was denied. The case was remanded to the United States District Court for the District of North Dakota and is proceeding in that court. The case is in the discovery phase, with a scheduled trial in August 2020.;
- Estate Representative's separate litigation against CP: There has been no further update since our Twenty-Ninth Report dated November 14, 2018. The case remains in the discovery phase;
- Potential administrative/secured claims filed in the Chapter 11: these claims and their quantum continue to be contested by the Estate Representative and it is uncertain if these claims will be definitively determined by the end of the requested extension period. Hearings were held on

the Wheeling claims on May 24 and 25, 2018, and the Bankruptcy Court issued a decision that Wheeling did not have a security interest in any settlement proceeds. Wheeling appealed the decision to the United States District Court which affirmed the Bankruptcy Court's decision. Wheeling has since appealed to the United States Court of Appeals for the First Circuit, and that appeal is currently being briefed for argument. No oral argument date has been set at this juncture. The Irving Railroads claims are the subject of a direct appeal to the United States Court of Appeals for the First Circuit on a remaining legal issue. That appeal has been briefed and argued, and the parties await a decision from the First Circuit. The Monitor continues to maintain a $10 million reserve in connection with these claims.

ACTIVITIES OF THE MONITOR

14. The Monitor's activities have included the following:

- The Monitor has issued distributions to various claimants as well as responding to queries from claimants with respect to the distributions;
- The Monitor has been in contact with the Province in connection with the analysis of the Final Claim and the Expense Provision;
- The Monitor has continued to provide monthly updates (for May 2019 to October 2019) to CP's attorneys as well as to Class Counsel, the whole pursuant to the CP Document Order (as more fully described in the Twenty-Sixth Report dated June 8, 2017);
- The Monitor has continued to cooperate with the Estate Representative and his professionals and with Petitioner's legal counsel to keep apprised of the Chapter 11 proceedings of MMAR;
- The Monitor has maintained regular contact with the major stakeholders to seek their input and discuss various issues;
- The Monitor continues to post copies of Court materials filed in the CCAA and Chapter 11 Proceedings on its website;
- The Monitor has prepared and filed the Thirty-First Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Extension

15. The Monitor is of the opinion that the Court should grant the extension request to June 12, 2020 in order to allow additional time for the resolution and finalization of the claim of the Province, the

redistribution of the remaining Settlement Funds to claimants, the payment of interest and the advancement of various litigation in the Chapter 11.

B) Professional Fees

16. The Monitor supports the approval of the professional fees for the period of June 1, 2019 to October 31, 2019, which fees are fair and reasonable.

Respectfully submitted at Montreal, this 25th day of November, 2019.

Richter Advisory Group Inc.
Monitor

Andrew Adessky, CPA, CA, MBA, CIRP, LIT

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

ANNEXE 20

(Thirty-second report of the monitor)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF ST-FRANÇOIS
No.: 450-11-000167-134

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

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.) a duly incorporated legal person having its principal place of business at 1981 McGill College, 12th Floor, in the city and district of Montreal, Quebec, H3A 0G6

Monitor

THIRTY-SECOND REPORT OF THE MONITOR
June 4, 2020

INTRODUCTION

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. ("MMAC") filed a Motion for the Issuance of an Initial Order pursuant to Section 11 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, C-36, as amended (the "CCAA"). On August 8, 2013, the Honourable Martin Castonguay, J.S.C., issued an initial order (the "Initial Order") which *inter alia* appointed Richter Advisory Group Inc. as the Monitor in these CCAA proceedings (the "Monitor"). An initial stay of proceedings was ordered until September 6, 2013 ("Stay Period").

2. The CCAA proceedings have since been supervised by the Honourable Gaétan Dumas, J.S.C. and the Stay Period has been extended twenty-one times with the most recent extension having been granted to June 12, 2020.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.

4. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in MMAC's Plan of Compromise and Arrangement filed on June 8, 2015 (the "Amended Plan"). All amounts reflected in this report are stated in Canadian currency unless otherwise noted.

5. On June 4, 2020, the Petitioner filed a Motion for a Twenty-Second Order Extending the Stay Period and for Approval of Professional Fees ("Twenty-Second Extension and Fee Motion").

6. The purpose of this Thirty-Second Report of the Monitor is to inform the Court on the following subjects:

- Claims Review and Status of Distributions;
- Extension Request;
- Approval of Professional Fees;
- CP Document Order;
- Interest Treatment;
- Chapter 11;
- Activities of the Monitor;
- Recommendations of the Monitor.

CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS

7. We summarize the status of the distributions by category as follows:

Montreal, Maine & Atlantic Canada Co.
Summary of Distributions
As of April 30, 2020

	Distribution Paid	Distribution Pending	Total	
Wrongful Death Claims	$ 121 561 892	$ -	$121 561 892	
Bodily Injury and Moral Damage Claims	51 137 401	-	51 137 401	
Property and Economic Damages Claims	25 634 715	-	25 634 715	
Government Claims	103 460 319	98 060 399	201 520 718	
Subrogated Insurer Claims	17 641 913	-	17 641 913	
	$ 319 436 240	$98 060 399	$417 496 639	[1]

[1] Excluded from this amount is a $10 million reserve for litigation of claims under Chapter 11, $8.2 million of accumulated interest earned and a $1 million reserve for other items.

