

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

TWENTY- FIFTH REPORT OF THE MONITOR
February 22, 2017

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 fifteen times with the most recent extension having been granted to June 30, 2017.

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. On December 1, 2016, the Canadian Pacific Railway Company ("CP") filed the Requête pour Divulgence de Documents Concernant les Sommes d'Argent Versées à des Membres du Groupe ("CP Document Motion"). The CP Document Motion was filed in connection with the Class Action and was heard on January 25, 2017 by the Honourable Martin Bureau, J.S.C.
5. On February 22, 2017, the Petitioner filed a Motion for the Approval of Professional Fees and for an increase in the Administration Charge ("Fee Motion"). The Fee Motion will be heard on March 3, 2017 or on March 14, 2017, if it is contested
6. Depending on ongoing discussions, the Monitor may file a Motion seeking directions on the treatment of interest earned on Funds for Distribution ("Interest Motion"). The Interest Motion would be served on February 24, 2017 and would be heard on March 3, 2017 or on March 14, 2017, if it is contested.
7. 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.
8. The purpose of this Twenty-Fifth Report of the Monitor is to inform the Court on the following subjects:
 - Claims Review and Status of Distributions;
 - Approval of Professional Fees;
 - Increase in Administration Charge;
 - CP Document Motion;
 - Interest Motion;
 - Chapter 11;
 - Activities of the Monitor;
 - Recommendations of the Monitor.

CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS

9. The status of the claims review and the payment of distributions under the Amended Plan is as follows:

- **Wrongful Death Claims:** as reported in the Monitor's Twenty-Third Report dated August 31, 2016 ("Twenty-Third Report") and the Monitor's Twenty-Fourth Report dated October 20, 2016 ("Twenty-Fourth Report"), all the projected distributions have been paid by the WD Trustee and the WD Trustee is holding an amount of approximately US\$0.2 million for the payment of future fees and expenses of the WD Trust.
- **Bodily Injury and Moral Damage Claims:** On or about December 19, 2016, the Monitor made a final 25% interim distribution to holders of Proven Claims in this category, as valued in accordance with Schedule F to the Amended Plan and thereby finalized the payment of 100% of the total distribution payable to those claimants (before any possible reallocation under section 4.2 of the Amended Plan).

In total, as of the date hereof, approximately \$45.8 million has been distributed to 4,324 claimants (see the Monitor's Twenty-Second Report dated April 19, 2016). As noted in the Twenty-Fourth Report, the Monitor reviewed 4,324 claims as filed, prepared and issued 4,324 Avis de Calcul de Votre Distribution et ou Avis de Rejet Total ou Partiel de Votre Réclamation ("Notices") and has received 457 contestations with respect to the Notices. The Monitor has been working to consensually resolve these 457 contestations. To date, 388 of these disputes have been resolved or have been abandoned based on negotiations with individual claimants, Class Counsel (with respect to the claims of Class Members) and counsel to other claimants. The Monitor is still attempting to resolve the remaining 69 disputes. If these remaining disputes cannot be consensually resolved, the Monitor will refer them to the Claims Officer and possibly seek directions from this Court in order to proceed with certain claims as test cases.

A small proportion of the distribution payments (72 payments totalling \$317,000) have not yet been released (due to missing information) or have been returned because some claimants have moved and not notified the Monitor of their new address. The Monitor will continue to try and obtain the necessary information to ensure the payments are received, failing which, the funds will be treated in accordance with Section 8.8 of the Amended Plan and donated to charity.

- **Property and Economic Damages Claims:** A total of 1,807 claims were filed in the CCAA and the Chapter 11. Based on the terms of the Amended Plan and the Monitor's review of 1,787 of these 1,807 claims, it is estimated as of the date hereof, that the distribution to holders

of each Proven Claim will be 56.6%. As of the date of this Report, the status of the review of the Property and Economic Damages Claims is as follows:

Montreal, Maine & Atlantic Canada Co. Property and Economic Damages Claims Summary As of February 13, 2017				
	# of claims	Claims Value as Filed	Claims Value - as accepted/estimated (by the Monitor)	Estimated distribution amount
Review finalized - distribution paid	1,631	\$ 108,922,699	\$ 10,994,630	\$ 6,222,961
Review finalized - disallowance issued and still within 20 day contestation period	70	37,620,184	9,131,004	5,168,148
Review finalized - disallowance contested	79	28,543,455	2,818,106	1,595,048
Review finalized - distribution held	7	11,367,115	10,132,228	5,734,841
Review finalized	1,787	186,453,453	33,075,968	18,720,998
Review not completed	20	17,309,823	2,504,911	1,417,779
Sub-total	1,807	203,763,276	35,580,879	20,138,777
Potential reallocation	-	-	39,419,121	22,428,670
Total	1,807	\$ 203,763,276	\$ 75,000,000	\$ 42,567,447

As noted above, the Monitor has completed a review of 1,787 of the 1,807 claims filed in the category of Property and Economic Damages Claims. Of these, 1,631 claims have been allowed and their holders have received an interim distribution of 50% (approximately \$6.2 million) of the estimated total distribution payable to the holders of Proven Claims. These distributions are on account of claims that have been allowed, in full or in part, as filed or as amended.

