

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF SAINT-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  
ARRANGEMENT WITH RESPECT TO:**

**MONTREAL, MAINE & ATLANTIC CANADA CO.  
(MONTREAL, MAINE & ATLANTIQUE CANADA  
CIE)**, a legal person duly incorporated under the  
laws of the province of Nova Scotia, having a place  
of business at 1, Place Ville Marie, 37<sup>th</sup> Floor,  
Montreal, Quebec H3B 3P4 (at the offices of its  
attorney ("fondé de pouvoir"))

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

**Monitor**

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**SIXTH REPORT OF THE MONITOR  
ON THE STATE OF PETITIONER'S FINANCIAL AFFAIRS  
February 10, 2014**

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**INTRODUCTION**

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. (hereafter in this Report "MM&A" or "Petitioner") filed with the Quebec Superior Court a Motion for the Issuance of an Initial Order ("Motion") 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. ("Richter") as Monitor (the "Monitor").

2. On August 21, 2013, the Petitioner filed a Motion to Amend the Initial Order and Seek a Charge and Security on the Property of Petitioner to Secure Funds for Self-Insured Obligations (“Charge and Security Motion”). The Monitor filed its First Report in respect of the Charge and Security Motion. On August 23, 2013, the Court granted an order amending the Initial Order to include the Self-Insured Obligation Charge.
3. On September 3, 2013, the Petitioner filed a Motion for an Order Extending the Stay Period and to Approve a Cross-Border Insolvency Protocol (“First Extension Motion”). The Monitor filed its Second Report on September 3, 2013 in support of the First Extension Motion. On September 4, 2013, the Court extended the stay of proceedings until October 9, 2013 and approved the cross-border insolvency protocol.
4. On October 4, 2013, the Petitioner filed a Motion for a Second Order Extending the Stay Period (“Second Extension Motion”) requesting an extension of the stay of proceedings to January 28, 2014. The Monitor filed its Third Report on October 4, 2013 in support of the Second Extension Motion. On October 9, 2013, the Court extended the stay of proceedings until January 28, 2014.
5. On October 4, 2013, the Petitioner also filed a Motion to Increase the Amount of the Administration Charge, which increase was approved by the Court on October 9, 2013.
6. On December 13, 2013, the Petitioner filed a Motion for an Order Approving a Compromise and Settlement with Travelers Property Casualty Company of America (“Travelers Motion”), which compromise and settlement was approved by the Court on December 19, 2013.
7. On December 13, 2013, the Petitioner filed a Motion for an Order Approving a Process to Solicit Claims and for the Establishment of a Claims Bar Date (“Claims Motion”). At the request of the Petitioner and other interested parties, the Claims Motion was postponed and was scheduled to be heard on February 11, 2014 (“February 11, 2014 Hearing”). As noted below, the Petitioner is requesting that the Claims Motion instead be heard on February 26, 2014 (“February 26, 2014 Hearing”).
8. On December 13, 2013, the Petitioner and the Monitor jointly filed a Motion to Increase the Amount of the Administration Charge. On December 19, 2013, the Court granted an increase in the Administration Charge.
9. On December 16, 2013, the Petitioner filed a Motion for an order (a) Approving Bid Procedures for the Sale of the Debtor’s Assets, (b) Approving a Stalking Horse Bid, (c) Approving a Break-Up Fee and Expense Reimbursement, (d) Scheduling an Auction, (e) Approving Procedures for the Assignment and Assumption of Certain Executory Contracts and Unexpired Leases and (f)

Approving a Form of Notice of Sale ("Sale Motion"). The Sale Motion was approved by the Court on December 19, 2013.

10. On November 1, 2013, the Motion for an Order Appointing Yannick Gagné, Guy Ouellet, Serge Jacques and Louis-Serges Parent as the Representatives of the Class Described in Appendix "A" hereto ("Class Representatives Motion"), which was scheduled to be heard on December 19, 2013, was postponed and is scheduled to be heard on February 11, 2014.
11. On December 17, 2013, the Chapter 11 Trustee filed a Contestation of the Class Representatives Motion.
12. On January 17, 2014, the Petitioner filed a Motion for an Order Approving and Authorizing the Assignment of Contracts ("Contract Assignment Motion"). The Contract Assignment Motion was approved by the Court on January 23, 2014.
13. On January 19, 2014, the Petitioner filed a Motion for the Issuance of (i) An Order Authorizing the Sale of the Assets of the Petitioner and of (ii) a Vesting Order ("Sale and Vesting Motion"). The Sale and Vesting Motion was approved by the Court on January 23, 2014.
14. On January 20, 2014, the Petitioner filed a Motion for a Third Order Extending the Stay Period ("Third Extension Motion"). On January 23, 2014, the Court extended the stay of proceedings until February 11, 2014.
15. On February 4, 2014, the Class Action Plaintiffs filed a Cross-Motion of the Class Action Plaintiffs for an Order Approving a Process to Solicit Claims and for the Establishment of a Claims Bar Date followed by the filing on February 5, 2014 of the Class Action Plaintiffs Plan of Argument ("Claims Cross-Motion").
16. On February 5, 2014, Orford Express Inc. filed a Motion to Modify a Prior Order and to Obtain Various Declaratory Orders ("Orford Motion").
17. On February 7, 2014, the Petitioner filed a Motion for a Fourth Order Extending the Stay Period to February 26, 2014 ("Fourth Extension Motion").
18. On February 7, 2014, the Monitor filed a Motion for Directions in respect of a Motion for Joint Status Conference filed on February 7, 2014 by the Official Committee of Victims in the Chapter 11 proceedings ("Directions Motion").
19. On February 7, 2014, the Chapter 11 Trustee filed two separate affidavits in connection with the Claims Motion and the Claims Cross-Motion.

