

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF ST-FRANÇOIS  
No.: 450-11-000167-134

SUPERIOR COURT  
(Commercial Division)  
*The Companies' Creditors Arrangement Act*

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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, 12<sup>th</sup> Floor, in the city and district of  
Montreal, Quebec, H3A 0G6

Monitor

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THIRTY-SEVENTH REPORT OF THE MONITOR  
December 7, 2022

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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-six times with the most recent extension having been granted to December 16, 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 December 7, 2022, the Petitioner filed a Motion for a Twenty-Seventh Order Extending the Stay Period, for the Approval of Professional Fees and an Increase to the Administration Charge for the US Professionals ("**Twenty-Seventh Extension and Fee Motion**"). The Twenty-Seventh Extension and Fee Motion will be heard on December 12, 2022.
6. The purpose of this Thirty-Seventh 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. The Monitor currently holds approximately \$15.5 million, being the balance of the funds not yet distributed ("**Undistributed Funds**") and which are 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 Canadian 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.

8. A total of approximately \$30,000 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 (30 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

9. The Twenty-Seventh Extension and Fee Motion seeks an extension of the Stay Period to June 16, 2023, in order to proceed with the distribution of the Undistributed Funds and pursue the proceedings under the Carmack Amendment (the “**Carmack Litigation**”) against Canadian Pacific Railway (“**CP**”) in the Chapter 11 (as discussed below).

## APPROVAL OF PROFESSIONAL FEES

10. The Twenty-Seventh Extension and Fee Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of June 1, 2022 to November 30, 2022, which can be summarized as follows:

<b>Montreal, Maine &amp; Atlantic Canada Co.</b>			
<b>Administration Charge Summary</b>			
<b>As of Nov 30, 2022</b>			
	<b>Fees /</b>		
	<b>Disbursements</b>	<b>Sales Taxes</b>	<b>Total</b>
Administration Charge <sup>1</sup>	\$ 14,650,000	\$ 2,170,000	\$ 16,820,000
Accrued Professional Fees as of May 31, 2022	(14,409,182)	(2,133,554)	(16,542,736)
Balance of Administration Charge to implement the Plan	240,818	36,446	277,264
Richter	31,923	4,781	36,704
Woods	13,004	1,947	14,951
Gowling WLG	6,563	983	7,545
	<u>51,490</u>	<u>7,711</u>	<u>59,200</u>
Balance of Administration Charge to complete the CCAA <sup>2</sup>	<u>\$ 189,328</u>	<u>\$ 28,735</u>	<u>\$ 218,063</u>

<sup>1</sup> 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.

<sup>2</sup> In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.

## **CP DOCUMENT ORDER**

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

## **INTEREST TREATMENT**

12. As of the date of this report, approximately \$9.5 million has been earned on the Funds for Distribution since the effective date of the Amended Plan.
13. 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.
14. 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**

15. The Monitor provides the following update received from the Estate Representative (formerly the Chapter 11 Trustee) regarding the outstanding proceedings in the United States 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) Carmack Litigation: 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 trial scheduled for February 27 to March 2, 2023; 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 Spring 2023 trial is likely in this case.

## INCREASE IN US ADMINISTRATION CHARGE

16. 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.
17. 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 related to i) the Carmack Litigation, and ii) certain Administrative Claims (unrelated to CP).
18. In the Twenty-Sixth Extension and Fee Motion the Petitioner requested a further increase in the Administration Charge for US Professionals of US\$400,000 (or CDN\$500,000). The requested increase was due to the complexity of the Carmack litigation as well as delays caused by the pandemic and the Estate Representative had advised the Monitor that this additional funding was required to complete the Carmack litigation with CP. The Monitor's Thirty-Sixth Report supported the increase in the Administrative Charge for US Professionals.
19. However, the Twenty-Sixth Extension and Fee Motion did not proceed on the subject of the increase in the US Administration Charge because CP requested additional information in connection with the increase which the Monitor, with the assistance of the Estate Representative, has endeavored to provide. Subsequently, the Estate Representative advised the Monitor that it reevaluated the funding required and thereby reduced the requested increase to US\$200,000 (or approximately CND\$260,000).
20. The Monitor has again discussed the request for an increase of the US Administration Charge with Class Counsel and the Province of Québec ("**Province**"). Both Class Counsel and the Province support the increase of the US Administration Charge in order to facilitate the management of the Carmack Litigation and to maximize its chances of success.
21. The Estate Representative has informed the Monitor that he has obtained the approval of the increase from the US Plaintiff counsels.
22. The Class Counsel, the Province and the US Plaintiff counsels collectively represent 93% in value of all claims and 99% of all claimants and they are all in favor of the increase.

23. Furthermore, the Monitor does not believe CP can be prejudiced by and does not believe CP has any financial interest in whether or not the charge is increased: i) there are no funds currently available for distribution to CP, ii) if the Carmack Litigation is successful the increase in the charge will be reimbursed to MMAC for the benefit of its creditors and iii) if the Carmack Litigation is not successful there will be no reduction in the distribution to CP which will be nil.
24. In summary, the Monitor supports this increase of US \$200,000 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 the Carmack Litigation will result in additional distributions to all categories of creditors in the CCAA 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 will be higher;
  - c) As previously indicated, all of major stakeholders (the Province, US Plaintiff counsels and Class Counsel) representing 99% in number and 93% in value of claims filed in the CCAA have been consulted by either the Estate Representative or the Monitor and they all agree with 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 which were initially forecasted.

#### **ACTIVITIES OF THE MONITOR**

25. 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 May 2022 to October 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 exchanged various emails with CP's counsel and the Estate Representative detailing the funding requirement with respect to the increase in the US Administration Charge;
  - 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, when applicable;
- g) The Monitor has prepared and filed the Thirty-Seventh Report; and
- h) The Monitor has performed other administrative and statutory matters relating to the Monitor's appointment.

## **RECOMMENDATIONS OF THE MONITOR**

### **A) Extension**

- 26. The Monitor is of the opinion that the Court should grant the extension request to June 16, 2023, in order to pursue the Carmack Litigation against CP and to allow for the distribution of the Undistributed Funds.

### **B) Professional Fees**

- 27. The Monitor supports the approval of the professional fees for the period of June 1, 2022 to November 30, 2022, which fees are fair and reasonable.

### **C) US Administration Charge**

- 28. The Monitor supports the increase in the Administration Charge for the US Professionals in the amount of US\$200,000 (CDN\$260,000) in order to pursue the Carmack Litigation against CP efficiently with the ultimate goal of realizing additional amounts for distribution to all creditors.

Respectfully submitted at Montreal, this 7<sup>th</sup> day of December, 2022.

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



Andrew Adessky, CPA, MBA, CIRP, LIT