- **Distribution Paid:**
  - this represents amounts paid to date prior to the deduction of fees and disbursements that were paid by claimants to their attorneys. In total, approximately $32,000 of the distribution payments have either not yet been released (due to missing information), have been returned because some claimants have moved and not notified the Monitor of their new address or have not yet been cashed. The Monitor will continue to try and obtain the necessary information to ensure the payments are received/deposited, failing which, the funds will be treated in accordance with Section 8.8 of the Amended Plan and donated to charity;
- **Distribution Pending:** this represents:
  - the balance of the distribution payable to the Province of Quebec ("Province") in respect of their original claim of $409 million filed in June 2014 ("Original Claim"). As noted in prior reports including the Twenty-Eighth Report to Court dated June 7, 2018 ("Twenty-Eighth Report), the amended and final claim submitted by the Province on December 1, 2017 (Final Claim) was approximately $340.7 million including a provision of $80 million for future expenses ("Expense Provision").
  - The Amended Plan was based upon the Original Claim of the Province and did not foresee the possibility that the actual costs of the Province would be significantly lower. Since our Thirty-First Report dated November 25, 2019, the Monitor and the Province have had numerous discussions regarding next steps. The Province was considering various options which it intended to discuss with the Monitor prior to the expiration of the current stay. However, due to the impact of the COVID-19 pandemic, the Province has been unable to provide its proposed resolution. The Monitor is continuing to follow up with the Province to

resolve this. A full review of the Province's claim will only be performed once the claim amount is finalized.

- **Other:**
  - Approximately $19.2 million composed of the $10 million reserve for litigation regarding various administrative claims in the Chapter 11 (see prior reports of the Monitor), approximately $8.2 million of interest earned on the funds held for distribution which will be distributed at the end of the CCAA proceedings and approximately $1.0 million of other reserves.

EXTENSION REQUEST

8. The Twenty-Second Extension and Fee Motion seeks an extension of the Stay Period to December 11, 2020, to allow for the finalization of the treatment of the Final Claim of the Province, the advancement of various litigation in the Chapter 11 (as discussed below) and the eventual allocation and distribution of interest income (as discussed below) prior to the conclusion of the CCAA.

APPROVAL OF PROFESSIONAL FEES

9. The Twenty-Second Extension and Fee Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of November 1, 2019 to May 31, 2020, which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co. Administration Charge Summary As of May 31, 2020	Fees / Disbursements	Sales Taxes	Total
Administration Charge [1]	$ 14,150,000	$ 2,096,000	$ 16,246,000
Accrued Professional Fees as of October 31, 2019	(13,698,038)	(2,027,099)	(15,725,137)
Balance of Administration Charge to implement the Plan	451,962	68,901	520,863
Richter	42,800	6,409	49,210
Woods	6,470	969	7,439
Gowling WLG	6,429	963	7,391
	55,699	8,341	64,040
Balance of Administration Charge to complete the CCAA [2]	$ 396,264	$ 60,560	$ 456,823

[1] As per the Amended Plan of Compromise and Arrangement dated June 8, 2015, the Order dated March 3, 2017 and the Order dated November 21, 2018.

[2] In addition, the Monitor and its counsel still retain a $150,000 retainer which will be applied to their final invoices.

CP DOCUMENT ORDER

10. We refer to the Twenty-Sixth Report of the Monitor dated June 8, 2017 for a summary of the CP Document Order. As of the date of this Report, the Monitor has provided monthly updates (for February 2017 to April 2020) to CP's attorneys as well as to the Class Counsel.

INTEREST TREATMENT

11. As of the date of this report, approximately $8.2 million has been earned on the Funds for Distribution since the effective date of the Amended Plan ("Interest").

12. Further to our update in the Twenty-Ninth Report dated November 14, 2018, the Monitor will ultimately issue provincial and federal tax slips to each claimant who will receive $50 or more of interest.

13. The issuance of the tax slips can only occur once all claims have been finally determined and the final allocation of interest can be calculated. Based on the information currently available, the Monitor estimates that it will need to issue tax slips (see above) to at least 4,400 individuals and corporations.

