

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 INC. (FORMERLY 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-SIXTH REPORT OF THE MONITOR
June 10, 2022

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 Inc. (formerly 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-five times with the most recent extension having been granted to June 17, 2022.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions filed and orders issued 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 10, 2022, the Petitioner filed a Motion for a Twenty-Sixth Order Extending the Stay Period, for the Approval of Professional Fees and an Increase to the Administration Charge for the US Professionals ("**Twenty-Sixth Extension and Fee Motion**"). Should there be any contestations, the Twenty-Sixth Extension and Fee Motion will be heard on June 14, 2022.
6. The purpose of this Thirty-Sixth Report of the Monitor is to inform the Court on the following subjects:
 - a) Status of Distributions;
 - b) Extension Request;
 - c) Approval of Professional Fees;
 - d) CP Document Order;
 - e) Interest Treatment;
 - f) Chapter 11;
 - g) Increase in US Administration Charge;
 - h) Activities of the Monitor; and
 - i) Recommendations of the Monitor.

STATUS OF DISTRIBUTIONS

7. As mentioned in the Monitor's Thirty-Fifth Report dated December 10, 2021, on or about December 13, 2021, the Monitor proceeded to pay the balance of funds which had not yet been distributed to the Province, namely an amount of approximately \$98.5 million (prior to consideration of interest earned) as follows:
 - a) An amount of \$58,909,516 to the Province;
 - b) An amount of \$39,609,585 to Richter Inc., in Trust (formerly Richter Advisory Group Inc.) as the distribution agent for the Province ("**Agent**") which amount was distributed as follows:

| Montreal, Maine & Atlantic Canada Co. Redistribution of Government of Québec Funds to the Creditors | |
|--|----------------------|
| Wrongful Death Claims | \$ 10,606,005 |
| Bodily Injury and Moral Damages Claims | 4,650,061 |
| Property and Economic Damages Claims | 2,403,466 |
| Government of Quebec | 19,083,345 |
| City of Lac-Mégantic | 1,174,879 |
| Government of Canada | - |
| Subrogated Insurer Claims | 1,691,829 |
| | <u>\$ 39,609,585</u> |

8. The Monitor currently holds approximately \$15.3 million, being the balance of the funds not yet distributed (“**Undistributed Funds**”) comprised of interest earned on the funds for distribution, various reserves which were taken in respect of litigious claims in the Chapter 11 and the Administration Charge of the Professionals. These Undistributed Funds will be distributed at the end of the CCAA proceedings once all other matters have been finalized in accordance with section 4.2 of the Amended Plan and in order to respect tax regulations with respect to the interest earned and distributed to the claimants.
9. A total of approximately \$31,000 of the distribution payments issued to date have i) not been released due to missing information, ii) been returned to the Monitor because some claimants (31 claimants) have moved and not notified the Monitor of their new address or iii) not been cashed. The average amount of those distribution payments is approximately \$1,000. The Monitor will continue to try and obtain the necessary information to ensure the payments are received or deposited, as the case may be, failing which, the funds will be treated in accordance with Section 8.8 of the Amended Plan and donated to charity.

EXTENSION REQUEST

10. The Twenty-Sixth Extension and Fee Motion seeks an extension of the Stay Period to December 16, 2022, in order to proceed with the distribution of the Undistributed Funds and pursue the litigious claims against Canadian Pacific Railway (“**CP**”) in the Chapter 11 (as discussed below).

APPROVAL OF PROFESSIONAL FEES

11. The Twenty-Sixth Extension and Fee Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of December 1, 2021 to May 31, 2022, which can be summarized as follows:

| Montreal, Maine & Atlantic Canada Co. | | | |
|---|----------------------|--------------------|---------------------|
| Administration Charge Summary | | | |
| As of May 31, 2022 | | | |
| | Fees / | | |
| | Disbursements | Sales Taxes | Total |
| Administration Charge ¹ | \$ 14,650,000 | \$ 2,170,000 | \$ 16,820,000 |
| Accrued Professional Fees as of Nov 30, 2021 | <u>(14,320,581)</u> | <u>(2,120,291)</u> | <u>(16,440,872)</u> |
| Balance of Administration Charge to implement the Plan | 329,419 | 49,709 | 379,128 |
| Richter | 76,750 | 11,493 | 88,244 |
| Woods | 3,838 | 572 | 4,410 |
| Gowling WLG | 8,013 | 1,198 | 9,211 |
| | <u>88,601</u> | <u>13,263</u> | <u>101,865</u> |
| Balance of Administration Charge to complete the CCAA ² | <u>\$ 240,818</u> | <u>\$ 36,446</u> | <u>\$ 277,264</u> |
| <p>¹ As per the Amended Plan of Compromise and Arrangement dated June 8, 2015, the Order dated March 3, 2017, the Order dated November 21, 2018 and the Order dated June 16, 2021.</p> <p>² In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.</p> | | | |

12. The Agent's professional fees relating to the redistribution of the government funds were paid directly by the Province from its portion of the redistribution.

