

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-EIGHTH REPORT OF THE MONITOR  
June 9, 2023

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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-seven times with the most recent extension having been granted to June 16, 2023.

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 9, 2023, the Petitioner filed a Motion for a Twenty-Eighth Order Extending the Stay Period and for the Approval of Professional Fees ("**Twenty-Eighth Extension and Fee Motion**"). The Twenty-Eighth Extension and Fee Motion will be heard on June 14, 2023.
6. The purpose of this Thirty-Eighth Report of the Monitor is to inform the Court on the following subjects:
  - a) Status of Distributions;
  - b) Extension Request;
  - c) CP Document Order;
  - d) Interest Treatment;
  - e) Chapter 11;
  - f) Approval of Professional Fees; and
  - g) Recommendations of the Monitor.

## **STATUS OF DISTRIBUTIONS**

7. The Monitor currently holds approximately \$15.4 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 in order to comply with tax regulations in an efficient manner with respect to the interest 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-Eighth Extension and Fee Motion seeks an extension of the Stay Period to December 15, 2023, in order to proceed with the distribution of the Undistributed Funds and pursue the proceedings under the Carmack Litigation against Canadian Pacific Railway (“CP”) in the Chapter 11 (as discussed below). The Monitor either directly or via the Estate Representative has communicated with the major stakeholders (the Province, the Class Counsel and the US Legal Representatives) who have all indicated their support and consent for the extension request.

## **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 2023) to CP’s attorneys as well as to the Class Counsel.

## **INTEREST TREATMENT**

11. As of the date of this report, approximately \$9.8 million has been earned on the Funds for Distribution since the effective date of the Amended Plan.
12. 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.
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 may need to issue tax slips to at least 4,400 individuals and corporations .

## **CHAPTER 11**

14. 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 weeks before trial was scheduled in February 2023, the district court *sua sponte* issued an order limiting the scope of damages to the value of the crude oil aboard Train 282, approximately \$4.3 million USD. The parties then negotiated an agreed-to

amount of damages based on the court's ruling (with all rights reserved for appeal). Following that agreement, three legal issues remain to be decided by the North Dakota district court: (1) whether CP is entitled to an offset in the amount of approximately \$400,000 for unpaid freight charges, (2) whether plaintiff is entitled to prejudgment interest, and (3) if the Judgment Reduction Provision of MMA's Chapter 11 Plan is applicable. Those issues are fully briefed and now awaiting decision. A prompt ruling on those outstanding matters is expected, but ultimately that is up to the court's schedule. Once those matters are decided, the WD Trustee will then appeal the district court's decision to limit damages to the value of the crude oil, which the Estate Representative thinks is contrary to settled law. CP may, and likely will, cross appeal on a number of issues where the plaintiff previously prevailed. The Estate Representative anticipates that it could take up to a year from the start of the appeal process for the circuit court to issue a ruling, although Estate Representative is hopeful that it will proceed more expeditiously; and

- b) Estate Representative's separate litigation against CP: In the Adversary Proceeding in MMA's Chapter 11 case in bankruptcy court in the District of Maine ("**US Court**"), the parties had fully briefed the record for a summary judgment and were awaiting the bankruptcy court's ruling when the Quebec Superior Court entered judgment in the class action proceeding against CP, *Ouellette v. Compagnie de chemin de fer Canadien Pacifique*, 2022 QCCS 4643 (Dec. 14, 2022) (Bureau, J.S.C.). In the Adversary Proceeding, CP asserted that *Ouellette* has preclusive effect. However, the Plaintiffs in *Ouellette* have since filed appeals of the Superior Court's judgment. These appeals could impact the Adversary Proceeding. Accordingly, the Parties requested that the bankruptcy court stay the Adversary Proceeding pending resolution of the *Ouellette* appeal. Recently, the US Court formally entered a stay, which will remain in effect until the *Ouellette* appeal is resolved, likely at least through 2023.

## **APPROVAL OF PROFESSIONAL FEES**

- 15. The Twenty-Eighth Extension and Fee Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of December 1, 2022 to May 31, 2023, which can be summarized as follows:

<b>Montreal, Maine &amp; Atlantic Canada Co.</b> <b>Administration Charge Summary</b> <b>As of May 31, 2023</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 Nov 30, 2022	<u>(14,460,672)</u>	<u>(2,141,265)</u>	<u>(16,601,937)</u>
Balance of Administration Charge to implement the Plan	189,328	28,735	218,063
Richter	34,070	5,102	39,172
Woods	19,524	2,921	22,445
Gowling WLG	5,128	768	5,895
	<u>58,722</u>	<u>8,790</u>	<u>67,513</u>
Balance of Administration Charge to complete the CCAA <sup>2</sup>	<u>\$ 130,606</u>	<u>\$ 19,945</u>	<u>\$ 150,551</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.			

## RECOMMENDATIONS OF THE MONITOR

### A) Extension

16. The Monitor is of the opinion that the Court should grant the extension request to December 15, 2023, in order to allow the Carmack Litigation against CP to follow its course. The major stakeholders support this position.

### B) Professional Fees

17. The Monitor supports the approval of the professional fees for the period of December 1, 2022 to May 31, 2023, which fees are fair and reasonable.

Respectfully submitted at Montreal, this 9<sup>th</sup> day of June 2023.

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



Andrew Adessky, CPA, MBA, CIRP, LIT