CHAPTER 11

14. The Monitor provides the following update from the Estate Representative regarding various matters which have an impact on the Amended Plan in respect of the timing and distribution of certain funds and the overall administration of the CCAA:

- Proceedings under the Carmack Amendment: a CP motion to dismiss the case was granted in part. The WD Trustee appealed that decision to the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit issued a decision dated September 14, 2018 which reversed the lower court and reinstated the case. CP moved for a rehearing *en banc* and the Eighth Circuit denied that motion. CP also petitioned for a *writ of certiorari* from the Supreme Court of the United States and that petition was denied. The case was remanded to the United States District Court for the District of North Dakota and is proceeding in that court. The case is in the discovery phase, with a scheduled trial in November 2020 (extended due to COVID-19 concerns). The parties have also both filed motions for summary judgment. The Estate Representative's motion is fully briefed and submitted; CP's motion is still in process, with the Estate Representative's response due on June 5, 2020, and CP's final response due thereafter;
- Estate Representative's separate litigation against CP: The case remains in the discovery phase; the discovery phase has been extended due to COVID-19 concerns, likely extending the eventual trial date as well;
- Potential administrative/secured claims filed in the Chapter 11: these claims and their quantum continue to be contested by the Estate Representative and it is uncertain if these claims will be definitively determined by the end of the requested extension period. Hearings were held on the Wheeling claims on May 24 and 25, 2018, and the Bankruptcy Court issued a decision that Wheeling did not have a security interest in any settlement proceeds. Wheeling appealed the decision to the United States District Court which affirmed the Bankruptcy Court's decision. Wheeling then appealed to the United States Court of Appeals for the First Circuit ("First Circuit"). The First Circuit affirmed. Barring the filing of a petition for certiorari with the Supreme Court, and a grant of that petition, the matter will be concluded by the First Circuit's ruling, and the funds reserved for this claim will be freed from the reserve. The Irving Railroads claims were the subject of a direct appeal to the United States Court of Appeals for the First Circuit on a remaining legal issue. The First Circuit affirmed, and the Estate Representative is considering the filing of a petition for certiorari with the Supreme Court. The Monitor continues to maintain a $10 million reserve in connection with these claims.

ACTIVITIES OF THE MONITOR

15. The Monitor's activities have included the following:

- The Monitor has issued distributions to various claimants as well as responding to queries from claimants with respect to the distributions;
- The Monitor has been in contact with the Province in connection with the analysis of the Final Claim and the Expense Provision;
- The Monitor has continued to provide monthly updates (for November 2019 to April 2020) to CP's attorneys as well as to Class Counsel, the whole pursuant to the CP Document Order (as more fully described in the Twenty-Sixth Report dated June 8, 2017);
- The Monitor has continued to cooperate with the Estate Representative and his professionals and with Petitioner's legal counsel to keep apprised of the Chapter 11 proceedings of MMAR;
- The Monitor has maintained regular contact with the major stakeholders to seek their input and discuss various issues;
- The Monitor continues to post copies of Court materials filed in the CCAA and Chapter 11 Proceedings on its website;
- The Monitor has prepared and filed the Thirty-Second Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Extension

16. The Monitor is of the opinion that the Court should grant the extension request to December 11, 2020, in order to allow additional time for the resolution and finalization of the claim of the Province, the redistribution of the remaining Settlement Funds to claimants, the payment of interest and the advancement of various litigation in the Chapter 11.

B) Professional Fees

17. The Monitor supports the approval of the professional fees for the period of November 1, 2019 to May 31, 2020, which fees are fair and reasonable.

Respectfully submitted at Montreal, this 4th day of June, 2020.

Richter Advisory Group Inc.
Monitor

Andrew Adessky, CPA, CA, MBA, CIRP, LIT

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N°:

N° : 450-11-000167-134

COUR D'APPEL

SAMUEL AUDET

PARTIE REQUÉRANTE - Créancier

c.

RICHTER GROUPE CONSEIL INC.

