

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No. 500-11-051741-169

DATE: December 1, 2016

PRESIDING: THE HONOURABLE JEAN-FRANÇOIS BUFFONI, J.S.C.

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

**CORPORATION MOUNT REAL / MOUNT REAL CORPORATION
GESTION MRACS LTÉE / GESTION MRACS LTD.
REAL VEST INVESTMENTS LTD. -and-
CORPORATION REAL ASSURANCE ACCEPTATION,**

Debtor Companies

-and-

RAYMOND CHABOT INC.,

Monitor

-and-

ANDRÉE MÉNARD

Class Plaintiff / Applicant

REPRESENTATION ORDER

[1] **CONSIDERING** the Motion of the applicant Class Plaintiff Andrée Ménard, dated December 1, 2016, for an Order of this Court appointing her as the Class representative in these CCAA proceedings and the Affidavit signed by Andrée Ménard (the "**CCAA Proceedings**");

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

[3] **AND WHEREAS** any capitalized terms used herein have the meaning ascribed to the definitions set forth in Schedule A;

THE COURT:

[4] **GRANTS** the Class Plaintiff's *Motion for an order appointing the Class Plaintiff as representative of the Class in the CCAA proceedings* on the terms and conditions set forth in this Representation Order;

[5] **DECLARES** that service and notice of the motion was good and sufficient;

[6] **APPROVES** the Class Plaintiff's retainer of Trudel Johnston & Lespérance and Belleau Lapointe as Class Counsel in these CCAA Proceedings, subject to this Honourable Court's ongoing supervisory jurisdiction over the fees and disbursements to be paid to Class Counsel in these proceedings and in the Class Action;

[7] **DIRECTS** that nothing in this Representation Order diminishes or affects in any way the right and the obligation of each and every Person with a Claim (including each and every Class Member) to file a Proof of Claim on an individual basis pursuant and subject to the requirements of the Claims and Meeting Order;

[8] **DIRECTS** that the Class Plaintiff and/or Class Counsel are authorized to take all steps and to perform all acts necessary or desirable to carry out the terms of this Representation Order on behalf of the Class Members, including, without limitation, by:

- a) negotiating and approving and binding the Class Members to the Plan and any future court order, and providing advice to Class Members in respect of same, and for this purpose Class Counsel and the Class Plaintiff shall have access to all individual Proofs of Claims filed by Class Members in the CCAA proceedings;
- b) dealing, on behalf of the Class Members, with stakeholders in these proceedings, the Monitor, this Honourable Court and any regulatory body and other government ministry;

- c) assisting Class Members with the completion of their individual Proof of Claim forms pursuant to the Claims and Meeting Order; and
- d) assisting the Monitor to disseminate information to Class Members regarding the Plan and CCAA Proceedings;

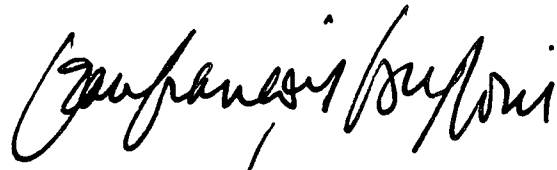
[9] **DIRECTS** that the reasonable professional fees incurred by Class Counsel on behalf of the Class Members, including the costs associated with any legal, accounting or other experts, will be included and determined in accordance with the fee provisions of the Plan subject to any further orders of this Court and the Class Action Court;

[10] **DIRECTS** that the Class Plaintiff, or Class Counsel on her behalf, and any other party may apply to this Court for advice and directions in the discharge of the Class Plaintiff's powers, responsibilities and duties pursuant to this Order, or for the variation of such powers, responsibilities and duties;

[11] **DECLARES** that service and notice of the motion was good and sufficient;

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

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



JEAN-FRANÇOIS BUFFONI, J.S.C.

