

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF QUÉBEC
DIVISION NO.: 01-MONTREAL
COURT NO.: 500-11-038543-100
COURT NO.: 500-11-038542-102
ESTATE NO.: 41-342412
ESTATE NO.: 41-1333938

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE BANKRUPTCIES OF:

4504020 Canada Inc.
(formerly Railpower Technologies Corp.)

a body politic and corporate, duly incorporated according to law and having its head office and principal place of business at:

9955 de Catania Avenue, Suite 105
Brossard, Québec J4Z 3V5

-and-

RHTC Liquidating Co.
(formerly Railpower Hybrid Technologies Corp.)

a legal person duly constituted under the laws of the State of Washington, having an establishment at 2021 Peninsula Drive, Erie, Pennsylvania, 16506 and its principal place of business at:

9955 de Catania Avenue, Suite 105
Brossard, Québec J4Z 3V5

(collectively "Bankrupts")

TRUSTEE'S REPORT TO THE FIRST MEETING OF CREDITORS

Pursuant to an order (the "Initial Order") of the Quebec Superior Court, District of Montreal (Commercial Division) (the "Court") made on February 4, 2009, 4504020 Canada Inc. (formerly Railpower Technologies Corp) ("Railpower Canada") and RHTC Liquidating Co. (formerly Railpower Hybrid Technologies Corp.) ("Railpower US") (collectively the "Companies") were granted protection under the *Companies Creditors' Arrangement Act* ("CCAA") of Canada, and Ernst & Young Inc. ("E&Y") was appointed as the Monitor in the CCAA proceedings. The foregoing has similar effect to a filing under Chapter 11 of the USA *Bankruptcy Code*, same however, not applying in this case. Pursuant to the Initial Order, the Companies with the assistance of the Monitor were authorized to proceed with a process which culminated in the sale of virtually all of the Companies' assets. Railpower US also applied to the Court in

Pennsylvania for recognition of the CCAA proceedings pursuant to Chapter 15 of the US *Bankruptcy Code*. This was granted by the US Court. An agreement was reached to sell the majority of the Companies' assets to R. J. Corman Railroad Group, LLC ("R.J. Corman").

Both the Court (on May 27, 2009) and the US Court (on May 28, 2009), authorized the sale transaction. Due to events occurring subsequent to the sale transaction (to be discussed in greater detail in this report) a Plan of Arrangement under the CCAA was not filed with the Companies' creditors ("Plan").

The largest creditor, Ontario Teachers' Pension Plan ("OTPP"), subsequently filed Petitions in Bankruptcy in virtue of the *Bankruptcy and Insolvency Act of Canada* ("BIA") against both Railpower Canada and Railpower US. On March 8, 2010 the Quebec Superior Court made a Bankruptcy Order solely against Railpower Canada. OTPP did not proceed further with its Petition against Railpower US, because OTPP had been enjoined from doing so by an Order of the US Court. RSM Richter Inc. ("Richter") was appointed as Trustee to the Estate of Railpower Canada by the Official Receiver (i.e. Canadian federal government representative which oversees bankruptcies).

On March 16, 2010, Richter in its quality as Trustee of Railpower Canada as sole shareholder of Railpower US, caused Railpower US to file an Assignment in Bankruptcy and Richter was appointed as Trustee. It should be noted that the Directors of the Companies had previously all resigned.

The consequence of the two bankruptcies is that the CCAA proceedings ceased to exist although certain Orders previously issued by the Court and US Court may well remain in force.

On March 23, 2010 Union Pacific Railroad Company ("UP") an unsecured creditor of Railpower US filed a Motion to the Court to Stay the Bankruptcy proceedings in Canada ("Motion to Stay"). The Motion was heard by the Court on March 25, 2010. The Court dismissed the Motion to Stay so that the Bankruptcy proceedings and the Trustee's administration of the Estates continue.

The information contained in the Report has been prepared from Monitor's Reports to Court, discussions with the Monitor and discussions with other representatives of the Companies and creditors. The Trustee has not received, as of the date of the writing of this report, any books and records of the Bankrupts, for its review. Consequently the Trustee expresses no opinion whatsoever with respect to the validity, the exactness or the reliability of the information contained herein.

I. CORPORATE STRUCTURE AND BACKGROUND

The Companies business was the development, construction, marketing and sales of specialized, patented, higher performance, clean locomotives and power plants for the transportation industry and derivative markets. Railpower Canada was formed under the *Canada Business Corporations Act* on June 30, 2001, by amalgamation of Railpower Technologies Inc. (formerly a private company incorporated as APP Applied Power & Propulsion Inc.) and Envirotrain Capital Corp. Railpower Canada's head office and principal place of business is located in Brossard, Quebec.