PARTIE INTIMÉE – Contrôleur

-et-

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

PARTIE MISE EN CAUSE - Débitrice

-et-

LE PROCUREUR GÉNÉRAL DU QUÉBEC

PARTIE MISE EN CAUSE – Créancier

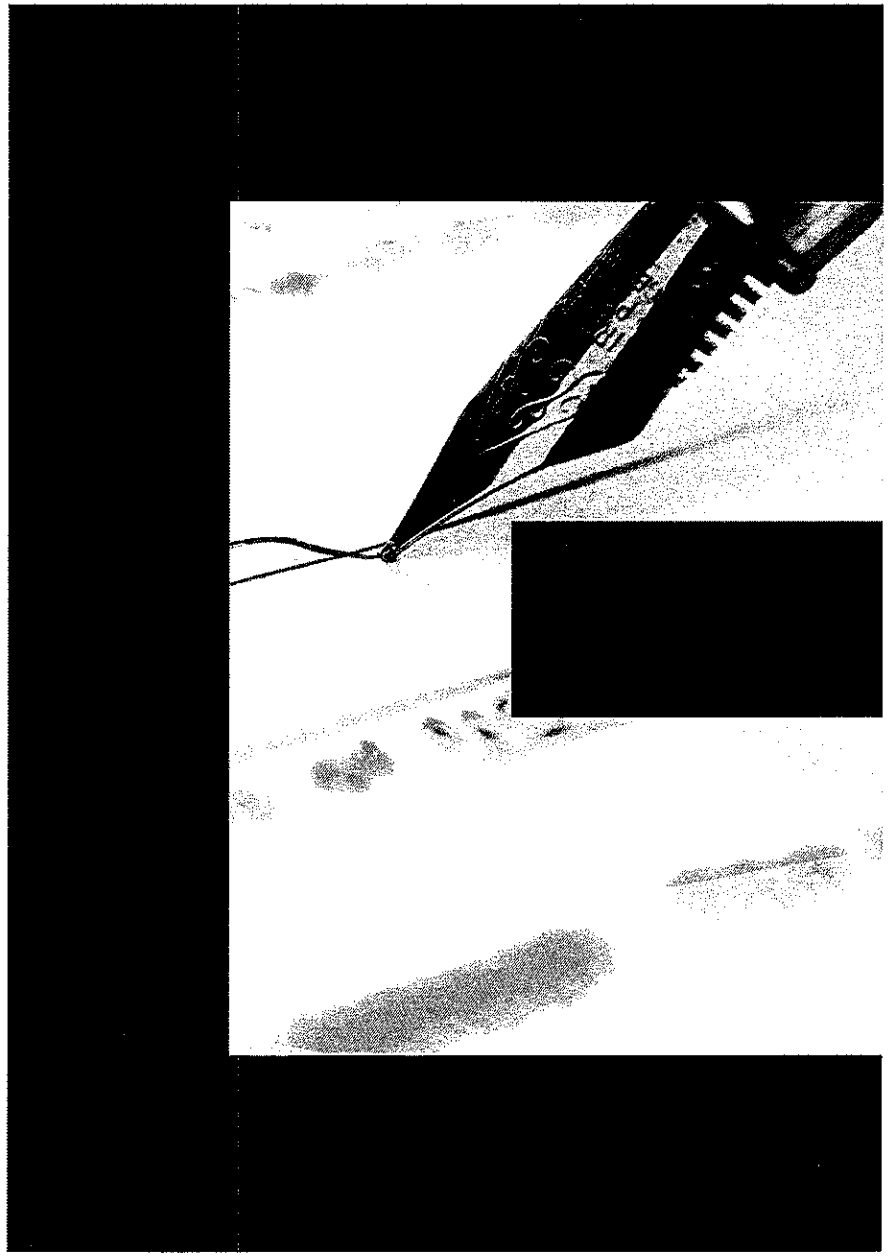
ANNEXE 21

(Document d'informations lors du vote des créanciers)

RICHTER

Présentation
Richter Groupe Conseil Inc.
Contrôleur nommé par la Cour de
Montréal, Maine & Atlantique
Canada Cie

Présenté aux :
Créanciers de MMA



Lac-Mégantic

Réunion des créanciers
Ville de Lac-Mégantic

Le 9 juin 2015, à 14 h 00, Centre sportif Mégantic

Ordre du jour

- Mot de bienvenu
- Amendements au Plan
  - Règlement avec WFS
  - Règlement avec SMBC
  - Traitement des grands-parents et petits-enfants
  - Autres
- Distribution anticipée
- Procédure de vote
- Vote et résultat
- Résumé des étapes à venir

Principaux amendements au Plan

1. Règlement avec World Fuel Services (« WFS »)

Un règlement est intervenu avec WFS le 8 juin 2015, lequel prévoit un paiement de 110 millions US$ au fonds de règlement. Ceci équivaut au taux de change du 7 juin 2015 à 137 millions Can$.

2. Montants payables aux grands-parents et petits-enfants de personnes décédées

Suite à des discussions avec les divers intervenants, le montant payable aux grands-parents et petits enfants pourrait être établi à 17 000 $. Cet amendement a été effectué suite à une demande des représentants du recours collectif. Cet amendement n'est applicable qu'à partir des économies, le cas échéant, résultant de réductions des réclamations économiques.

Les pages qui suivent identifient les amendements apportés au Plan de compromis et d'arrangement résultant principalement des 2 points ci-haut.

Principaux amendements au Plan

Section 1.1 – Termes définis

Fonds de Règlement (p. 8)	les contributions monétaires totales payables aux termes des Conventions de Règlement, y compris l'Indemnité de XL et le Paiement Additionnel de XL, avant le recouvrement potentiel des réclamations cédées à MMAC et au Syndic par certaines des Parties Quittancées, lesquelles contributions monétaires sont estimées, à la date des présentes, à cent quatre-vingt-deux millions trois cent mille dollars canadiens (182 300 000,00 $ CA), plus **cent quatre-vingt-dix-huit million neuf cent mille ~~quatre-vingt-neuf millions quatre cent mille~~ dollars américains (198,900,000.00~~89 400 000,00~~ $ US);**
Injonction et Quittance (p. 8)	une ordonnance de la Cour Responsable de la LACC et de la Cour de Faillite Américaine quittançant, empêchant et interdisant, en permanence et automatiquement, la mise à exécution, la poursuite, la continuation et(ou) le commencement de toute Réclamation qu'une Personne ou un Réclamant détient ou revendique ou qu'il peut détenir ou revendiquer à l'avenir contre l'une ou plusieurs des Parties Quittancées, **à l'exception de toutes réclamations préservées aux termes du paragraphe 5.3 contre les Tiers Défendeurs qui ne sont pas des Parties Quittancées,** ou qui pourrait donner lieu à une Réclamation contre l'une ou plusieurs des Parties Quittancées, que ce soit au moyen d'une demande reconventionnelle, ...
Ordonnance Finale (p. 10)	une ordonnance de la Cour Responsable de la LACC, de la Cour du Recours Collectif ou de la Cour de Faillite Américaine qui **n'a pas été renversée, annulée, amendée, modifiée ou suspendue et qui** n'est plus susceptible d'appels subséquents, soit parce que le délai d'appel a pris fin sans qu'un appel ne soit logé, soit parce qu'elle a été confirmée par toutes les cours ayant compétence pour entendre des appels s'y rapportant;