In respect of the 79 claimants which to date have filed notices of contestation, the Monitor will review the reasons provided for the contestations and attempt to resolve those contestations directly with the claimants prior to referring these disputes to the Claims Officer or to the Court.

As noted in the table, there are 20 claims in respect of which the Monitor has not yet issued Notices. While the Monitor has completed a preliminary review of these claims, notices have not yet been issued for various reasons including i) claimants attempting to provide additional documentation in support of the amounts claimed, ii) ongoing legal analysis of the claim and iii) the Monitor is waiting on information to be received from the Province as to the final amounts paid under a provincial aid program to some of the claimants. The Monitor expects to issue Notices with respect to all of the remaining claims in the next few months.

As noted above and as stated in the Twenty-Fourth Report, based on the current review of the Property and Economic Damage Claims, it appears very likely that the total amount of Proven Claims in this category will be significantly below the \$75 million threshold referred to in Section 4.2 of the Amended Plan. Should this be the case, this would entail, under the terms of Section 4.2 of the Amended Plan, a redistribution of the distribution related to the difference

between the amount of \$75 million and the final amount of Proven Claims (“Economic Savings”) to other claimants and categories of claimants as follows:

- Firstly, an amount of \$884,000 to pay \$17,000 to each of the grandparents and grandchildren of the deceased;
- Secondly, an amount of \$4.2 million to increase the distribution to parents, siblings, grandparents and grandchildren of WD victims so that the total of such distribution equals 12.5% of the total of the distribution to all claimants in the wrongful death category;
- Thirdly, the balance of the Economic Savings, on a pro-rata basis to all of the holders of Proven Claims in the categories described in Sections 4.2(a) (b) (d) and (e) of the Amended Plan.

The timing of further interim distributions and the redistribution of the Economic Savings are dependent upon the resolution of all contested claims.

- **Government Claims:** Claims in the government category have been dealt with as follows:
 - City of Lac-Mégantic - the distribution in respect of its \$20 million claim was paid in 2016;
 - Attorney General of Canada – as previously reported in the Monitor’s Fifteenth Report dated January 9, 2015 and the Monitor’s Nineteenth Report dated May 14, 2015, the Federal Government has agreed to the reallocation of the distributions payable to it under the Amended Plan in favour of certain other categories of creditors and this has been factored into the amounts being paid to the other categories of creditors as noted in this report;
 - Province of Quebec (“Province”) – an interim amount of 50% of the projected distribution in respect of the \$409 million claim filed by the Province was paid in 2016. The Province has informed counsel to the Monitor that it continues to incur costs related to the derailment and the Monitor is awaiting further updates with respect to the final amount of the Province’s claim.
- **Subrogated Insurer Claims:** The subrogated insurer claims received their distributions in accordance with the terms of the Amended Plan in 2016.

APPROVAL OF PROFESSIONAL FEES

10. The Fee Motion seeks the approval of the payment of the fees of the Canadian Professionals incurred for the period of October 1, 2016 to December 31, 2016 which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co. Canadian Professionals Fee Summary October 1, 2016 to December 31, 2016			
	Fees /		
	Disbursements	Sales Taxes	Total
Richter	\$ 411,550	\$ 61,630	\$ 473,179
Woods	90,529	13,557	104,086
Gowlings	57,271	8,563	65,833
	<u>\$ 559,349</u>	<u>\$ 83,749</u>	<u>\$ 643,098</u>

11. After the payment of the fees outstanding as of December 31, 2016, approximately \$436,000 (plus a pre-filing retainer of \$150,000) will remain to cover the costs (including taxes) of the remaining work to be performed by the Canadian Professionals (including the Claims Officer) to complete the claims process and the administration of the CCAA.