Railpower US was incorporated in 2004 and is a wholly owned subsidiary of Railpower Canada. Railpower US had a place of business in Erie, Pennsylvania and was incorporated under the laws of the State of Washington. Railpower US has its **principal** place of business in Brossard, Quebec where the corporate headquarters of Railpower Canada were located.

While the Companies are distinct legal entities, from an operations standpoint they were run largely as a single unit, and management and operational decisions were made from Railpower Canada's headquarters.

According to Management, the Companies' financial difficulties resulted from the following:

- Certain anticipated large orders from customers were delayed in 2008 due to the economic slowdown and to delayed governmental subsidiaries, especially in the United States.
- No significant orders were received in 2008 and the economic slowdown caused large expected orders in 2009 to be delayed.

As a result of the above factors the Companies incurred significant losses and were unable to meet their obligations as they became due.

II. EVENTS POST INITIAL CCAA ORDER

The Companies and the Monitor carried out a sales process in following the Initial Order. The Court and the US Court approved a sale of the majority of the Companies' assets. An asset purchase agreement completing the sale transaction was entered into on May 29, 2009 between the Companies and R.J. Corman. The total proceeds from the sale amounted to \$5,100,000 (\$2,711,698 allocated to Railpower Canada and \$1,910,642 USD allocated to Railpower US).

The following are other significant events which occurred subsequent to the CCAA filing:

- On June 2, 2009 the Monitor filed a Motion to implement in the United States, the Canadian Process Order (Court Order of May 27, 2009), a procedure for filing proof of claims.
- On July 8, 2009, the US Court entered an Order recognizing and enforcing the Canadian Claims Order in the United States.
- On July 21, 2009, UP, an unsecured creditor of Railpower US filed a Rule 2004 Examination Notice against the Companies.
- On August 6, 2009, the Monitor filed a Motion to Quash the Rule 2004 Examination Notice.
- On August 14, 2009, certain creditors of Railpower US including UP, filed an *Involuntary Chapter 7 Petition* against Railpower US under *Title 11* of the *United States Code*. On September 8, 2009, the Monitor filed a Motion to Dismiss the *Involuntary Chapter 7 Petition*. The *Chapter 7 Petition* is still pending before the US Court.

III. STATEMENT OF AFFAIRS

In accordance with the BIA, a Statement of Affairs (estimated balance sheet) was prepared solely for Railpower US and that of Railpower Canada is still pending. Notwithstanding, we have prepared below a current summary of their estimated balance sheets based on very limited information. The estimated balance sheet / Statement of Affairs is normally attested to by a Director of the bankrupt, but was not done so in these cases as all Directors had previously resigned. The information provided below will also likely require future modification as more details become available.

1. Railpower Canada

A) Assets

- **Cash**

Per discussions with the Monitor, funds held in the Monitor's trust bank account totals approximately \$3.6 million. These funds have yet to be transferred by the Monitor to the Trustee. Included in this balance is an amount of \$998,000 emanating from the portion of the sale transaction related to the intellectual property. As discussed later in this report the intellectual property is not subject to any security.

- **Railcar Engines ("Locomotives")**

There were two Locomotives excluded from the sale transaction with R.J. Corman. The two Locomotives are currently held at Norfolk Southern Railway ("NSR") premises and there is apparently a mechanics' lien on these Locomotives. The total claim by NSR is \$1.9MM USD. The validity of said claim has yet to be assessed.

During the CCAA proceedings apparently a sale of the Locomotives was contemplated which would have resulted in net proceeds to Railpower Canada of \$500,000 USD. As a result of the current US Court proceedings this deal was never finalized. The Trustee has not determined whether this sale arrangement is still possible and what realization value is attributable to the two Locomotives.

- **Building**

Railpower Canada owns land and a building located at 500, rue Dijon, St. Jean-sur-Richelieu, Quebec. The building is subject to a legal hypothec (builder's lien) in favour of Groupe Aécon Québec Inc. To the extent the lien is valid, any excess value would fall under the security of the OTPP.

B) Liabilities

It is important to note that the exact amount of the liabilities which existed as at March 8, 2010 will only be determined once the proof of claims are submitted by the creditors and have been compiled by the Trustee. We, nonetheless, present hereinafter a summary of Railpower Canada's liabilities based upon preliminary information provided by the Monitor.

Description	Amount
Secured Creditors	TBD (Note A)
Preferred Creditors	Unknown
Unsecured Creditors	\$60,320,874 (Note A)

Note A – See below for details on secured creditors

- **Secured Creditors**

The Ontario Teachers' Pension Plan Board is the Company's principal secured lender ("Secured Lender"). The total amount due to the OTPP per the creditors' list amounts to approximately \$41.6 million.

The realization of the assets under OTPP's security will fall significantly short of the total amount due. It is likely that the aforementioned Secured Lender will file an unsecured proof of claim, as a result of the shortfall it will suffer.