Principaux amendements au Plan

Article 3 – Catégorie, Vote et Questions connexes

3.3 Réclamations non visées (p. 20)

k) les Réclamations qui font partie de celles décrites au paragraphe 5.1 (2) de la LACC, **sauf qu'en contrepartie de la contribution faite par les Parties A&D ou en leur nom, lesdites Parties A&D sont bénéficiaires de l'Injonction et Quittance à l'égard de toutes Réclamations relatives au Déraillement, à l'exclusion des Réclamations décrites au paragraphe 3.3 (b).**

Article 4 - Distributions

4.2 Distribution aux créanciers (p. 23)

e) les Créanciers ayant des Réclamations Gouvernementales recevront globalement 52,4 % des Fonds pour Distribution en règlement intégral et final de leurs Réclamations Prouvées contre les Parties Quittancées. Le Contrôleur distribuera ce montant proportionnellement entre la Province, la Ville Lac-Mégantic, le Procureur général du Canada (pour le compte du Développement économique Canada pour les régions du Québec) et la Commission de la santé et de la sécurité au travail (*CSST*). Aux fins du présent Plan, les Réclamations Prouvées de la Province, de la ville de Lac-Mégantic, du gouvernement fédéral du Canada (Développement économique Canada pour les régions du Québec) et de la Commission de la santé et de la sécurité au travail (*CSST*) sont ainsi évaluées et établies :

i) la Province : 409 313 000 $ CA (soit **89,9 %~~94 %~~** des Réclamations Gouvernementales);

ii) la Ville Lac-Mégantic : **20,000,000 $~~5 000 000 $~~ CA (soit 4,4 %~~1,1 %~~** des Réclamations Gouvernementales);

iii) le Procureur général du Canada (pour le compte du Développement économique Canada pour les régions du Québec) : 21 000 000 $ CA **(soit 4,6 %~~4,8 %~~** des Réclamations Gouvernementales)

iv) CSST : 4 915 257 **$~~313 775 $~~ CA (soit 1,1 %~~0,1 %~~** des Réclamations Gouvernementales)

Article 4 - Distributions

4.2 Distribution aux créanciers (p. 23)

Il est entendu que les Créanciers ayant des Réclamations Gouvernementales recevront globalement 52,4 % des Fonds pour Distribution en règlement intégral et final de leurs Réclamations Prouvées contre les Parties Quittancées. Le Contrôleur distribuera ce montant proportionnellement entre la Province, la Ville Lac-Mégantic, le Procureur général du Canada (pour le compte du Développement économique Canada pour les régions du Québec) et la Commission de la santé et de la sécurité au travail (*CSST*). Aux fins du présent Plan, les Réclamations Prouvées de la Province, de la ville de Lac-Mégantic, du gouvernement fédéral du Canada (Développement économique Canada pour les régions du Québec) et de la Commission de Il est entendu que les Créanciers ayant des Réclamations en Indemnisation et des Réclamations Autres que les Réclamations Liées au Déraillement n'auront droit à aucune distribution aux termes du présent Plan ou du Plan Américain à l'égard du Fonds d'Indemnisation et n'auront aucun droit à aucune partie des Fonds pour Distribution. Cependant, les Créanciers ayant des Réclamations Autres que les Réclamations Liées au Déraillement contre MMAC auront droit à des distributions aux termes du Plan Américain, selon ses modalités, sur tout produit net disponible de la liquidation des biens de MMA.

Malgré ce qui précède, si, après l'examen des Réclamations pour Dommages Matériels et Économiques conformément à l'Ordonnance Relative à la Procédure de Résolution des Réclamations, la valeur totale des Réclamations pour Dommages Matériels et Économiques est réduite en deçà de 75 millions de dollars, **le montant pour distribution relatif** à la différence entre le montant de 75 millions de dollars et la valeur totale révisée de ces Réclamations (l'« Épargne sur les Réclamations Économiques ») sera ~~**proportionnellement**~~ attribuée **comme suit :**~~**à la valeur des Réclamations des autres catégories décrites aux paragraphes 4.2a), b), d) et e).**~~

i) **Premièrement, le montant requis jusqu'à 884 000 $ pour permettre un paiement jusqu'à 17 000 $ à chaque grand-parent et petit-enfant des personnes décédées, auquel cas les grands-parents et petits-enfants seront retranchés de l'Annexe F et inclus au paragraphe 7 de l'Annexe E;**

ii) **Deuxièmement, le montant requis à partir de l'épargne sur les Réclamations Économiques pour permettre une augmentation de l'enveloppe pour parents, frères et soeurs, grands-parents et petits-enfants de 5 % à 12,5 %;**

iii) **Troisièmement, proportionnellement, à la valeur des Réclamations des autres catégories décrites aux paragraphes 4.2a), b), d) et e).**