20. The Fourth Extension Motion and the Directions Motion will be heard at the February 11, 2014 Hearing. The Petitioner has requested that the hearing of the Claims Motion, the Class Representatives Motion and the Claims Cross-Motion be postponed to the February 26, 2014 Hearing.
21. All amounts reflected in this report are stated in Canadian currency unless otherwise noted.
22. The purpose of this Sixth Report of the Monitor is to inform the Court on the following subjects:
  - General Corporate Information and Purpose of CCAA filing;
  - Canadian Transportation Agency;
  - Service of the Railway Line in Lac-Mégantic;
  - Financial Position;
  - Cash Flow Projections and Interim Financing;
  - Insurance;
  - Compromise and Settlement with Travelers Property Casualty Company of America;
  - Sale of Assets;
  - Claims Process;
  - Class Representatives Motion and Claims Cross-Motion;
  - Increase in the Administration Charge;
  - Chapter 11 Proceedings;
  - Activities of the Monitor;
  - Recommendations of the Monitor.
23. We inform the Court that the Monitor has not conducted an audit or investigation of the information which has been provided to it by the Petitioner and that accordingly, no opinion is expressed regarding the accuracy, reliability or completeness of the information contained within this Report. The information contained herein is based on a review of unaudited financial information provided to the Monitor by the Petitioner's management as well as discussions with the Petitioner's management and employees.

## **GENERAL CORPORATE INFORMATION AND PURPOSE OF CCAA FILING**

24. As noted in the Monitor's prior reports, the Petitioner operates a shortline freight railroad company in the Province of Quebec. It is a wholly owned subsidiary of Montreal, Maine & Atlantic Railway Ltd. ("MM&AR") which operates a shortline railroad in the States of Vermont and Maine (MM&A and MM&AR are hereinafter collectively referred to as the "Companies"). Together, the Companies operate approximately 500 route miles and service customers in Canada and the United States. An affiliated company, LMS Acquisition Corp. ("LMS") located in Hermon, Maine, operates a 130,000 square foot warehouse offering warehousing and lumber distribution.
25. As also noted in the Monitor's prior reports, the purpose of the CCAA proceedings is to:
- Continue the operations of the railway to the fullest extent possible in order to service the many customers and municipalities located along its route who are dependent on the railway for the operations of their business and this has been the case to date;
  - Set up a sale process, in order to achieve a going-concern sale of the assets of MM&A and MM&AR. Railroad Acquisitions Holdings LLC ("RAH") was the successful bidder for virtually all the assets of the Companies and a Sale and Vesting Motion was approved by the Court on January 23, 2014;
  - Provide continued employment for the experienced work force still employed by the Petitioner which will also serve to enhance the going-concern value of the Petitioner's business and hopefully ensure continued employment for that work force after a sale. As appears from the Asset Purchase Agreement ("APA"), the majority of the current employees of MM&A should be retained by RAH;
  - Set up a claims process, to avoid a multiplicity of individual legal recourses and deal efficiently with the claims of all stakeholders including the families of the victims and all holders of claims resulting from the derailment ("Derailment Victims"). As noted above, a Claims Motion was filed on December 13, 2013;
  - Facilitate the negotiation with its various insurers and other third parties in order to maximize proceeds available for distribution and ensure the proper distribution of such indemnities and other proceeds pursuant to the Claims Process.

## **CANADIAN TRANSPORTATION AGENCY ("CTA")**

26. As noted in the Monitor's Fifth Report, on January 16, 2014, MM&A submitted a request to the CTA seeking an extension of its Certificate of Fitness to April 1, 2014 to enable it to continue operations while it seeks to complete the sale of its assets.

27. On January 30, 2014, the CTA varied the existing order by amending the date of effect of the suspension of MMA's Certificate of Fitness to April 1, 2014.

#### **SERVICE OF THE RAILWAY LINE IN LAC-MÉGANTIC**

28. As discussed in the Monitor's Fourth and Fifth Reports, MM&A and the City of Lac-Mégantic ("City") reached an agreement covering Phase I of MM&A's operating plan consisting of service, which started on December 18, 2013, to the City's industrial park to allow clients such as Tafisa Canada Inc. and Logi-Bel Entrepotage Inc. to resume train service to their customers. MM&A has now established a regular weekly operating schedule to the industrial park.
29. The City and MM&A, with the assistance of the Monitor, have discussed the implementation of Phase II of MM&A's operating plan. Phase II of MM&A's operating plan consists of the resumption of east-west traffic between Quebec and Maine. MM&A has agreed that it will not transport any crude oil or similar product, that the proportion of cars containing dangerous goods will not exceed 25% of the total cars on any train operated and that it will observe various maximum speed limits and other security measures and operating conditions.
30. The City is reviewing the Phase II plan with its municipal counsel and MM&A is awaiting a response from the City regarding implementation. The targeted date for implementation of Phase II is on or about February 11, 2014. These interim agreements between MM&A and the City do not bind RAH.
31. MM&A will continue to self-embargo the transport of any crude oil.

#### **FINANCIAL POSITION**

32. In conjunction with the filing of the Third Extension Motion on January 20, 2014, the Petitioner submitted weekly cash flow projections covering the period from January 13, 2014 to February 14, 2014, a copy of which was attached as Exhibit "R-1" to the Third Extension Motion.
33. Wheeling & Lake Erie Railway Company ("Wheeling") provided the Companies with a US\$6 million line of credit, which had been utilized in full as of the commencement of the restructuring proceedings. The accounts receivable and inventory of MM&AR as of the filing date, secured the line of credit. Subsequent to the Camden DIP financing, as defined below, MM&AR has set aside the proceeds of all U.S. accounts receivable collected for pre-petition sales and for post-petition sales through October 18, 2013. MM&AR has been remitting these deposits to Wheeling on a regular basis.