Mtre. André Lespérance
Mtre. Gabrielle Gagné
Trudel Johnston & Lespérance
Mtre. Daniel Belleau
Mtre. Isabelle Lafont
Belleau Lapointe
Co-Attorneys for Class Plaintiff

Mtre. Roger Simard
Mtre. Laurent Nahmiash
Mtre. Anthony Franceschini
Dentons Canada LLP
Attorneys for Applicant and Monitor
Attorneys for Schwartz Levitsky Feldman LLP

Mtre. Marianne Ignacz
Mtre. Claudia Déry
Norton Rose Fulbright LLP
Attorneys for Deloitte LLP

Mtre. Julie-Martine Loranger
McCarthy Tétrault LP
Attorneys for B2B Bank

Mtre. Alain Riendeau
Fasken Martineau LLP
Attorneys for Ernst & Young Inc.
As Liquidator to Penson Funds

Mtre. Avram Fishman
Fishman Flanz Meland Paquin LLP
Attorneys for BDO Canada LLP

SCHEDULE A to the Representation Order**DEFINITIONS**

1. **"Applicant"** means the Trustee in its capacity as trustee of each of the estates of the Debtors.
2. **"Applicant's Counsel"** means Dentons Canada LLP as counsel retained and instructed by RCGT to act on its behalf in the CCAA Proceedings to give effect to the Plan Support Agreement.
3. **"Approval Date"** means the date on which the Approval Orders become Final Orders. If the Class Action Order and the CCAA Approval Order become Final Orders on different dates, the Approval Date is the latest date on which any of the Class Action Order or CCAA Approval Order becomes a Final Order.
4. **"Approval Orders"** means the Class Action Order and the CCAA Approval Order, collectively.
5. **"B2B"** means B2B BANK as the successor to B2B TRUST, with a place of business at 1981 McGill College Avenue, 20th Floor, Montreal, Quebec H3A 3K3.
6. **"B2B Consideration"** means the amount to be paid by B2B set forth in the Confidentiality Agreement.
7. **"Bankruptcy or Bankruptcies"** means, individually or collectively as the context requires, the bankruptcy proceedings for MRC in the Superior Court of Québec (Commercial Division) file bearing no. 500-11-027031-059, the bankruptcy proceedings for MRACS in the Superior Court of Québec (Commercial Division) file bearing no. 500-11-026937-058, the bankruptcy proceedings for Real Vest in the Superior Court of Québec (Commercial Division) file bearing no. 500-11-027506-068 and the bankruptcy proceedings for RAAC in the Superior Court of Québec (Commercial Division) file bearing no. 500-11-027632-062 which have been consolidated pursuant to an Order of Honourable Jean-Yves Lalonde, J.S.C. dated April 7, 2006.
8. **"Bankruptcy Consideration"** means the amount available for distribution in the Bankruptcy estates on the Approval Date, net of the Trustee's fees and disbursements and applicable taxes thereon, as approved under the provisions of the BIA.

9. **"Bankruptcy Loan"** means the amount outstanding on one or more loans made by the Trustee to Class Counsel for the purpose of funding disbursements in the Class Action.
10. **"BDO"** means BDO Canada LLP, (formerly known as BDO Dunwoody LLP) a limited partnership with a place of business at 1000, de la Gauchetière Street West, Suite 200, Montreal, Québec H3B 4W5.
11. **"BDO Consideration"** means the amount to be paid by BDO set forth in the Confidentiality Agreement, excluding the amount payable for the costs of the arrangement under the CCAA.
12. **"BIA"** means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
13. **"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.
14. **"CCAA"** means the *Companies' Creditors Arrangement Act*, R.S.C. c. C-36, as amended.
15. **"CCAA Approval Order"** means an order in the CCAA Proceedings which shall, among other things: (i) approve, sanction and/or confirm the Plan; (ii) authorize the Parties to undertake the settlement and the transactions contemplated by the Plan; and (iii) provide for the bar of Claims and the Injunction.
16. **"CCAA Court"** means the Superior Court of Québec (Commercial Division), sitting as a court designated pursuant to the CCAA.
17. **"CCAA Filing Date"** means the date of the Initial Order.
18. **"CCAA Proceedings"** means the case filed in CCAA Court by the Applicant.
19. **"Claim"** means past, present and future claims, causes of action, obligations, rights, suits, judgments, applications, remedies, interests, actions, liabilities, demands, duties, tax, injuries, damages, expenses, fees, 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 delict, quasi-delict, 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 (i) arising out of, based upon, or connected to, in whole or in part, directly or indirectly, whether