Pour plus de certitude, le montant total requis à même l'Épargne sur les Réclamations Économiques pour permettre une augmentation de l'enveloppe pour les parents, frères et sœurs, grands-parents et petits-enfants à 12,5 % au sein de la catégorie des Victimes dans le cas de Décès ne devra pas excéder 5,1 millions de dollars.

4.3 Distributions additionnelles aux créanciers (p. 24)

Avec le consentement de la Province et du gouvernement fédéral du Canada (Développement économique Canada pour les régions du Québec), tous les montants payables aux termes du présent Plan :

a. **à la Province sur l'Indemnité de XL (évalués à ~~13 735 000 $ CA~~ 13 383 000 $ CA);**

b. **au procureur général du Canada (pour le compte du Développement économique Canada pour les régions du Québec) (évalués à 9 909 589 $ ~~6 936 000 $~~ CA);**

(collectivement, les « **Dividendes Réaffectés** »)

Article 5 – Quittances et Injonctions

5.1 Quittances et injonctions aux termes du Plan (p. 27)

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 Oeuvre 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, **à l'exception de toutes réclamations préservées aux termes du paragraphe 5.3 contre les Tiers Défendeurs qui ne sont pas des Parties Quittancées,** pourrait donner lieu à une Réclamation contre les Parties Quittancées,

Distribution estimative

Montréal, Maine & Atlantique Canada Cie.

Distribution estimative aux diverses catégories de créanciers

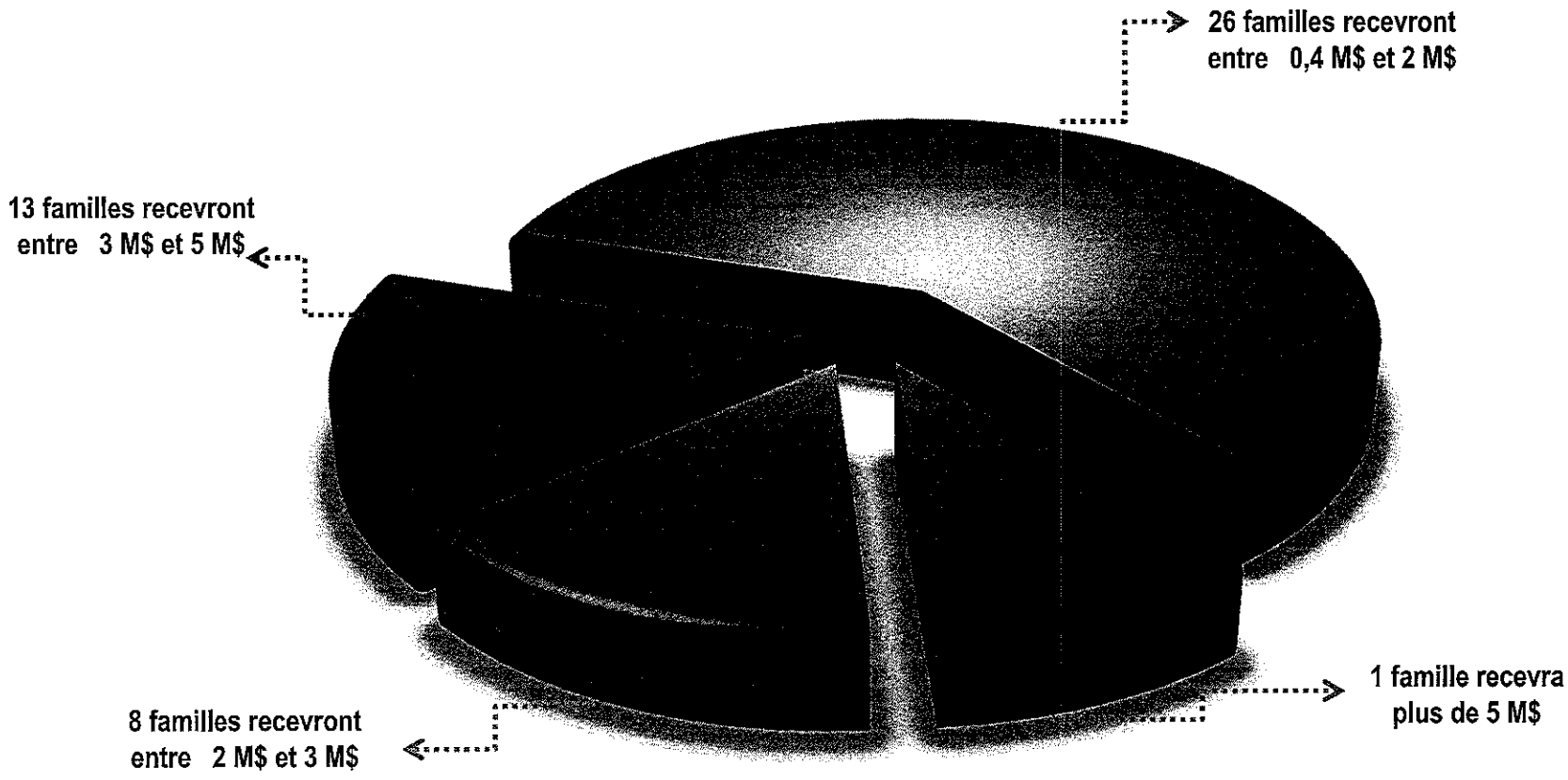
Selon l'information disponible le 8 juin 2015