34. As at January 31, 2014 the total amount remitted to Wheeling was US\$1.1 million. A further US\$0.7 million is being held in escrow and US\$0.5 million thereof relates to the proceeds of the sale of tax credits earned by MM&AR. As mentioned in the Monitor's Fifth Report, Wheeling claims that it has a security interest over the tax credits but that position is contested by the Chapter 11 Trustee. The validity, priority and extent of Wheeling's security interest in the proceeds of these tax credits was heard in the United States Bankruptcy Court for the District of Maine ("US Court") on January 23, 2014. The US Court did not provide any ruling on this matter and took the pleading under advisement. The remaining US\$0.2 million held in escrow, may be remitted to Wheeling if the realization of assets subject to Wheeling's security does not generate sufficient proceeds to pay the amounts owed to Wheeling.
35. As of January 31, 2014, the consolidated cash balance of the Companies amounted to US\$0.2 million as compared to the projected consolidated balance of US\$0.1 million. In addition, the Companies used US\$2.7 million of the DIP financing as compared to a projected use of US\$2.6 million. The overall actual cash balance is in line with projections. The following are the major variances:
- US\$0.3 million positive cash receipts variance resulting from the better than forecasted collection of accounts receivable;
  - US\$0.2 million lower than projected material, supplies and other costs; offset by:
  - US\$0.5 million of tax credits were projected to be received, however, as mentioned above, the entitlement to these tax credits are being contested by Wheeling and the amount is being held in escrow.
36. For additional details, we refer you to Exhibit "1" attached hereto, entitled Comparative Cash Flow for the period January 13, 2014 to January 31, 2014.

#### **CASH FLOW PROJECTIONS AND INTERIM FINANCING**

37. Included hereto as Exhibit "2" are updated projections for MM&A ("MM&A Projections") as well as the combined projections with MM&AR ("Combined Projections") for the period February 3, 2014 to February 28, 2014 ("Period").
38. The MM&A Projections and the Combined Projections have been prepared by management and the Chapter 11 Trustee based on information and assumptions as of the week ended January 31, 2014. The MM&A Projections and the Combined Projections have been prepared using probable assumptions supported by and consistent with the plans of the Companies for the Period, considering the economic conditions that are considered the most probable by management. Since

the MM&A Projections and the Combined Projections are based on assumptions regarding future events, actual results will vary from the information presented even if the hypothetical assumptions occur, and the variations may be material.

39. The underlying assumption of the MM&A Projections and the Combined Projections are that the Companies will continue with their current level of railway operations, pending the eventual closing of the sale of assets to RAH, projected to take place by the end of March 2014.
40. The Combined Projections reflect the following:
  - US\$0.8 million of receipts which include the collection of freight, switching, storage, car hire and equipment rental revenue. As the majority of billings are issued by MM&AR on behalf of both companies, the MM&A Projections reflect that funding to cover projected disbursements of MM&A during the Period will be provided by MM&AR, which is consistent with historical practices. The projected revenues include services relating to both Phase I and Phase II of MM&A's operating plan;
  - US\$2.0 million of cash disbursements include the following:
    - US\$1.0 million of payroll and benefits is based on forecasted staffing levels in both Canada and the US as well as overtime and temporary employment required for certain track repairs and winter maintenance during the operating period;
    - US\$0.5 million of materials and supplies consists primarily of estimated costs related to the maintenance and servicing of the railroad tracks as well as fuel purchases, consistent with current run rates;
    - US\$0.5 million of other operating costs including freight and locomotive costs, provision for rent, utilities, insurance, interest and other bank charges, track testing and employee expenses during the Period.
41. As discussed in previous Monitor's reports, the Chapter 11 Trustee was able to obtain US\$3 million of Debtor In Possession financing ("DIP Financing") in the form of a line of credit from Camden National Bank ("Camden"). The DIP Financing has been used to support the operations of both MM&AR and the Petitioner, but is not sufficient to permit any additional capital expenditures for necessary track repairs nor for payments of the fees owed to the Petitioner's Counsel, the Monitor and its Counsel ("Professionals").
42. As of the date of this report, the Companies have fully drawn upon the full amount of the DIP Financing.

43. The US\$3 million of DIP Financing was intended to finance the operations of the Companies through January 31, 2014. As a result of the current timeline to close the sale with RAH (end of March 2014), additional financing is required to continue the operations. On February 5, 2014, the Chapter 11 Trustee filed a motion to increase the maximum DIP Financing provided by Camden to US\$4.8 million, which, as noted above, should provide sufficient financing through the projected closing of the sale March 31, 2014, after which, the DIP Financing will be repaid from the proceeds of sale allocated to MM&AR.
44. Due to noticing requirements, the Chapter 11 Trustee is seeking interim approval of a US\$0.75 million increase at a hearing to be held on February 11, 2014 with approval of the full US\$1.8 million increase expected to occur at a final hearing to be held on February 26, 2014. The US\$1.8 million increase in the DIP Financing will be secured by a charge on the assets of MM&AR only. The Chapter 11 Trustee has indicated that he expects that the FRA and the Maine Department of Transport who have charges on the assets of MM&AR will consent to the increase under terms and conditions being negotiated with them.
45. The interim financing of an additional US\$0.75 million bringing the DIP Financing to US\$3.75 million, will be sufficient to cover the operations of the Companies through the extension period of February 26, 2014.

## **INSURANCE**

46. As discussed in the Monitor's Fifth Report, the Petitioners were advised by XL Insurance Company Limited ("XL") that the existing civil liability policy which provides aggregate coverage of \$25 million per event will not be renewed and will expire on April 1, 2014. There are ongoing discussions between the Chapter 11 Trustee and XL to determine whether an extension of the policy for an interim period is possible in the event that the sale of the Petitioner's assets is not completed by March 31, 2014.
47. The Monitor, its counsel, counsel for MM&A as well as the Chapter 11 Trustee have been in communication with counsel for XL to understand and discuss potential terms and conditions under which XL will remit the \$25 million insurance policy. These discussions are ongoing and all parties are working towards setting up formal negotiation sessions which will involve all of the interested parties including the named insureds and the beneficiaries of the insurance policy.