through a direct claim, cross-claim, third-party claim, commodity or income tax claim, warranty claim, recursory claim, indemnification claim, subrogation claim, forced intervention, class action or otherwise, from (a) the Class Action, including any claims for investment loss in capital and interest related to the Promissory Notes or otherwise related directly or indirectly to one or more of the Debtors or the audited or unaudited, consolidated or unconsolidated financial statements of any of them; or (b) the Existing Agreements, or (ii) that would otherwise constitute a claim by or against the Debtors, provable in bankruptcy under the BIA, when the Debtors became subject to the CCAA Proceedings. This definition of Claim includes, but is not limited to, claims for breach of contract, breach of the implied covenant of good faith and fair dealing, duty to inform, statutory or regulatory violations, for indemnity or contribution, or punitive, exemplary or extra-contractual damages of any type, as may be limited herein.

20. **"Claim Appeal Motion"** means, with respect to any Claim, the motion which shall be served upon the Monitor, Applicant's Counsel and Class Counsel and filed in Court by the Creditor disputing a Notice of Revision or Notice of Rejection of the Creditor's Proof of Claim and setting out the reasons for the appeal.
21. **"Claims Bar Date"** has the meaning ascribed thereto in the Claims Bar Date section of the Claims and Meeting Order.
22. **"Claims Procedure"** means the procedure established for the filing of Proof of Claims in the CCAA Proceedings pursuant to the Claims Procedure section of the Claims and Meeting Order.
23. **"Claims and Meeting Order"** means the order rendered by the CCAA Court approving a claims process, a claims bar date and a meeting of creditors, as such order may be amended, restated or varied from time to time.
24. **"Claims Resolution Process"** means the provisions of the Claims and Meeting Order establishing the procedure for determining the validity and quantum of any disputed Claims for the purpose of the Plan.
25. **"Class"** or **"Class Member"** means "Toutes les personnes qui en date du 9 novembre 2005 étaient propriétaires de billets à ordre émis par les sociétés Corporation Mount Real, Gestion MRACS Ltée, Investissements Real Vest Ltée et Corporation Real Assurance Acceptation" who did not exclude themselves within the prescribed delays.

26. **“Class Action”** means the class action commenced on or about November 8, 2008, before the Class Action Court, under court file 500-06-000453-080, including all subsequent amendments and all proceedings in this Court file, whether before or after the action was authorized to proceed as a class action.
27. **“Class Action Claims”** means Claims of the members of the Class that are accepted under the Plan.
28. **“Class Action Court”** means the Superior Court of Québec (Class Action Division) presided by the Honourable Jean-François Buffoni, J.S.C.
29. **“Class Action Order”** means the order issued in the Class Action (i) confirming that the CCAA Approval Order shall be binding and giving full effect against the parties designated in 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 Settling Defendants; and (iii) terminating the Class Action against the Settling Defendants without costs.
30. **“Class Counsel”** means Belleau Lapointe and Trudel, Johnston & Lespérance as counsel retained by Class Plaintiff in the Class Action.
31. **“Class Counsel Fees”** means, in the respective proportions indicated in writing by Class Counsel to the Monitor, a total amount of fees equal to twenty per cent (20%) of the Settling Defendants’ Consideration received by the Monitor, plus the Class Counsel’s disbursements relating to the Class Action and the CCAA Proceedings, plus applicable taxes thereon, as established in invoices addressed to the Class Plaintiff in a form acceptable to the Monitor.
32. **“Class Plaintiff”** means Andrée Ménard, in her capacity as representative of the Class.
33. **“Confidentiality Agreement”** means the agreement signed between Deloitte, BDO, SLF, B2B and Class Plaintiff, with the intervention of the Liquidator, RCGT and persons and counsel present during the case settlement conference presided by the Honourable Louis Lacoursière, J.S.C. which was held during the week of July 11, 2016, dated as of July 15, 2016.
34. **“Creditors”** means collectively all Persons holding any Claim against: (i) MRC, MRACS, Real Vest or RAAC; (ii) the Settling

Defendants; and/or (iii) any of the Released Parties and “**Creditor**” means any one of them.