Contributions au fonds de règlement	431 750 172 $		
Charge d'administration (incluant les taxes)	(21 797 000)		
Fonds disponibles pour distribution	409 953 172 $	Réclamations dans les cas de décès	111 221 428 $
		Réclamations en raison de lésions corporelles et dommages moraux	48 846 487
		Réclamations pour dommages matériels et économiques	41 554 303
		Réclamations des assureurs subrogés	16 808 080
		Réclamations gouvernementales	191 522 874
			409 953 172 $

Avant l'imputation des honoraires des avocats Américains et dans certains cas les Avocats du recours collectif

Répartition des fonds aux familles de personnes décédées

Avant l'imputation des honoraires des avocats Américains et dans certains cas les Avocats du recours collectif



Répartition des fonds pour dommages moraux

Montreal, Maine & Atlantic Canada Co.
Répartition des fonds pour dommages moraux

	Points	Nombre estimatif de réclamants	Total des points	%	Distribution estimative	Distribution par réclamation
Trouble & Inconvenient	5,0	3 700	18 500	24,9%	$ 11 677 000	$ 3 160
Évacuations						
Montant par jour	1,0	1 850	10 370	14,0%	6 545 000	630
Maximum	30,0					par jour
Zones rouge et jaune	50,0	140	7 000	9,4%	4 418 000	31 560
Grand-parents et petits-enfants	15,0	50	750	1,0%	473 000	9 460
Stress Post Traumatique - court terme (note 2)	50,0	250	12 500	16,8%	7 890 000	31 560
Stress Post Traumatique - long terme (note 2)	100,0	250	25 000	33,7%	15 780 000	63 120
Blessures	50,0	2	100	0,1%	63 000	31 500
Provision (note 3)					2 000 000	
Total (notes 1 & 4)			**74 220**	**100%**	**$ 48 846 000**	

Les montants ci-haut reflétés ne tiennent pas compte des honoraires qui pourraient être redevables aux avocats des réclamants et ceux du recours collectif.

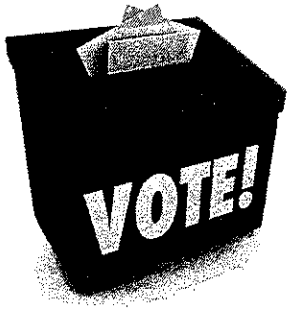
Note 1: Les montants représentés peuvent être cumulatifs si un réclamant est affecté par plus d'une situation énumérée.Cependant les réclamants classés dans la catégorie des cas de décès ne peuvent pas réclamer de compensation pour stress post traumatique.

Note 2: S'applique à tous ceux qui ont été diagnostiqués pour stress post traumatique, dépression, troubles d'anxiété, et/ou qui sont toujours suivi médicalement pour des causes découlant de la tragédie ou ceux présents dans la zone rouge au moment du déraillement. Afin de se qualifier dans cette catégorie, plus amples informations devront être transmises au Contrôleur.

Note 3: Afin d'être utilisé pour bonifier le montant pour stress post traumatique, si nécessaire. Advenant que cette provision ne soit pas utilisée à cette fin, le montant résiduel sera réparti aux autres postes des dommages moraux.

Note 4: Le montant final attribué à chaque catégorie, variera dépendamment de l'information additionnelle qui sera reçue par le Contrôleur, d'ici le 31 août 2015.