## **COMPROMISE AND SETTLEMENT WITH TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA**

48. As mentioned in the Monitor's Fifth Report, a settlement in the amount of US\$3.8 million was reached with Travelers Property Casualty Company of America ("Travelers") and was approved by

this Court and the US Court, on December 19, 2013 and December 24, 2013, respectively (“Settlement Payment”). On or about January 23, 2014, the Settlement Payment was remitted to the Monitor and the Chapter 11 Trustee as follows:

- US\$2,470,000 or 65% has been paid to the Monitor in respect of amounts due to MM&A;
  - US\$1,330,000 or 35% has been paid to the Chapter 11 Trustee in respect of amounts due to MM&AR.
49. As a result of a contestation filed by Wheeling in respect of the allocation of the Settlement Payment between MM&A and MM&AR, no amounts will be disbursed until further order of the Courts. In this respect, a joint hearing is scheduled for February 26, 2014. The Monitor and its counsel are working with the Chapter 11 Trustee and its professionals to prepare for the joint hearing including responding to and participating in any discoveries scheduled to take place prior to the joint hearing.
50. The Monitor is holding the funds paid to it in trust pending the resolution of the Wheeling contestation and a further order of this Court permitting it to pay accrued professional fees owing to the Professionals that are secured by the Administration Charge.

#### **SALE OF ASSETS**

51. On January 23, 2014, the Court approved the Sale and Vesting Motion authorizing MM&A to sell substantially all of its assets to RAH, who was the successful bidder at the auction held on January 21, 2014.
52. The Monitor has been in contact with counsel for RAH who has confirmed that they are working on their filings with the various regulatory authorities to seek the appropriate operating licenses. In addition, the Monitor has been informed that RAH has or will shortly be holding meetings with representatives of the Province and the City regarding various operational matters including the track in Lac-Mégantic.
53. On February 5, 2014, Orford Express Inc. (“Orford”) filed the Orford Motion in which they seek an order modifying the Approval and Vesting Order to compel RAH to assume a contract between Orford and MM&A under which Orford operated a tourist train on MM&A’s tracks. The Monitor has been informed by counsel to RAH that RAH is in communication with Orford to determine if this matter can be resolved consensually and that the hearing scheduled for February 11, 2014 has been postponed to February 26, 2014.

## CLAIMS PROCESS

54. As noted above, on December 13, 2013, the Petitioner filed the Claims Motion which included a detailed claims package to be completed by all claimants. At the request of the Petitioner and other interested parties, the Claims Motion which was initially scheduled to be heard on December 19, 2013, was postponed and scheduled to be heard at the February 11, 2014 Hearing. As noted above, the Petitioner is requesting that the Claims Motion be heard on February 26, 2014 as the necessary financial resources to implement the Claims Process, including significant out of pocket disbursements (estimated to be between \$25,000 to \$50,000), has not been confirmed.
55. As the Claims Process is detailed in the Monitor's Fourth Report, a brief overview only of the Claims Process is summarized in this Sixth Report:
- The Monitor, with the assistance of its counsel, counsel for MM&A, along with input from the Chapter 11 Trustee, the Province as well as counsel for the Official Committee of Victims in the Chapter 11 proceedings prepared a Claims Package to be utilized by all creditors who wish to file a claim in the CCAA proceedings. A draft of the Claims Package was also submitted prior to finalization to counsel for the City and no comments were received.
  - Due to the complexity of the nature of the different claims that can be filed, the Claims Package includes claim forms for different types of claimants be they wrongful death, personal injury, economic loss, moral damages and other, for individuals and business as applicable.
  - The Claims Process was designed to enable Derailment Victims to file a single claim with the Monitor which may be deemed filed in the Chapter 11 proceedings if the claimant elects such treatment. The Chapter 11 Trustee supports this process and the Bar Date Motion filed in the Chapter 11 proceedings acknowledges the deemed filing of the claims to be submitted to the Monitor under the Claims Process.
  - Notification of the Claims Process will be provided to claimants in multiple ways including notices in local and regional newspapers, mass mailing via Canada Post, coordination with the City to post information on the City website, use of local media and other means.
  - The Monitor will conduct information sessions (to be coordinated with the City) to provide an overview of the Claims Process and the Claims Package. The Monitor will attend the City on a regular basis to assist claimants to the extent possible to complete their claim forms and will provide a toll free number and respond to questions submitted by e-mail.
  - The Claims Process being submitted for approval is the first phase of a claims process. It is intended to provide information, both factual and economic to assist all stakeholders in determining the scope, nature and extent of the claims. The Monitor is not requesting the Court

to approve any procedures for a formal review, determination, adjudication or compromise of the claims which will only be dealt with in a further motion and be subject to Court approval.

56. Due to the delays in having the Claims Motion heard in court, MM&A will be requesting that the original claims bar date of March 31, 2014 be amended to May 31, 2014 which corresponds to the claims bar date requested by the Chapter 11 Trustee.

#### **CLASS REPRESENTATIVES MOTION AND CLAIMS CROSS-MOTION**

57. At the February 11, 2014 Hearing, this Court is scheduled to hear a request to appoint Class Representatives to represent certain of the Derailment Victims in this case as well as the Claims Cross-Motion filed by the proposed Class Representatives. As noted in the Fourth Extension Motion, the Petitioner will be seeking the postponement of the Class Representatives Motion as well as the Claims Cross-Motion so that these matters can be heard at the same time as Petitioner's Claims Motion.
58. In the Monitor's Fourth Report to Court, we noted that both the Petitioner and the Chapter 11 Trustee have contested the appointment of the Class Representatives and their ability to file class claims (among other matters) and the Monitor has expressed its concerns with the terms and conditions surrounding the appointment of the Class Representatives and we will comment on certain of these issues below in respect of the Claims Cross-Motion.
59. Since the filing of the Class Representative Motion, the Monitor's counsel has met and communicated with the attorneys for the proposed Class Representatives to obtain clarification on a number of issues including:
- Class Representative Fees;
  - Filing of group or class claims versus individual claims;
  - Opting in versus opting out of a class;
  - Ability of the Class Representatives to bind the class.
60. The Monitor and the Petitioner have informed counsel for the proposed Class Representatives that in their view, the most useful role for the proposed Class Representatives and their counsel would be to act on an ad-hoc basis to assist claimants to complete the claim forms.
61. On February 4, 2014, the proposed Class Representatives filed a Claims Cross-Motion commenting on the Claims Process filed by the Petitioner. We will briefly highlight certain of the issues raised and the Monitor's response:

<b>Proposed Class Representative's Comments</b>	<b>Monitor's Response</b>
<p>The Claims Process excludes any representative claim.</p>	<p>The ability to file a class claim in a Chapter 11 proceeding can only be done with the prior approval of the Bankruptcy Court, and this is subject to the claimant meeting all of the normal requirements for a class action under non-bankruptcy procedural rules. On February 7, 2014, the Chapter 11 Trustee filed two affidavits with this Court setting out the Chapter 11 Trustee's view of US law on this issue and explaining why he believes it is unlikely that class claims will be allowed in this case. Consequently, a key feature of the Claims Process will be lost, namely that a Derailment Victim who wishes to file a claim against MM&amp;AR will not have to actually file a claim in the Chapter 11 process if it simply confirms to the Monitor that it's claim should be deemed filed against MM&amp;AR.</p>
<p>The claim forms are too detailed and complicated for the victims to complete, especially as they are 78 pages long.</p>	<p>The claims forms are not 78 pages long. There is one proof of claim form and 9 different schedules, designed for 9 different categories of claimants. The majority of claimants will only be completing one schedule. As noted above, the claim forms were designed with input from multiple sources to ensure all of the necessary information was obtained to allow for the proper treatment, categorization and eventual review and analysis of the claims and particularly to enable the proper determination of which claimants are entitled to proceeds under the XL insurance policy.</p>
<p>The proposed Claims Bar Date will not give sufficient time for the claims to be completed and claimants will not receive sufficient notice.</p>	<p>Claimants will have approximately 12 weeks to complete the claim forms. The Monitor, in consultation with various stakeholders believes this will be sufficient time but the suggested Claims Bar Date can be changed if the stakeholders consider it necessary. As noted elsewhere in this report, a communications plan to notify all potential claimants of the Claims Process has been developed and will be implemented immediately following approval of the Claims Process.</p>

<p>The Class Representatives and their counsel are not mentioned in any notice to creditors that they would be available to assist the individuals in completing the claim forms.</p>	<p>As noted above, we support the concept of the proposed Class Representatives acting in an ad-hoc fashion to assist claimants in completing the claim forms and have no objection to informing claimants of this resource.</p>
<p>The Claims Process refers to information sessions to be provided by the Monitor and the Monitor will be on-site to assist the individuals with any questions they may have. However, the Monitor cannot provide legal advice to the individuals.</p>	<p>Agreed – the Monitor will not provide legal advice but simply the assistance normally provided to explain claim forms and respond to questions. Claimants will always have the option of consulting their own attorney or counsel for the proposed Class Representatives if they so choose.</p>

62. The Claims Cross-Motion recommends an alternate claims process (“Alternate Claims Process”) on which we comment as follows:

<b>Alternate Claims Process Feature</b>	<b>Monitor’s Response</b>
<p>Class-wide representative claims seeking aggregate damages on behalf of individuals as outlined in the Class Representative Motion.</p>	<p>Class claims will not permit the determination of which claimants are entitled to share in the XL insurance policy and as noted above, will likely not be accepted in the Chapter 11. Further, as noted in the affidavits filed by the Chapter 11 Trustee, in the event that this Court allows class claims, the Chapter 11 Trustee will not be willing to continue with the joint Claims Process that has been developed and therefore, any claimants who wish to file claims in the Chapter 11 proceedings will have to file separate claims in those proceedings.</p>
<p>Simpler and less imposing claim forms.</p>	<p>The forms simply do not provide enough information to allow for even a limited review as part of phase I of the claims process and again, will not allow for determination of entitlement to the XL insurance policy proceeds.</p>

<p>Amount of information sought from individual derailment victims is limited to gain an appreciation for the universe of claims, with the expectation that the Class Representative's counsel will formulate a discovery plan and follow-up with claimants for additional information as is necessary and appropriate having regard to the amounts available for distribution.</p>	<p>Claimants will thus most likely be required to complete another claim form as the information provided under the claim form suggested by the proposed Class Representatives is insufficient.</p>
<p>The claim forms provide for base claims consistent with those that will be advanced by the Class Representatives on behalf of those persons they represent, so as to ensure consistency in treatment of creditors.</p>	<p>The base claim amounts suggested by the proposed Class Representatives may dilute the distribution to certain claimants without being able to ascertain whether the prejudiced claimants agree.</p>

**INCREASE IN ADMINISTRATION CHARGE**

- 63. As noted in previous Monitor's reports, the Petitioner originally requested a \$1.5 million Administration Charge to secure the fees and expenses of the Professionals. The Initial Order limited the Administration Charge to \$0.5 million but with the right to apply for an increase of the Administration Charge, at a later date.
- 64. On October 4, 2013 the Petitioner and the Monitor jointly submitted a request to the Court requesting an increase in the Administration Charge to \$2.5 million in respect of the Professionals. The reasons thereof are detailed in the Monitor's Third Report. On October 9, 2013, the Court approved the increase in the Administration Charge.
- 65. On December 13, 2013, the Petitioner and the Monitor jointly submitted a request to the court for a further increase of the Administration Charge to \$5.0 million in respect of the Professionals. The reasons for the increase are detailed in the Monitor's Fourth Report. Following discussions between the Professionals, the FRA and the Province, the increase was limited to \$750,000.
- 66. On December 19, 2013, the Court approved the increase in the Administration Charge to \$3.25 million for the Professionals.

67. As of January 31, 2014, the total unpaid fees and disbursements of the various Professionals, net of pre-filing retainers and prior to sales taxes, approximates \$2.9 million. However, the Professionals have recently been advised that the Petitioner may not be able to claim input tax credits on the sales taxes charged by the Professionals and the unpaid fees and disbursements net of pre-filing retainers should therefore be considered on a tax included basis and therefore total approximately \$3,300,000 as of January 31, 2014 (which is slightly in excess of the existing Administration Charge), summarized as follows:

	<b>Pre-Tax</b>	<b>Tax Included</b>
• Gowling Lafleur Henderson LLP (counsel to MM&A)	\$1,431,000	\$1,645,000
• Richter Advisory Group Inc. (Monitor)	\$861,000	\$990,000
• Woods LLP (counsel to Monitor)	\$574,000	\$660,000

68. The Professionals are in discussions with the FRA and the Province in respect of securing an increase in the Administration Charge to enable the continuation of the CCAA proceedings for the benefit of all stakeholders and the Monitor will report on these discussions prior to the February 26, 2014 Hearing.