35. “**Creditors’ Instructions**” means the instructions for Creditors explaining how to file a Proof of Claim.
36. “**Creditors’ List**” means a list, prepared by the Monitor and filed with the CCAA Court, of all Known Creditors, as may be updated from time to time.
37. “**Debtors**” or “**Debtor Companies**” means MRC, MRACS, Real Vest and RAAC.
38. “**Deloitte**” means Deloitte LLP, a limited partnership with a place of business at 1190 Avenue des Canadiens-de-Montréal, Suite 500, Montreal, Québec H3B 0M7.
39. “**Deloitte Consideration**” means the amount to be paid by Deloitte set forth in the Confidentiality Agreement.
40. “**Distribution Date**” means 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.
41. “**Effective Time**” means 8:00 a.m. (Montreal time) on the Plan Implementation Date.
42. “**Effective Time of the Initial Order**” means 12:01 a.m. (Montreal time), on the date of the Initial Order.
43. “**Execution Date**” means the first day upon which all Parties have executed the Plan Support Agreement and delivered a copy to counsel for the other Parties.
44. “**Existing Agreements**” means any and all contracts or agreements between the Debtors and/or the Individual Defendants and/or any of the Creditors on the one hand, and any of the Released Parties, on the other hand, except if such contracts or agreements are between a Creditor and a Released Party and are completely unrelated to: (i) the subject matter of the Class Action; or ii) the Debtors and/or the Individual Defendants and/or their affiliates, subsidiaries, predecessors, successors, affiliates of their predecessors and successors, shareholders, directors, officers, agents, employees, partners or members.
45. “**FAAC**” means Fonds d’aide aux actions collectives.
46. “**Final Order**” means an order of the Class Action Court or the CCAA Court or any and all courts with jurisdiction to consider any

appeals, that 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, and that has not been challenged by inter alia an application for certiorari, retractation, modification or rectification of the judgment.

47. **"Funds for Distribution"** means the full net amount of capital of the Settlement Consideration and Bankruptcy Consideration received by the Monitor for distribution to Creditors, without any deduction whatsoever for professional fees and disbursements related to the CCAA Proceedings, but after deduction of the payment by the Monitor to Class Counsel of the Class Counsel Fees.
48. **"Individual Defendants"** means, Paul D'Andrea, Lino P. Matteo and the mis en causes Laurence Henry, Lowell Holden, Joseph Pettinicchio, and Andris Spura.
49. **"Initial Application"** means the application filed by the Trustee seeking an initial order under the CCAA with respect to the Debtor Companies.
50. **"Initial Order"** means the order issued by the CCAA Court, on the Initial Application of the Applicant, authorizing the filing of the CCAA Proceedings and appointing the Monitor, as may be amended.
51. **"Injunction"** means an order by the CCAA Court acceptable to the Settling Defendants permanently releasing and enjoining the enforcement, prosecution, continuation or commencement of any Claim that any Person, including, without limitation, any Creditor, holds or asserts or may in the future hold or assert against the Released Parties. The Injunction shall provide that any and all Claims against the Released Parties will be permanently and automatically compromised, discharged and extinguished, that all Persons, including, without limitation, all Creditors, whether or not consensually, shall be deemed to have granted full, final 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, attachment, collection or recovery of any judgment, award, decree, or order against the Released Parties or the property of the Released Parties with respect to any Claim; (iv) creating, perfecting, or enforcing any encumbrance of any kind against the Released

Parties or the property of the Released Parties with respect to any Claim; and (v) asserting any right of setoff, subrogation, indemnification, recursory right, warranty, contribution or recoupment of any kind against any obligations due to or by the Released Parties with respect to any Claim.