INCREASE IN ADMINISTRATION CHARGE

12. The effective date of the Amended Plan was December 22, 2015. In the year that has passed, the Canadian Professionals have diligently implemented the Amended Plan and over 95% of the claimants have received full or partial distributions on account of their claims, with many of the claimants having received payments in multiple categories. But as noted below, there remains work to be done to enable the complete distribution of the Funds for Distribution in accordance with the terms of the Amended Plan.
13. The following table summarizes the fees incurred by the Canadian Professionals from November 2015 to December 2016:

Montreal, Maine & Atlantic Canada Co. Administration Charge Summary As of December 31, 2016			
	Fees /		Total
	Disbursements	Sales Taxes	
Administration Charge ¹	\$ 12,000,000	\$ 1,797,000	\$ 13,797,000
Accrued Professional Fees as of October 31, 2015 ²	(8,167,000)	(1,199,999)	(9,366,999)
Balance of Administration Charge to implement the Plan	3,833,000	597,001	4,430,001
<u>Fees and Disbursements - Nov. 1, 2015 to Dec. 31, 2016</u>			
Richter	2,624,707	393,050	3,017,756
Woods	515,271	77,162	592,433
Gowling	317,576	47,538	365,113
Verrill Dana ²	5,235	-	5,235
Claims Officer	11,979	1,794	13,773
	<u>3,474,767</u>	<u>519,543</u>	<u>3,994,310</u>
Balance of Administration Charge to complete the CCAA ³	<u>\$ 358,233</u>	<u>\$ 77,458</u>	<u>\$ 435,691</u>

¹ As per the Amended Plan of Compromise and Arrangement dated June 8, 2015.

² US counsel, so no sales tax applicable.

³ In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.

14. During this period, the bulk of the work related to the analysis and treatment of the claims by the Monitor and the fees of the Monitor consequently represent approximately 76% of the total fees for the period. The work of the Monitor consists of approximately 8,000 hours of work and can be broken down into three major categories:

- Claims Analysis:
 - 4,324 claims in the Bodily Injury and Moral Damages category;
 - 1,807 claims in the Property and Economic Damages category;
 - Communications with hundreds of the claimants to explain the valuation of their claim and resolve their questions thereby limiting the number of formal contestations;
 - 536 formal contestations and communications with claimants to resolve these contestations.

This category of work represented approximately 60% of the Monitor's work or an average of less than an hour per claim;

- The preparation and issuance of approximately 14,500 individual distributions to creditors in accordance with the terms of the Amended Plan, including the preparation of detailed

statements of account and responses to creditors' queries. This represented approximately 30% of the Monitor's work;

- Other acts of administration including reporting to Court, analysis of various tax matters, interaction with the Estate Representative and the WD Trustee in the Chapter 11 proceedings, communications with the Public Curator, ongoing posting of documents to the website and other tasks which represent approximately 10% of the Monitor's work.

15. Despite the significant work performed by the Canadian Professionals since October 2015, the estimated cost of the work remaining to be done to complete the administration of the CCAA and the full distribution of the settlement funds exceeds the remaining amount of the charge which secures the payment of the fees of the Canadian Professionals. This is due to the exceptional nature of this case and the complexity of the work involved. Indeed, despite best efforts to foresee the amount of time which would be required to analyze the claims, the fact that the claims are individualized damage claims, the fact that most claimants are not represented by counsel for the purposes of discussing and documenting their individual claims with representatives of the Monitor and the fact that those discussions between individual claimants and representatives of the Monitor have been very extensive, have all contributed to the insufficiency of the projected fees and amount of the administrative charge. We summarize the remaining work to be done and the estimated cost thereof as follows:

Montreal, Maine & Atlantic Canada Co. Additional Administration Charge - Work to Complete					
	Low		High		
	Hours	Total	Hours	Total	
1 Finalize economic claim analysis	90	\$ 39,000	100	\$ 42,000	
2 Economic and moral claims contestations resolution	1,760	796,000	2,320	1,125,000	
3 Dividend distribution - economic claims	120	34,000	120	34,000	
4 Economic savings reallocation	290	71,000	590	142,000	
5 Dealing with Chapter 11 Estate Representative	50	26,000	60	35,000	
6 Tax Matters	190	98,000	590	143,000	
7 Other administrative matters	240	76,000	320	152,000	
	<u>2,740</u>	<u>\$ 1,140,000</u>	<u>4,100</u>	<u>\$ 1,673,000</u>	

In respect of the remaining work, we comment as follows:

- Finalize analysis of Property and Economic Damages claims: represents the work required to issue Notices in respect of 20 claims (including communication and dealings with claimants, analysis of supporting documentation);