69. Since the Initial Order, as a result of the ongoing tight liquidity facing the Petitioner and MM&AR, the Professionals have not requested nor has it been possible for the Petitioner to make any payments to the Professionals, thereby preserving cash flow to enable the continued operations to service the Petitioner's many clients and enable the continued payment of the Petitioner's employees.

## **CHAPTER 11 PROCEEDINGS**

70. As previously reported, on August 7, 2013, MM&AR commenced proceedings under Chapter 11 of the U.S. Bankruptcy Code in the US Court.

71. On August 21, 2013, the U.S. Trustee appointed Robert J. Keach, attorney, to be the Chapter 11 Trustee of MM&AR and he has assumed day to day control of the operations of MM&AR.

72. The Monitor and its counsel continue to be in frequent contact with the Chapter 11 Trustee and his professionals to coordinate the efficient administration of both estates as well as the sale process and the Claims Process that are more fully described elsewhere in this report.

73. The Monitor reviews daily and weekly information reports from the Companies as well as variance reports prepared by Development Specialists Inc. ("DSI"), the financial advisor to the Chapter 11 Trustee.

74. As noted in the Monitor's Fourth Report, the United States Trustee appointed four creditors (who all allege to have claims arising from the Derailment) to a Committee of Derailment Victims ("Official Committee of Victims") to assist the Chapter 11 Trustee. In addition, the Province and the City have been added as ex-officio members to the Official Committee of Victims. The Official Committee of Victims has also engaged legal counsel.
75. On January 29, 2014 the Unofficial Committee of Wrongful Death Claimants ("WDC Committee") filed a Chapter 11 Plan and a Disclosure Statement for Chapter 11 Plan ("WDC Chapter 11 Plan"). Key elements of the WDC Chapter 11 Plan can be summarized as follows:
- The WDC Committee proposes that the U.S estate will pay wrongful death and personal injury claims and the Canadian estate will pay other victims claims, be it property damage, business interruption, etc. To accomplish this, the WDC Chapter 11 Plan proposes to allocate 75% of the \$25 million XL insurance policy to the U.S. estate and 25% to the Canadian estate. Should the Canadian estate object, then ultimately it will be left to the courts to decide on the allocation;
  - The allocation to the U.S. estate will be paid to a Plan Fiduciary. The WDC Committee proposes to nominate former U.S. Senator George J. Mitchell to serve as Plan Fiduciary and administer the remainder of the Chapter 11 bankruptcy estate including the distribution of funds allocated to the U.S. estate;
  - The WDC Chapter 11 Plan provides for all victims to be free to pursue claims in any forum they choose in respect of whatever rights they may have against any non-Debtor parties. In addition, the Plan Fiduciary will evaluate the costs and benefits of MM&AR to pursue claims against non-Debtor parties.
76. The WDC Chapter 11 Plan is in conflict with Claims Cross-Motion as competing creditor groups attempt to put forward their preferred alternatives.
77. The Monitor is reviewing the WDC Chapter 11 Plan with its counsel and with the Chapter 11 Trustee and its counsel. Objections to the disclosure statement accompanying the WDC Chapter 11 Plan must be filed in the US Court by February 28, 2014 (the deadline for objections to the plan itself has not yet been set). The Chapter 11 Trustee has indicated that he intends to ask the Bankruptcy Court to strike and/or dismiss the WDC Chapter 11 Plan as facially nonconfirmable.
78. The Monitor is continuing to post the various relevant motions and orders in respect of MM&AR's Chapter 11 proceedings to its website to permit all stakeholders to follow these proceedings. Recent motions and orders filed with or issued to date by the US Court include the following:

- Motion for Expedited Hearing, Approval of Shortened Objection Period and Approval of Notice Procedures with Respect to Bar Date Motion;
- Chapter 11 Plan and disclosure statement dated January 29, 2014 Proposed by the Unofficial Committee of Wrongful Death Claimants;
- Motion of Official Committee of Victims Pursuant to Cross-Border Insolvency Protocol requesting Joint Status Conference before US and Canadian Court;
- Wheeling & Lake Erie Railway Company's Motion to Enforce Cash Collateral Orders;
- Motion for Interim and Final Orders (A) Authorizing Debtor to Obtain Post-Petition Financing and (B) Granting to Camden National Bank Post-Petition Priority Liens;
- Complaint (Trustee v. World Fuel Services, et al) in respect of assertion of direct claims against and the contestation of proofs of claim filed by, various World Fuel entities;
- Order (I) Approving (A) Sale of Assets Pursuant to Asset Purchase Agreement with Railroad Acquisitions Holding LLC, (B) Sale of Assets Free and Clear of Liens, Claims, and Interests, and (C) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases thereto and (II) Granting Related Relief.

