

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-FIFTH REPORT OF THE MONITOR
December 10, 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-four times with the most recent extension having been granted to December 17, 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. As noted in the Thirty-Fourth Report to Court, the Monitor filed a Motion for Determinations and Directions ("**Motion for Directions**") with respect to the claim of the Province of Quebec ("**Province**") and the Court issued an order in connection with that motion on June 4, 2021 ("**Motion for Directions Order**").
6. On June 23, 2021, Me Hans Mercier filed a "Requête Pour Permission d'Appeler d'un Jugement Rendu en Application de la Loi sur les Arrangements avec Certain Créanciers" ("**Motion for Leave to Appeal**") with respect to the Motion for Directions Order. The Motion for Leave to Appeal was heard by the Court of Appeal on July 20, 2021.
7. On July 22, 2021, the Court of Appeal dismissed the Motion for Leave to Appeal.
8. On December 10, 2021, the Petitioner filed a Motion for a Twenty-Fifth Order Extending the Stay Period and for the Approval of Professional Fees ("**Twenty-Fifth Extension and Fee Motion**"). Should there be any contestations, the Twenty-Fifth Extension and Fee Motion will be heard on December 17, 2021.
9. The purpose of this Thirty-Fifth 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) Activities of the Monitor; and
 - h) Recommendations of the Monitor.

STATUS OF DISTRIBUTIONS

10. The Monitor currently holds approximately \$114 million, being the balance of the funds not yet distributed to the Province and the balance of the Undistributed Funds (as defined in the Thirty-Fourth Report dated June 8, 2021) (“**Thirty-Fourth Report**”). We provide below an update regarding the status of these funds.
11. The Motion for Directions Order is no longer subject to appeal and the Monitor can now proceed to follow the conclusions of the Motion for Directions Order. More specifically, the Monitor can pay the balance of the funds which have 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 Advisory Group Inc. as the distribution agent for the Province (“**Agent**”) which amount shall be 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
	\$ 39,609,585

12. The distribution of funds by the Agent is expected to commence before year end.
13. At the time of this report, the Monitor is holding, among the Undistributed Funds, approximately \$15.5 million of interest earned on the Funds for distribution, various reserves which were taken in respect of litigious claims in the Chapter 11 and the Administrative 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.
14. A total of approximately \$32,000 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 (36 claimants) have moved and not notified the Monitor of their new address or iii) not been

cash. The average amount of those distribution payments is approximately \$891. 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

15. The Twenty-Fifth Extension and Fee Motion seeks an extension of the Stay Period to June 17, 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

16. The Twenty-Fifth Extension and Fee Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of June 1, 2021 to November 30, 2021, which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co.			
Administration Charge Summary			
As of November 30, 2021			
	Fees /		
	Disbursements	Sales Taxes	Total
Administration Charge ¹	\$ 14,650,000	\$ 2,170,000	\$ 16,820,000
Accrued Professional Fees as of May 31, 2021	<u>(14,145,379)</u>	<u>(2,094,089)</u>	<u>(16,239,467)</u>
Balance of Administration Charge to implement the Plan	504,621	75,911	580,533
Richter	89,418	13,390	102,808
Woods	63,983	9,563	73,546
Gowling WLG	21,801	3,249	25,050
	<u>175,202</u>	<u>26,202</u>	<u>201,404</u>
Balance of Administration Charge to complete the CCAA ²	<u>\$ 329,419</u>	<u>\$ 49,709</u>	<u>\$ 379,128</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>			

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

CP DOCUMENT ORDER

17. 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 November 2021) to CP's attorneys as well as to the Class Counsel.

INTEREST TREATMENT

18. As of the date of this report, approximately \$9.2 million has been earned on the Funds for Distribution since the effective date of the Amended Plan.
19. 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.
20. 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

21. 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 discovery phase, with a scheduled trial in July 2022; 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 summer 2022 trial is also likely in this case.

ACTIVITIES OF THE MONITOR

22. 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 Motion for Directions Order and has prepared for and appeared before the Court of Appeal in connection with the Motion for Leave to Appeal;

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

RECOMMENDATIONS OF THE MONITOR

A) Extension

- 23. The Monitor is of the opinion that the Court should grant the extension request to June 17, 2022, in order to allow for the distribution of the Undistributed Funds and pursue the litigious claims against CP in the Chapter 11.

B) Professional Fees

- 24. The Monitor supports the approval of the professional fees for the period of June 1, 2021 to November 30, 2021, which fees are fair and reasonable.

Respectfully submitted at Montreal, this 10th day of December, 2021.

Richter Advisory Group Inc.
Monitor



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