

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
	<u>\$ 319,436,240</u>	<u>\$98,060,399</u>	<u>\$417,496,639</u>

- **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 /		Total
	Disbursements	Sales Taxes	
Administration Charge ¹	\$ 14,150,000	\$ 2,096,000	\$ 16,246,000
Accrued Professional Fees as of October 31, 2018	<u>(13,624,638)</u>	<u>(2,016,108)</u>	<u>(15,640,746)</u>
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	<u>11,321</u>	<u>1,695</u>	<u>13,015</u>
	<u>52,106</u>	<u>7,802</u>	<u>59,909</u>
Balance of Administration Charge to complete the CCAA ²	<u>\$ 473,256</u>	<u>\$ 72,089</u>	<u>\$ 545,345</u>

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