

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-FOURTH REPORT OF THE MONITOR
June 8, 2021

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-three times with the most recent extension having been granted to June 18, 2021.

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 March 19, 2021, the Monitor filed a Motion for Determinations and Directions ("**Motion for Directions**") with respect to the treatment of the claim of the Province of Quebec ("**Province**"). The Motion for Directions was heard on April 15, 2021.
6. On June 4, 2021 the Court issued an order in connection with the Motion for Directions as detailed below ("**Motion for Directions Order**").
7. On June 7, 2021, Me Hans Mercier informed the Monitor that he will be appealing the Motion for Directions Order.
8. On June 8, 2021, the Petitioner filed a Motion for a Twenty-Fourth Order Extending the Stay Period, for the Approval of Professional Fees and for an Increase to the Administrative Charge for the Canadian Professionals ("**Twenty-Fourth Extension and Fee Motion**"). Should there be any contestations, the Twenty-Fourth Extension and Fee Motion will be heard on June 17, 2021.
9. The purpose of this Thirty-Fourth Report of the Monitor is to inform the Court on the following subjects:
 - a) Status of Distributions and Motion for Directions;
 - b) Extension Request;
 - c) Approval of Professional Fees and Increase in Administration Charge;
 - d) CP Document Order;
 - e) Interest Treatment;
 - f) Chapter 11;
 - g) Activities of the Monitor; and
 - h) Recommendations of the Monitor.

STATUS OF DISTRIBUTIONS AND MOTION FOR DIRECTIONS

10. We refer to our prior reports for a summary of the distributions by category. At the present time, the Monitor is holding approximately \$114.6 million which consists of:
 - a) \$98.5 million consisting of the balance of funds not yet distributed to the Province as more fully discussed below; and
 - b) \$16.1 million of Undistributed Funds (as defined and discussed below).

11. As noted in prior reports including the Twenty-Eighth Report to Court dated June 7, 2018 (“**Twenty-Eighth Report**”), the Plan evaluated and established the claim of the Province at \$409.3 million for the purpose of calculating the Province’s share of the distribution to claimants. Subsequently, the Province advised the Monitor that its damages were in fact lower than expected and approximated \$325 million. As noted in the Monitor’s Thirty-Third Report to Court dated December 4, 2020, the Province informed the Monitor that it may upon certain conditions being fulfilled, redistribute a portion of the distribution due to the Province under the Amended Plan. The Province subsequently advised the Monitor that these conditions were not met and the Province requested the Monitor to remit the balance of the distribution due to the Province, namely an amount of approximately \$98 million (“**Balance of Province Distribution**”), the whole in accordance with the terms of the Amended Plan. Counsel for various claimants objected to this on the basis that the Province incurred significantly lower costs than originally projected.

12. Accordingly, the Monitor filed the Motion for Directions wherein it asked the Court to:
 - a) Determine whether the Proven Claim of the Province is under the terms of sub-section 4.2(e) of the Amended Plan in the amount of \$409,313,000; and if not,
 - b) Direct the Monitor to determine the amount of the Proven Claim of the Province in accordance with the Claims Resolution Order; and
 - c) Determine whether the distribution to the Province is to be calculated in accordance with sub-section 4.2(e) of the Amended Plan using the amount of the Province’s Proven Claim as determined in accordance with the Claims Resolution Order; and if not,
 - d) Direct the Monitor as to how to calculate the distribution to the Province.

13. On June 4, 2021, the Court issued the Motion for Directions Order which concluded as follows:
 - a) **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; [Translation: DETERMINES that the proven claim of the Province was settled at \$409,313,000 pursuant to the terms of paragraph 4.2 (e) of the Plan];

- b) **DÉCLARE** que la Province peut utiliser à sa guise les sommes qui lui reviennent en vertu du plan d'arrangement; [Translation : DECLARES that the Province can use the funds that are to be paid to it pursuant to the Plan of Arrangement at their discretion];
- c) **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; [Translation : AUTHORIZES the Province to utilize the services of the Monitor to distribute the sums it wishes to pay to the creditors it chooses based on the conditions it determines as the Monitor already has the necessary information to perform this function].

Further steps will depend on the outcome of the appeal that Me. Mercier has indicated will be filed.

- 14. The \$16.1 million of undistributed funds ("**Undistributed Funds**") will form part of a final distribution (subject to a deduction for costs) upon the conclusion of the CCAA as follows:
 - a) \$7.2 million consisting of the balance of a reserve held by the Monitor in respect of various litigation regarding certain administrative claims in the Chapter 11. As noted in the Thirty-Third Report, the litigation relating to these administrative claims has been concluded and the unused portion of the reserve will be available for distribution to the various claimants in the CCAA in accordance with section 4.2 of the Amended Plan; and
 - b) \$8.9 million consisting of interest earned to date on funds held for distribution which will be distributed at the end of the CCAA proceedings once all other matters have been finalized in order to respect tax regulations.
- 15. A total of approximately \$32,000 of the distribution payments issued to date have either not yet been released (due to missing information), have been returned because some claimants (37 claimants) have moved and not notified the Monitor of their new address or have not yet been cashed. The average cheque amount of the uncashed distribution payments is approximately \$867. 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.

EXTENSION REQUEST

- 16. The Twenty-Fourth Extension and Fee Motion seeks an extension of the Stay Period to December 17, 2021, to allow for the resolution of the Balance of Province Distribution, the advancement of the various litigation in the Chapter 11 relating to Canadian Pacific Railway ("**CP**") (as discussed below) and the eventual allocation and distribution of the Undistributed Funds prior to the conclusion of the CCAA.