Réunion des créanciers du 9 juin 2015 - Vote



Qui vote :

Dans le cas du recours collectif :

- Représentants désignés votent pour les parties inscrits au recours collectif pour lesquels une preuve de réclamation a été déposée

Dans le cas des familles représentées par les avocats Américains :

- Avocats votent pour les parties qu'ils représentent et pour lesquels une preuve de réclamation a été déposée

Tous les autres circonstances :

- Chaque réclamant vote individuellement

Réunion des créanciers du 9 juin 2015 – Compilation du Vote

Pour être accepté, le Plan nécessite au minimum le vote suivant :

- 50% plus 1 en nombre, **plus**
- 2/3 en valeur

Compilation

En vertu du Plan, de l'Ordonnance relative à la procédure de réclamation, de l'Ordonnance relative à la procédure de résolution des réclamations et de l'Ordonnance visant la tenue d'une assemblée des créanciers, tous les Créanciers ont le droit de voter jusqu'à concurrence de la valeur nominale de leur réclamation assujettie aux conditions suivantes :

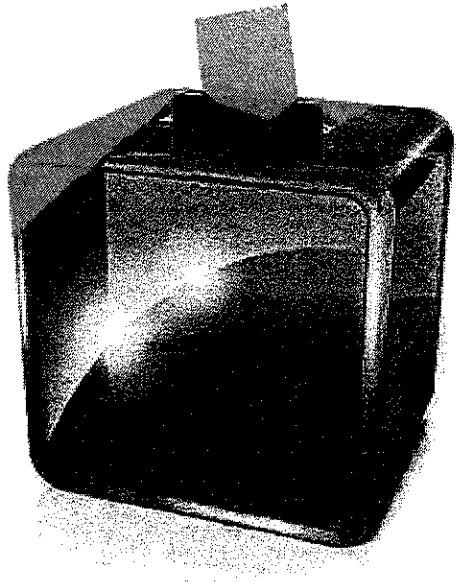
- le total des votes des titulaires de « Réclamations dans les cas de décès » ne doit pas représenter plus de 22,2 % de tous les votes des créanciers ou 200 000 000 $;
- le total des votes des titulaires de « Réclamations en raison de lésions corporelles et de dommages moraux » ne doit pas représenter plus de 11,1 % de tous les votes des créanciers ou 100 000 000 $;
- le total des votes des titulaires de « Réclamations de dommages matériels et économiques » ne doit pas représenter plus de 8,3 % de tous les votes des créanciers ou 75 000 000 $;
- le total des votes des titulaires de « Réclamations subrogées d'un assureur » ne doit pas représenter plus de 3,8 % de tous les votes des créanciers ou 33 701 000 $;
- le total des votes des titulaires de « Réclamations gouvernementales » ne doit pas représenter plus de 48,5 % de tous les votes des créanciers ou 435 627 000 $;
- les titulaires de « Réclamations en Indemnisation » n'ont pas le droit de voter;
- le total des votes des titulaires de « Réclamations autres que les réclamations liées au déraillement » ne doit pas représenter plus de 6,1 % de tous les votes des créanciers ou 55 000 000 $.

La valeur du vote de chaque créancier sera calculée selon la formule suivante :

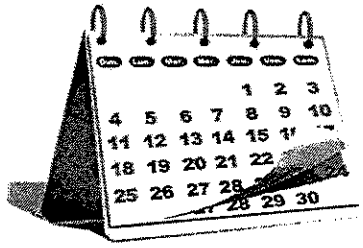
$$\frac{\text{Valeur nominale de la Preuve de réclamation du Créancier}}{\text{Valeur nominale totale de toutes les Preuves de réclamations dans la catégorie de votation}} \times \text{Valeur maximale totale attribuée au vote dans la catégorie de votation} = \text{Valeur de la Réclamation aux fins de votation du Créancier}$$

Questions

Résultat du vote



Échéancier



3 juin 2015
Séance d'information

9 juin 2015
Réunion des créanciers

27 mai 2015
Séance d'information

17 juin 2015 - 31 juillet 2015
Reconnaissance du Plan aux États-Unis

10 août 2015
Date limite pour voter sur le Plan Américain

1 septembre 2015 - 31 octobre 2015
Obtention des Fonds, Émission des quittances et finalisation des réclamations

1 juin 2015

1 juillet 2015

1 août 2015

1 septembre 2015

1 octobre 2015

1 novembre 2015

26 mai 2015

30 novembre 2015

1 octobre 2015 - 30 novembre 2015
Distribution initiale aux victimes

20 août 2015
Audience pour approbation du Plan Américain

17 juin 2015
Approbation du Plan par la Cour

23 juin 2015
Approbation de documents aux États-Unis sur le Plan Américain

31 août 2015
Date limite pour remettre la déclaration médicale pour stress post-traumatique

Nº :
Nº : 450-11-000167-134

COUR D'APPEL DU QUÉBEC
DISTRICT DE MONTRÉAL

SAMUEL AUDET
PARTIE APPELANTE - Créancier
c.
RICHTER GROUPE CONSEIL INC.
PARTIE INTIMÉE – Contrôleur
-et-
MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE
PARTIE MISE EN CAUSE - Débitrice
-et-
PROCUREUR GÉNÉRAL DU QUÉBEC
PARTIE MISE EN CAUSE - Créancier

REQUÊTE POUR PERMISSION D'APPELER D'UN JUGEMENT RENDU EN APPLICATION DE LA LOI SUR LES ARRANGEMENTS AVEC CERTAINS CRÉANCIERS

Partie requérante
Datée du 23 juin 2021

MERCIER MORIN AVOCATS INC.
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Saint-Georges (Québec) G5Y 7X3
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