The Trustee's legal counsel in Canada, Davies Ward Phillips & Vineberg LLP, has provided Richter with an opinion on the validity and enforceability of the security of the Secured Lender. The opinion concludes that the Secured Lender holds a valid perfected security interest in all the Company's assets except for the intellectual property (to the extent of \$20 million)

- **Preferred Creditors**

As at the preparation of this report, a preferred claim of approximately \$70,000 was received from the Commission des Normes du Travail. The Trustee has yet to validate the claim. The Trustee is unaware of any amounts owing to the Government authorities which would be considered a priority. Notice has been sent to possible preferred creditors and the ultimate amount of this category of claims will only be subsequently determined.

- **Unsecured Claims**

As previously discussed, a Claims Process was instituted under the CCAA proceeding. The unsecured claims have been estimated based upon the proofs of claim filed with the Monitor and other amounts as disclosed to the Trustee by the Monitor. The Trustee has requested from all creditors, and awaits the submission of "new" proofs of claim. Pending such tabulation and ultimate review/acceptance by the Trustee, we cannot accurately determine the total claims which may rank for dividend distribution.

2. Railpower US

A) Assets

- **Cash**

Per discussions with the Monitor, funds held in the Monitor's trust bank account totals approximately \$2.0 million emanating from the sale transaction. These funds have yet to be transferred by the Monitor to the Trustee as they are subject to an Order of the Court and US Court that they remain in E&Y's trust pending further judgment.

B) Liabilities

It is important to note that the exact amount of the liabilities which existed as at March 16, 2010 will only be determined once the proofs of claim are submitted by the creditors and have been compiled by the Trustee. We, nonetheless, present hereinafter a summary of Railpower US's liabilities based upon preliminary information provided by the Monitor.

Description	Amount
Secured Creditors	-
Preferred Creditors	Unknown
Unsecured Creditors	\$89,142,413

- **Secured Creditors**

The Trustee is unaware of any secured creditors in the Estate.

- **Preferred Creditors**

The Trustee is unaware of any amounts which would be considered a priority. Notice has been sent to possible preferred creditors and the ultimate amount of this category of claims will only be subsequently determined.

- **Unsecured Creditors**

As previously discussed a Claims Process was instituted under the CCAA proceeding. The unsecured claims amount emanate from the proofs of claim filed with the Monitor and other amounts disclosed to the Trustee. Included in the proofs of claim, is an intercompany claim from Railpower Canada amounting to \$78.9 million. **There are various issues concerning** this intercompany claim which are still under review by the Trustee and its legal counsel.

IV. SUMMARY OF THE PRELIMINARY ADMINISTRATION OF THE ESTATE

- **Books and Records and Security and Protective Measures**

The Trustee has requested from the Monitor access and control of all the books and records of the Companies. The Monitor has not yet responded to the request.

- **Reviewable Transactions**

The Trustee will perform a review of the payments to creditors to determine whether any are of preferential nature within the meaning of the BIA. We will report the results to the Inspectors of the Estates once our review is complete.

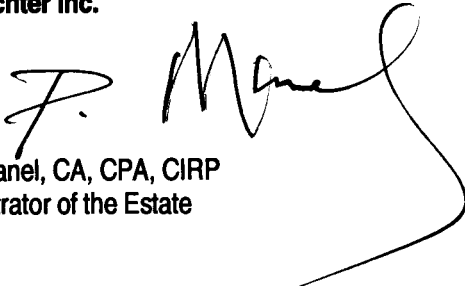
V. PROJECTED DISTRIBUTION

In respect of Railpower Canada, as it is the Trustee's preliminary view that the sole dividend to unsecured creditors may result from the portion of the sale transaction which related to the intellectual Property. The amount of the net realization from the sale of intellectual property would be distributed to the **unsecured creditors** on a pro rata basis, according to the scheme of distribution contemplated by the BIA ("dividend"). It should be noted that a dividend shall only be paid to those unsecured creditors which have submitted a **new** proof of claim to the Trustee. **Therefore, even if a proof of claim has been previously filed with the Monitor, another one must be filed with RSM Richter Inc.**

To the extent there are no secured creditors in Railpower US, all funds available for distribution would be paid to the unsecured creditors on a pro rata basis to those unsecured creditors which have submitted an "admitted" proof of claim to the Trustee. We reiterate **that there are various issues concerning** the intercompany claim which are still under review by the Trustee and its legal counsel which may affect the prorata distribution. Accordingly, the Trustee cannot at this time forecast the amount of likely dividend.

Dated at Montréal, this 31st day of March 2010.

RSM Richter Inc.
Trustee


Philip Manel, CA, CPA, CIRP
Administrator of the Estate