

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-FIRST REPORT OF THE MONITOR
November 25, 2019

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 times with the most recent extension having been granted to December 12, 2019.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted 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 November 25, 2019, the Petitioner filed a Motion for a Twenty-First Order Extending the Stay Period and for Approval of Professional Fees ("Twenty-First Extension and Fee Motion"). The Twenty-First Extension and Fee Motion will be heard on December 2, 2019, 2019.
6. The purpose of this Thirty-First Report of the Monitor is to inform the Court on the following subjects:
 - Claims Review and Status of Distributions;
 - Extension Request;
 - Approval of Professional Fees;
 - CP Document Order;
 - Interest Treatment;
 - Chapter 11;
 - Activities of the Monitor;
 - Recommendations of the Monitor.

CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS

7. We summarize the status of the distributions by category as follows:

Montreal, Maine & Atlantic Canada Co.
Summary of Distributions
As of October 31, 2019

	Distribution Paid	Distribution Pending	Total
Wrongful Death Claims	\$ 121,561,892	\$ -	\$121,561,892
Bodily Injury and Moral Damage Claims	51,137,401	-	51,137,401
Property and Economic Damages Claims	25,634,715	-	25,634,715
Government Claims	103,460,319	98,060,399	201,520,718
Subrogated Insurer Claims	17,641,913	-	17,641,913
	<u>\$ 319,436,240</u>	<u>\$98,060,399</u>	<u>\$417,496,639</u>

- **Distribution Paid:** this represents amounts paid to date prior to the deduction of fees and disbursements that were paid by claimants to their attorneys. In total, approximately \$33,000 of the distribution payments have either not yet been released (due to missing information), have been returned because some claimants have moved and not notified the Monitor of their new address or have not yet been cashed. 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;
- **Distribution Pending:** this represents:
 - the balance of the distribution payable to the Province of Quebec (“Province”) in respect of their original claim of \$409 million filed in June 2014 (“Original Claim”). As noted in prior reports including the Twenty-Eighth Report to Court dated June 7, 2018 (“Twenty-Eighth Report”), the amended and final claim submitted by the Province on December 1, 2017 (Final Claim) was approximately \$340.7 million including a provision of \$80 million for future expenses (“Expense Provision”).
 - The Amended Plan was based upon the Original Claim of the Province and did not foresee the possibility that the actual costs of the Province would be significantly lower. The Monitor and the Province have scheduled a meeting for November 25, 2019 to consider next steps given the lower claim amount and will provide an update in its next report. A full review of the Province’s claim will only be performed once the claim amount is finalized.
 - Approximately \$18.0 million composed of the \$10 million reserve for litigation regarding various administrative claims in the Chapter 11 (see prior reports of the Monitor), approximately \$7.0 million of interest earned on the funds held for distribution which will be distributed at the end of the CCAA proceedings and approximately \$1.0 million of other reserves.

EXTENSION REQUEST

8. The Twenty-First Extension and Fee Motion seeks an extension of the Stay Period to June 12, 2020, to allow for the finalization of the treatment of the Final Claim of the Province, the advancement of various litigation in the Chapter 11 (as discussed below) and the eventual allocation and distribution of interest income (as discussed below) prior to the conclusion of the CCAA.

APPROVAL OF PROFESSIONAL FEES

9. The Twenty-First Extension and Fee Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of June 1, 2019 to October 31, 2019 which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co. Administration Charge Summary As of October 31, 2019			
	Fees /		
	Disbursements	Sales Taxes	Total
Administration Charge ¹	\$ 14,150,000	\$ 2,096,000	\$ 16,246,000
Accrued Professional Fees as of May 31, 2019	<u>(13,676,744)</u>	<u>(2,023,911)</u>	<u>(15,700,655)</u>
Balance of Administration Charge to implement the Plan	473,256	72,089	545,345
Richter	14,472	2,167	16,639
Woods	1,914	287	2,200
Gowling WLG	4,908	735	5,643
	<u>21,293</u>	<u>3,189</u>	<u>24,482</u>
Balance of Administration Charge to complete the CCAA ²	<u>\$ 451,962</u>	<u>\$ 68,901</u>	<u>\$ 520,863</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.

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 2019) to CP's attorneys as well as to the Class Counsel.

INTEREST TREATMENT

11. As of the date of this report, approximately \$7.0 million has been earned on the Funds for Distribution since the effective date of the Amended Plan ("Interest").
12. 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.
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 will need to issue tax slips (see above) to at least 3,200 individuals and corporations.

CHAPTER 11

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:

- 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 is in the discovery phase, with a scheduled trial in August 2020.;
- Estate Representative's separate litigation against CP: There has been no further update since our Twenty-Ninth Report dated November 14, 2018. The case remains in the discovery phase;
- Potential administrative/secured claims filed in the Chapter 11: these claims and their quantum continue to be contested by the Estate Representative and it is uncertain if these claims will be definitively determined by the end of the requested extension period. Hearings were held on

the Wheeling claims on May 24 and 25, 2018, and the Bankruptcy Court issued a decision that Wheeling did not have a security interest in any settlement proceeds. Wheeling appealed the decision to the United States District Court which affirmed the Bankruptcy Court's decision. Wheeling has since appealed to the United States Court of Appeals for the First Circuit, and that appeal is currently being briefed for argument. No oral argument date has been set at this juncture. The Irving Railroads claims are the subject of a direct appeal to the United States Court of Appeals for the First Circuit on a remaining legal issue. That appeal has been briefed and argued, and the parties await a decision from the First Circuit. The Monitor continues to maintain a \$10 million reserve in connection with these claims.

ACTIVITIES OF THE MONITOR

14. The Monitor's activities have included the following:

- The Monitor has issued distributions to various claimants as well as responding to queries from claimants with respect to the distributions;
- The Monitor has been in contact with the Province in connection with the analysis of the Final Claim and the Expense Provision;
- The Monitor has continued to provide monthly updates (for May 2019 to October 2019) 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);
- 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;
- The Monitor has maintained regular contact with the major stakeholders to seek their input and discuss various issues;
- The Monitor continues to post copies of Court materials filed in the CCAA and Chapter 11 Proceedings on its website;
- The Monitor has prepared and filed the Thirty-First Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Extension

15. The Monitor is of the opinion that the Court should grant the extension request to June 12, 2020 in order to allow additional time for the resolution and finalization of the claim of the Province, the

redistribution of the remaining Settlement Funds to claimants, the payment of interest and the advancement of various litigation in the Chapter 11.

B) Professional Fees

16. The Monitor supports the approval of the professional fees for the period of June 1, 2019 to October 31, 2019, which fees are fair and reasonable.

Respectfully submitted at Montreal, this 25th day of November, 2019.

Richter Advisory Group Inc.
Monitor

A handwritten signature in black ink, appearing to be 'A Adessky', written over a horizontal line.

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