## **ACTIVITIES OF THE MONITOR**

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

- Continued monitoring of the Petitioner's operations which has included frequent contact with the Chapter 11 Trustee and his professionals, Petitioner's management and legal counsel all with a view to keeping apprised of material developments and to seek input with respect to the restructuring process. In addition, The Monitor has kept apprised of the restructuring proceedings of MM&AR through the review of Chapter 11 motions and orders as well as frequent communication with the Chapter 11 Trustee and his professionals;
- Maintaining regular contact with representatives of the Province, the City and other stakeholders in this restructuring process to seek their input and provide assistance in various areas;
- The Monitor is working with the Chapter 11 Trustee and the various professionals in respect of the completion of the sale of the Companies' assets to RAH;
- The Monitor through its counsel has been in communication with the legal counsel of the proposed Class Representatives;

- The Monitor continues to respond to queries from suppliers, creditors and other interested parties;
- The Monitor reviewed the Petitioner's financial affairs and results for the period January 13, 2014 to January 31, 2014;
- The Monitor continues to post copies of all Court materials filed in the CCAA and Chapter 11 Proceedings on its website;
- The Monitor has prepared and filed this Sixth Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

#### **RECOMMENDATIONS OF THE MONITOR**

80. At the present time, it is premature for the Petitioner to devise a Plan of Arrangement and present same to its creditors. The Petitioner is seeking an extension in order to determine if these CCAA proceedings can continue and therefore allow the Petitioner to continue its operations and provide additional time in order to complete the closing of the sale of its assets and subsequently proceed with the Claims Process and the filing of a Plan of Arrangement.
81. The Petitioner has been paying for goods and services received subsequent to the date of filing the CCAA as they become due, except for professional fees.
82. The Petitioner is acting in good faith, with due diligence and has been cooperating with all stakeholders involved in this process, including but not limited to, the Monitor, the various governmental agencies including the CTA, the City, the Chapter 11 Trustee and its creditors.
83. The Monitor agrees with the Petitioner's request to postpone the hearing on the Claims Motion as well as the Class Representative Motion and the Claims Cross-Motion to the February 26, 2014 Hearing as these matters are all related.
84. The Monitor supports the holding of a joint procedural/scheduling conference be held pursuant to the Cross-Border Insolvency Protocol approved by this Court and the US Court.

#### **IV. CONCLUSION**

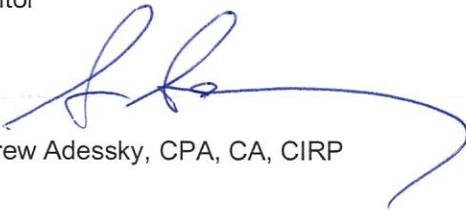
85. The Court should grant the extension request for the following reasons:
- Since the commencement of the CCAA proceedings, the Petitioner has and continues to act in good faith and with diligence;

- The Petitioner still requires additional time to complete the sale with RAH to maximize the value of its assets and sell the company on a going concern basis which is in the best interests of all of its stakeholders, employees and customers;
- The Petitioner has not prejudiced its creditors as it is paying post-filing liabilities incurred since the date of filing as they become due, except for the fees of the Professionals, and the Cash Flow Projections indicate that it will continue to do so;
- Richter will continue to monitor the financial affairs of the Petitioner and inform the Court and all stakeholders of material adverse changes in the Petitioner's cash flow or financial circumstances as required;
- The extension will not cause any prejudice to the various stakeholders.

Respectfully submitted at Montreal, this 10<sup>th</sup> day of February, 2014.

**Richter Advisory Group Inc.**

Monitor



Andrew Adessky, CPA, CA, CIRP

## Montréal, Maine &amp; Atlantic Railway Ltd./Montreal Maine &amp; Atlantic Canada Co.

## Comparative Cash Flow

For the period January 13, 2014 to January 31, 2014

(in USD)	Forecast Jan 13-Jan 31	Actual Jan 13-Jan 31	Variance Jan 13-Jan 31
<b>MMA Cash Receipts:</b>			
Deposits & Wire Transfers	450,000	758,012	308,012
Other items <sup>1</sup>	540,000	9,359	(530,641)
DIP financing - Camden National Bank	295,966	450,000	154,034
<b>Total</b>	<b>1,285,966</b>	<b>1,217,371</b>	<b>(68,595)</b>
<b>MMA Disbursements:</b>			
Payroll & Related Taxes	728,900	683,620	45,280
Materials and supplies	357,500	221,686	135,814
Freight car and locomotive	20,700	2,740	17,960
Other costs	180,606	165,621	14,985
<b>Total</b>	<b>1,287,706</b>	<b>1,073,667</b>	<b>214,039</b>
<b>Net Cash Flow</b>	<b>(1,740)</b>	<b>143,704</b>	<b>145,444</b>
<b>Opening Cash Balance - MMA</b>	<b>101,740</b>	<b>80,502</b>	<b>(21,238)</b>
<b>Closing Cash Balance - MMA</b>	<b>100,000</b>	<b>224,206</b>	<b>124,206</b>
<b>Camden National Bank - DIP Lender</b>			
<b>Opening line of credit</b>	<b>2,242,159</b>	<b>2,242,159</b>	<b>-</b>
<b>Funds advanced</b>	<b>295,966</b>	<b>450,000</b>	<b>(154,034)</b>
<b>Ending Line of credit</b>	<b>2,538,125</b>	<b>2,692,159</b>	<b>(154,034)</b>
<b>Total authorized line of credit</b>	<b>3,000,000</b>	<b>3,000,000</b>	<b>-</b>
<b>Total available line of credit</b>	<b>461,875</b>	<b>307,841</b>	<b>154,034</b>
<b>Loan balance - net of cash</b>	<b>\$ 2,438,125</b>	<b>\$ 2,467,953</b>	<b>\$ (29,828)</b>

<sup>1</sup> - Other items includes switching revenue, car hire revenue and equipment rentals. MMA projected tax credits of \$490k to be received the week ending January 31, 2014. The amounts are being held in escrow pending litigation over entitlement.