52. **“Known Creditor”** means a Creditor listed on the list filed by the Monitor at the hearing for the Claims and Meeting Order, as may be updated from time to time.
53. **“Liquidator”** means Ernst & Young Inc., a Canadian corporation having a place of business at 800 René-Lévesque Boulevard West, Suite 1900, Montreal, Quebec H3B 1X9, acting in its capacity as court appointed liquidator of Penson Financial Services Canada Inc.
54. **“Meeting of Creditors”** means a meeting or meetings of the Creditors to consider and vote on the Plan held pursuant to the Claims and Meeting Order and includes any meeting or meetings resulting from the adjournment thereof.
55. **“Monitor”** means Raymond Chabot Inc. (represented by Mr. Jean Gagnon, CPA, CA, CIRP, SAI), solely in its capacity as monitor in the CCAA Proceedings, or such other entity as may be approved by the CCAA Court in the future to serve in such capacity in the CCAA Proceedings.
56. **“MRACS”** means MRACS Ltée / Gestion MRACS Ltd. and its predecessors and successors.
57. **“MRC”** means Corporation Mount Real/Mount Real Corporation and its predecessors and successors.
58. **“Net Capital”** means the capital initially invested by a Class Member, without any interest thereon, less any amount paid to the Class Member.
59. **“Notice to Creditors”** means the notice of the Claims and Meeting Order to be published on the Website on the Publication Date, which shall set out the Claims Procedure, Claims Bar Date, Claims Resolution Process, the notice of the Meeting of Creditors, the notice of the application for Court approval of the Plan and the Creditors’ Instructions, being substantially in the form of Schedule “B” to the Claims and Meeting Order.
60. **“Notice of Rejection”** means the notice informing a Creditor that the Monitor, in consultation with Class Counsel, have determined that the Creditor’s Claim is deemed or is presumed rejected and setting out the reasons for rejection.

61. **"Notice of Revision"** means the notice informing a Creditor that the Monitor, in consultation with Class Counsel, have revised all or part of such Creditor's Claim set out in its Proof of Claim and setting out the reasons for revision.
62. **"Ordinary Creditors"** means Persons holding Ordinary Claims.
63. **"Ordinary Claims"** means Claims in the CCAA Proceedings that are: i) filed as Ordinary Claims with the Monitor subject to being accepted as Proven Claims under the Plan; ii) proof of claims previously filed in the Bankruptcies with the Trustee, subject to being accepted as Proven Claims under the Plan; and iii) Class Actions Claims filed with the Monitor which are concurrently deemed filed as Ordinary Claims for the same amount.
64. **"Parties"** means the Trustee (in its capacity as a trustee to the Bankruptcies and Monitor), the Class Plaintiff (in her capacity as representative of the Class) and the Settling Defendants.
65. **"Penson"** means Penson Financial Services Canada Inc.
66. **"Penson Agreement"** means the agreement entered into on October 3 and 5, 2016 between the Class Plaintiff and the Liquidator and homologated by the court in the liquidation proceedings of Penson on October 18, 2016.
67. **"Penson Consideration"** means the amount to be paid by the Liquidator on behalf of Penson set forth in the Penson Agreement.
68. **"Person"** means and includes a natural person or persons, a group of natural persons acting as individuals, a group of natural individuals 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 (including the Trustee), or receiver of any such person or entity.
69. **"Plan"** means the plan of compromise and arrangement filed with respect to the Debtors in the CCAA Proceedings, including any amendment thereto if such amendment is agreed in writing to by all of the Parties to the Plan Support Agreement.
70. **"Plan Implementation Date"** means the Business Day on which the Monitor has filed with the CCAA Court the certificate contemplated in the Plan.

