

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 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, 12th Floor, in the city and district of
Montreal, Quebec, H3A 0G6

Monitor

THIRTY-NINTH REPORT OF THE MONITOR
December 6, 2023

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-eight times with the most recent extension having been granted to December 15, 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 December 6, 2023, the Petitioner filed a Motion for a Twenty-Ninth Order Extending the Stay Period and for Approval of Professional Fees ("**Twenty-Ninth Extension and Fee Motion**"). The Twenty-Ninth Extension and Fee Motion will be heard on December 11, 2023.
6. The purpose of this Thirty-Ninth 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 \$15.7 million, being the balance of the funds not yet distributed ("**Undistributed Funds**") and which are comprised primarily of interest earned on the funds for distribution, various reserves 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, in an efficient manner, with tax regulations concerning the interest to be distributed to the claimants and the issuance of tax slips.
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. In accordance with Section 8.8 of the Amended Plan, these unclaimed funds will be donated to charity.

EXTENSION REQUEST

9. The Twenty-Ninth Extension and Fee Motion seeks an extension of the Stay Period to December 17, 2024, 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). A longer than normal extension period is being requested to allow the necessary time for the Carmack Litigation to hopefully be completed and thus reduce the costs of seeking a further extension in six months. 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 together represent 99% of all claimants and 93% of the value of all claims) and they 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 October 2023) to CP’s attorneys as well as to Class Counsel.

INTEREST TREATMENT

11. As of the date of this report, approximately \$10.2 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 those damages based on the court's ruling (with all rights reserved for appeal with regards to that limitation of damages and the ultimate amount of damages to be awarded). Following that agreement, three legal issues remain to be decided by the North Dakota district court: (1) whether CP is entitled to set-off an amount of approximately US\$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 was expected, but a ruling is still pending. 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 believes 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. To date, the Court of Appeal has not yet set a date for hearing of the *Ouellette* appeal.

APPROVAL OF PROFESSIONAL FEES

15. The Twenty-Ninth Extension and Fee Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of June 1, 2023 to November 30, 2023, which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co.
Administration Charge Summary
As of November 30, 2023

	Fees /		Total
	Disbursements	Sales Taxes	
Administration Charge ¹	\$ 14,650,000	\$ 2,170,000	\$ 16,820,000
Accrued Professional Fees as of May 31, 2023	<u>(14,519,394)</u>	<u>(2,150,055)</u>	<u>(16,669,449)</u>
Balance of Administration Charge to implement the Plan	130,606	19,945	150,551
Richter	21,481	3,217	24,698
Woods	13,728	2,056	15,784
Gowling WLG	1,868	280	2,148
	<u>37,077</u>	<u>5,552</u>	<u>42,630</u>
Balance of Administration Charge to complete the CCAA ²	<u>\$ 93,529</u>	<u>\$ 14,392</u>	<u>\$ 107,921</u>

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.

² 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 17, 2024, 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 June 1, 2023 to November 30, 2023, which fees are fair and reasonable.

Respectfully submitted at Montreal, this 6th day of December 2023.

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



Andrew Adessky, CPA, MBA, CIRP, LIT