CP DOCUMENT ORDER

13. 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 2022) to CP's attorneys as well as to the Class Counsel.

INTEREST TREATMENT

14. As of the date of this report, approximately \$9.3 million has been earned on the Funds for Distribution since the effective date of the Amended Plan.
15. As described 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.

16. 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 may need to issue tax slips to at least 4,400 individuals and corporations.

CHAPTER 11

17. The Monitor provides the following update received from the Estate Representative (formerly the Chapter 11 Trustee) 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:
 - a) Proceedings under the Carmack Amendment: We refer to the Thirty-Fourth Report for details of these proceedings. The Estate Representative advises that the case remains in the pre-trial phase, with a scheduled trial in November 2022; and
 - b) Estate Representative's separate litigation against CP: The case remains in the pre-trial phase; pending before the court is CP's motion for summary judgment, which has been opposed by the Estate Representative. A Fall 2022 trial is likely in this case.

INCREASE IN US ADMINISTRATION CHARGE

18. The Canadian Professionals believe that at the present time, the remaining charge to complete the CCAA administration is sufficient. Full details are included in the professional fees summary table shown above.
19. Under the Amended Plan, the US Professionals were granted an Administration Charge of \$8 million. On December 10, 2020, this Court issued an order to increase the Administration Charge for US Professionals to \$8,850,000 plus any applicable taxes. The December 2020 increase was in connection with the estimated costs to complete the litigation with CP. Due to the complexity of the litigation as well as delays caused by the pandemic, the Estate Representative has advised the Monitor that additional funding is required to complete the litigation with CP and has requested a further increase of US\$400,000 (or CDN\$500,000).
20. While the Estate Representative believes it can obtain third-party financing to complete the litigation, the Estate Representative has discussed having this be funded from the funds held by the Monitor on behalf of all the claimants through an increase in the Administration Charge for US Professionals. The Monitor supports this further increase for the following reasons (consistent with the reasons listed in our Thirty-Third Report to Court dated December 4, 2020):
 - a) The potential recovery in a successful litigation against CP, both under the Carmack Amendment and the separate litigation may result in additional distributions to all categories of creditors far in excess of the costs to complete the litigation, which is to the benefit of all creditors;

- b) If the Estate Representative were to obtain third-party financing, the cost to all the creditors as a share of any successful litigation will be significantly higher;
- c) The various major stakeholders (the Province, US Plaintiff counsel and Class Counsel) have been consulted by either the Estate Representative or the Monitor and the Monitor has not been notified of any objection to the increase; and
- d) The increase in the US Administration Charge would come from interest earned on the settlement funds which was not foreseen at the time and thus has no direct impact on the distributions to creditors from the initial settlement fund.

ACTIVITIES OF THE MONITOR

21. The Monitor's activities have included the following:
- a) The Monitor has issued distributions to various claimants and has responded to queries from claimants with respect to the distributions;
 - b) The Monitor has continued to provide monthly updates (for December 2021 to April 2022) 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);
 - c) 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;
 - d) The Monitor has maintained contact with major stakeholders to seek their input, discuss various issues and provide requested information;
 - e) The Monitor continues to post copies of Court materials filed in the CCAA and Chapter 11 Proceedings on its website, when applicable;
 - f) The Monitor has prepared and filed the Thirty-Sixth Report; and
 - g) Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Extension

22. The Monitor is of the opinion that the Court should grant the extension request to December 16, 2022, in order to pursue the litigious claims against CP in the Chapter 11 and to allow for the distribution of the Undistributed Funds.

B) Professional Fees

23. The Monitor supports the approval of the professional fees for the period of December 1, 2021 to May 31, 2022, which fees are fair and reasonable.

C) US Administration Charge

24. The Monitor supports the increase in the Administration Charge for the US Professionals in the amount of US\$400,000 (CDN\$500,000) in order to continue with litigation against CP with the ultimate goal of realizing additional amounts for distribution to all creditors.

Respectfully submitted at Montreal, this 10th day of June, 2022.

Richter Inc. (formerly Richter Advisory Group Inc.)
Monitor



Andrew Adessky, CPA, MBA, CIRP, LIT