APPROVAL OF PROFESSIONAL FEES AND INCREASE IN ADMINISTRATION CHARGE

17. The Twenty-Fourth Extension and Fee Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of December 1, 2020 to May 31, 2021, which are summarized below, as well as an increase in the Administration Charge for Canadian Professionals:

Montreal, Maine & Atlantic Canada Co.			
Administration Charge Summary			
As of May 31, 2021			
	Fees /		
	Disbursements	Sales Taxes	Total
Administration Charge ¹	\$ 14,150,000	\$ 2,096,000	\$ 16,246,000
Accrued Professional Fees as of November 30, 2020	<u>(13,832,545)</u>	<u>(2,047,242)</u>	<u>(15,879,786)</u>
Balance of Administration Charge to implement the Plan	317,455	48,758	366,214
Richter	185,016	27,706	212,722
Woods	100,331	15,025	115,355
Gowling WLG	27,488	4,116	31,604
	<u>312,834</u>	<u>46,847</u>	<u>359,681</u>
Balance of Administration Charge to complete the CCAA ²	<u>\$ 4,621</u>	<u>\$ 1,911</u>	<u>\$ 6,533</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.			

As appears from the above table, the Administration Charge has been substantially utilized and there is a need to seek a further increase to cover costs for ongoing work to complete the administration of the CCAA, which work can be summarized as follows:

- a) Ongoing analysis and communications with the Province and other stakeholders regarding the Balance of Province Distribution following the Motion for Directions Order issued on June 4, 2021 pending the outcome of the appeal;
- b) Allocation and distribution of the Undistributed Funds including the allocation and distribution of interest income to the claimants, including preparation and issuance of Federal T5 slips and Provincial Relevé 3 slips with respect to approximately 4,400 claimants, communications with the Federal and Provincial revenue agencies and responding to claimant inquiries;
- c) Ongoing communications with claimants regarding queries they may have;

- d) Monitoring proceedings in the Chapter 11 case including communications with the Estate Representative and resulting consequences of the Carmack litigation; and
- e) Other administrative matters.

This increase in the Administration Charge does not reduce the initially contemplated distributions to the creditors from the initial settlement fund. The increase is entirely paid from interest earned on the settlement funds and from the unused reserves which were held in connection with the US litigation.

The Province, Estate Representative and Class Counsel have been consulted with respect to the increase in the Administration Charge. The Province and Estate Representative have agreed to the increase and Class Counsel has not expressed any objection.

The potential recovery from a successful outcome of the litigation against CP may result in additional distributions to all categories of creditors far in excess of the costs to complete the litigation, which would be to the benefit of all creditors, and the Monitor agrees that this litigation should be pursued.

Based on the foregoing, an increase to the Administration Charge of \$500,000 plus taxes is being sought to cover amounts currently owing as well as for the work required to complete the administration of the CCAA.

CP DOCUMENT ORDER

- 18. 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 2021) to CP's attorneys as well as to the Class Counsel.

INTEREST TREATMENT

- 19. As of the date of this report, approximately \$8.9 million has been earned on the Funds for Distribution since the effective date of the Amended Plan.
- 20. 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.
- 21. 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 to at least 4,400 individuals and corporations.

CHAPTER 11

22. 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:
- a) 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 remains in the discovery phase, with a scheduled trial in Fall 2021. Previously, the parties both filed motions for summary judgment. The Estate Representative's motion was granted in part, with the court finding that CP was strictly liable under the Carmack Amendment. The court did not rule on damages, as the Estate Representative's motion sought only a determination of liability, with damages to go to trial. Following the assignment of a new judge to preside over the case, CP filed a motion for reconsideration, and the Estate Representative opposed that motion and also filed a limited motion for reconsideration. Both motions were denied, leaving the prior decision, including the liability finding against CP, intact. The court ruled on various pleadings relating to CP's attempts to obtain discovery from World Fuels and affiliates, largely allowing the discovery. The parties are in the final stages of the discovery process and the case is proceeding towards trial in Fall 2021; and
 - b) Estate Representative's separate litigation against CP: The case remains in the discovery phase which has been extended due to COVID-19 concerns, likely extending the eventual trial date as well. A Fall 2021 trial is also likely in this case.

ACTIVITIES OF THE MONITOR

23. 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 been in contact with the Province and with all of the major stakeholders in connection with the Balance of Province Distribution, including responding to queries and information requests of the various major stakeholders;
 - c) The Monitor has filed the Motion for Directions and has presented this motion to the Court;

- d) The Monitor has continued to provide monthly updates (for November 2020 to April 2021) 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);
- e) 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;
- f) The Monitor has maintained contact with the major stakeholders to seek their input, discuss various issues and provide requested information;
- g) The Monitor continues to post copies of Court materials filed in the CCAA and Chapter 11 Proceedings on its website;
- h) The Monitor has prepared and filed the Thirty-Fourth Report; and
- i) Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Extension

24. The Monitor is of the opinion that the Court should grant the extension request to December 17, 2021, in order to allow additional time for the resolution and finalization of the Balance of Province Distribution pursuant to the Motion for Directions Order and the pending appeal, the distribution of the Undistributed Funds to claimants, and the advancement of the Carmack litigation in the Chapter 11.

B) Professional Fees and Increase in Administration Charge

25. The Monitor supports the approval of the professional fees for the period of December 1, 2020 to May 31, 2021, 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.

Respectfully submitted at Montreal, this 8th day of June, 2021.

Richter Advisory Group Inc.

Monitor



Andrew Adessky, CPA, CA, MBA, CIRP, LIT