Montréal, Maine & Atlantic Canada Co.  
For the period February 3, 2014 to February 28, 2014

(in USD)	Week Ending:	Forecast 07/02/2014	Forecast 14/02/2014	Forecast 21/02/2014	Forecast 28/02/2014	Total
<b>Cash Receipts:</b>						
Intercompany Montreal, Maine & Atlantic Railway, Ltd. <sup>1</sup>		310,471	103,794	223,338	83,119	720,721
Deposits & Wire Transfers		-				-
<b>Total</b>		<b>310,471</b>	<b>103,794</b>	<b>223,338</b>	<b>83,119</b>	<b>720,721</b>
<b>Disbursements:</b>						
Payroll and benefits		134,400	788	146,881	788	282,856
Materials and supplies		60,000	54,831	54,831	54,831	224,494
Freight car and locomotive expense		12,540	11,550	-	-	24,090
Other operating costs		46,531	36,625	21,625	27,500	132,281
<b>Total</b>		<b>253,471</b>	<b>103,794</b>	<b>223,338</b>	<b>83,119</b>	<b>663,721</b>
<b>Net Cash Flow (Use) - Operations</b>		<b>57,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>57,000</b>
<b>Opening Cash Balance</b>		<b>10,000</b>	<b>67,000</b>	<b>67,000</b>	<b>67,000</b>	<b>10,000</b>
<b>Closing Cash Balance <sup>1</sup></b>		<b>\$ 67,000</b>	<b>\$ 67,000</b>	<b>\$ 67,000</b>	<b>\$ 67,000</b>	<b>\$ 67,000</b>

<sup>1</sup> For the purposes of this cash flow, cash receipts are assumed to be equal to projected disbursements. The ending bank balance will fluctuate on a daily basis depending on the actual deposits in the Canadian account and actual disbursements required on a daily basis.

Montreal, Maine & Atlantic Railway & Montreal Maine & Atlantic Canada Co. Budget thru 2/28/14 (in USD)	FORECAST				Total
	W/E 07/02/2014	W/E 14/02/2014	W/E 21/02/2014	W/E 28/02/2014	
<b>Net Freight Revenue</b>	195,000	243,144	256,244	272,144	966,532
<b>MOW Rental Income</b>	8,500	-	-	-	8,500
<b>Switching</b>	40,000	-	-	-	40,000
<b>Total Frt/Switch Revenue</b>	<b>243,500</b>	<b>243,144</b>	<b>256,244</b>	<b>272,144</b>	<b>1,015,032</b>
<b>Receipts:</b>					
<b>Transportation Revenue</b>					
Freight Revenue and Zone Switching	\$ 150,000	\$ 179,700	\$ 179,700	\$ 179,700	689,100
MCC Pre 10/18 Collections	-	-	-	30,000	30,000
ISS Settlement	25,000	-	-	-	25,000
Sub Total - Transportation Revenue	175,000	179,700	179,700	209,700	744,100
<b>Other Operating Revenue</b>					
Switching & Miscellaneous	-	-	-	-	-
Railcar Storage	-	-	-	10,000	10,000
Contract Shop & Car Repairs	-	-	-	-	-
Equipment Rental	-	8,500	-	-	8,500
45G Credit	-	-	-	-	-
Car Hire Revenue (Payable)	-	-	-	50,000	50,000
Sub Total - Other Operating Revenue	-	8,500	-	60,000	68,500
<b>Total Cash Receipts</b>	<b>175,000</b>	<b>188,200</b>	<b>179,700</b>	<b>269,700</b>	<b>812,600</b>
<b>Disbursements:</b>					
<b>Payroll &amp; Related</b>					
Salaries, Wages & Commissions US	-	236,049	-	236,049	472,099
Employee Benefits & Claims - US	60,000	48,150	48,150	48,150	204,450
Salaries, Wages & Commissions CDN	120,000	-	131,694	-	251,694
Group Health, pension and union dues- CDN	14,400	788	15,188	788	31,163
Sub Total - Payroll & Related	194,400	284,987	195,031	284,987	959,405
<b>Materials &amp; Supplies</b>					
Diesel Fuel	60,000	84,662	84,662	84,662	313,987
Inventory Payments	7,500	7,500	5,000	5,000	25,000
Material/Repair Costs US	40,000	30,000	12,500	12,500	95,000
Material/Repair Costs CDN	30,000	12,500	12,500	12,500	67,500
Sub Total - Material & Supplies	137,500	134,662	114,662	114,662	501,487
<b>Freight Car &amp; Locomotive Expense</b>					
Leases - Car	-	35,000	-	-	35,000
Leases - Locomotive	38,000	-	-	-	38,000
Sub Total - Freight Car & Locomotive	38,000	35,000	-	-	73,000
<b>Other Operating Costs</b>					
Rent	16,000	-	-	-	16,000
Electricity	9,000	-	-	-	9,000
Heat at Derby maintenance facility	5,400	5,400	5,400	5,400	21,600
Insurance Payments	29,906	43,500	-	-	73,406
Bank Chges /Interest Exp/Points	-	-	1,000	1,000	2,000
2% Points for New Financing	-	54,000	-	-	54,000
Other Closing Costs	-	-	20,000	-	20,000
Rail Testing	-	15,000	-	-	15,000
Restructuring Related	-	32,400	-	-	32,400
Phone, Internet, Radio, Other expenses	33,250	43,250	43,250	55,000	174,750
Sub Total - Rent, Heat & Utilities	93,556	193,550	69,650	61,400	418,156
<b>Total Operating Disbursements</b>	<b>463,456</b>	<b>648,199</b>	<b>379,344</b>	<b>461,049</b>	<b>1,952,048</b>
<b>Net Cash Inc(Dec) From Ops</b>	<b>(288,456)</b>	<b>(459,999)</b>	<b>(199,644)</b>	<b>(191,349)</b>	<b>(1,139,448)</b>
<b>SUMMARY</b>					
Cash Beginning	224,206	215,750	100,000	100,000	224,206
Net Weekly Cash Flow	(288,456)	(459,999)	(199,644)	(191,349)	(1,139,448)
Financing Advance(Paydowns)	280,000	344,249	199,644	191,349	1,015,242
Cash Ending	\$ 215,750	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000
<b>Principal Bal New Financing</b>	<b>2,692,159</b>	<b>2,972,159</b>	<b>3,316,408</b>	<b>3,516,052</b>	<b>2,692,159</b>
<b>Net Weekly Cash Advance(Paydown)</b>	<b>280,000</b>	<b>344,249</b>	<b>199,644</b>	<b>191,349</b>	<b>1,015,242</b>
<b>End of Period Principal Balance</b>	<b>2,972,159</b>	<b>3,316,408</b>	<b>3,516,052</b>	<b>3,707,401</b>	<b>3,707,401</b>