71. **"Plan Support Agreement"** means the Plan Support and Settlement Agreement entered into among the Settling Defendants, the Trustee and the Class Plaintiff on the Execution Date, and as the context requires, includes the Confidentiality Agreement and the Pension Agreement.
72. **"Proceedings"** means the Bankruptcy and the CCAA Proceedings.
73. **"Promissory Notes"** means promissory notes allegedly issued and/or guaranteed by MRC and its affiliated or related or formerly affiliated or related entities MRACS, Real Vest and RAAC from 1993 to November 2005. For greater certainty, the notes issued by any other entity are expressly excluded from this definition.
74. **"Proof of Claim"** means the forms of Proof of Claim for Ordinary Creditors and Class Members as approved by the Claims and Meeting Order.
75. **"Property"** means all the Debtor Companies' present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof.
76. **"Proven Claims"** means a Claim finally determined, settled or accepted for voting and distribution purposes in accordance with the provisions of the Plan or the Claims Resolution Process, in the applicable category or categories as an Ordinary Claim and/or a Class Action Claim.
77. **"Publication Date"** means the date on which the publication of the Notice to Creditors on the Website has been completed.
78. **"RAAC"** means Corporation Real Assurance Acceptation and its predecessors and successors.
79. **"Raymond Chabot Inc."** or **"RCGT"** means Raymond Chabot Inc. in such capacity of Monitor or Trustee as required by the context.
80. **"Real Vest"** means Real Vest Investments Ltd. and its predecessors and successors.
81. **"Related Released Parties"** means all of the Persons who are Released Parties in relation to a particular Settling Defendant.
82. **"Released Parties"** means the Settling Defendants, their affiliates, subsidiaries, predecessors, successors, affiliates of their predecessors and successors, and each of their shareholders, directors, officers, agents, employees, partners, members, legal counsel, experts, consultants, advisors and/or insurers and includes

Persons who have a financial interest in, perform services for, or have commercial dealings with one of the Released Parties.

83. **"Representation Order"** means the order to be rendered on the CCAA Filing Date in the CCAA Proceedings by the CCAA Court appointing, as representatives of the class members designated in the Class Action, the Class Plaintiff, represented by the Class Counsel, to further act on behalf of the Class before the CCAA Court in the context of the CCAA Proceedings.
84. **"Settlement Consideration"** means, subject to the terms of the plan Support Agreement, the aggregate sum of no less than \$43,025,000 to be delivered by the Settling Defendants in their respective proportions pursuant to Section 2 of the Confidentiality Agreement (excluding the amounts payable by BDO and SLF for the costs of the arrangement under the CCAA) and the Pension Agreement, plus the Bankruptcy Consideration.
85. **"Settling Defendants"** means B2B, the Liquidator on behalf of Pension, Deloitte, BDO and SLF.
86. **"Settling Defendants' Consideration"** means the aggregate sum of no less than \$43,025,000 to be delivered by the Settling Defendants in their respective proportions pursuant to the Plan Support Agreement.
87. **"SLF"** means Schwartz Levitsky Feldman LLP, a limited partnership with a place of business at 1980 Sherbrooke Street West, 10th Floor, Montreal, Québec H3H 1E8.
88. **"SLF Consideration"** means the amount to be paid by SLF set forth in the Confidentiality Agreement, excluding the amount payable for the costs of the arrangement under the CCAA.
89. **"Stay Period"** means the period of the stay of proceedings ordered in the Initial Order, as may be extended by the Court from time to time.
90. **"Trustee"** means Raymond Chabot Inc., a Québec company having a place of business at 600 De La Gauchetière Street West, Suite 2000, Montréal, Québec, H3B 4L8 , solely in its capacity as trustee appointed in the Bankruptcies of the Debtors.
91. **"Unaffected Claims"** or "Unaffected Claim" has the meaning given to that term in the Plan.

92. **“Website”** means the website maintained by the Monitor in respect of the CCAA Proceedings pursuant to the Initial Order at the web address listed in the Claims and Meeting Order.