- Contestations Resolution: as at the date hereof, there are 69 unresolved contestations filed by claimants following the receipt of Notices in the category of Moral Damages and Bodily Injury and 79 contestations similarly filed by claimants in the category of Property and Economic Damages. It is estimated that another 50 contestations will be received in connection with Notices recently issued or which will be issued shortly in the category of Property and Economic Damages. The contestation process will include communications with claimants to attempt to consensually resolve disputes and where necessary, preparation of claims packages and attendance at hearings before the Claims Officer and/or before the Court;
 - Dividend distributions: issuance of a final distribution to 1,807 claimants in the category of Property and Economic Damages and responding to creditors inquiries;
 - Economic savings reallocation: assumes the issuance of one or two additional distributions (in excess of 6,000 distributions each time) including the calculation of amounts due per claimant, all resulting from the expected reallocation of savings in the category of Property and Economic Damages, pursuant to Section 4.2 of the Amended Plan;
 - Chapter 11: dealing with outstanding issues including treatment of late filed Chapter 11 claims, Carmack claim litigation¹, resolution of Chapter 11 administrative claims (see below) and other matters;
 - Tax matters: analysis of the tax treatment of the interest earned on Funds for Distribution (approximately \$2 million as of the date of this report) including communications with the Federal and Provincial revenue agencies regarding reporting requirements and the potential issuance of relevant tax forms to individual claimants for each of calendar years 2015, 2016 and 2017 and the possible filing of a motion for directions with the Court if the Monitor cannot conclude its discussions with the Federal revenue agency;
 - Other administrative matters: includes reports to court, creditor queries, dealing with unclaimed funds in accordance with the Amended Plan, likely extension of the stay of proceedings past June 30, 2017, communications with major stakeholders, termination of the CCAA and other statutory matters.
16. The estimated cost to complete the administration of the CCAA should range from a low of \$1.1 million to a high of \$1.7 million (\$1.26 million to \$1.95 million tax included) based on different assumptions regarding the number of contested claims and the time involved to resolve matters (including in particular the level of involvement of the Claims Officer). Thus, the estimated cost under either scenario to complete exceeds the remaining charge and retainer of \$587,000.

¹ 49 U.S. Code § 14706 - Liability of carriers under receipts and bills of lading. The Carmack Amendment governs the liability of carriers that transport interstate shipments and shipments between the United States and a foreign country.

Accordingly, the Fee Motion currently seeks a \$1.5 million increase (plus taxes) in the Administration Charge.

17. The following factors need to be considered in respect of the additional charge being sought because these factors could not be foreseen at the time the initial Administration Charge of \$12 million plus taxes was granted:
- The analysis of claims in the category of Property and Economic Damages has required extraordinary levels of direct communication by the Monitor with creditors (particularly with members of the Class) to obtain details supporting the calculation of their damages, to assess the information provided and to explain the Monitor's value of each claim to respective creditors;
 - The Monitor has received thousands of communications from creditors regarding the statements of distribution and the Notices in order to understand the assessment of their claim. Subsequently, the Monitor has been dealing with the many contestations that have been filed;
 - In order to issue distributions to creditors as quickly as possible, the Monitor issued interim distributions as opposed to waiting for all claims to be reviewed and all contestations to be resolved. This has resulted in increased costs which were not foreseen;
 - The treatment of distributions to over 600 minors has required additional resources to obtain the necessary information regarding identification of guardians and reporting to the Public Curator;
 - The Monitor, aided by its legal counsel and counsel to MMAC, has had to devote unplanned resources to the treatment of interest earned on the Funds for Distribution as discussed elsewhere in this report.

CP DOCUMENT MOTION

18. On December 1, 2016, CP filed a motion in the Class Action proceedings seeking access to the proofs of claim filed by all creditors with the Monitor as well as all medical declarations in support of post-traumatic stress claims, copies of all contestations filed by creditors, as well as details relating to distributions to all creditors.
19. On February 6, 2017, the Honorable Martin Bureau, J.S.C. issued an order granting CP's motion to provide the information requested to CP's attorneys along with monthly updates with the requirement that CP's attorneys hold in escrow that portion of the information that does not relate to creditors who are not members of the Class Action.

INTEREST MOTION

20. As noted above, approximately \$2 million of interest has been earned on the Funds for Distribution since the effective date of the Amended Plan. The Monitor along with its legal counsel and counsel to MMAC have had numerous communications with both the Federal and Provincial revenue agencies and have devoted various resources in order to determine the tax treatment of this interest and whether or not T5 and R3 tax slips need to be issued to the creditors who will receive their pari passu share of the interest.

CHAPTER 11

21. The Estate Representative has advised the Monitor on the following matters which have an impact on the Amended Plan both in terms of distribution and in respect of the overall administration:
- Proceedings were instituted in 2016 by the WD Trustee against CP and related entities for approximately US\$177 million in the United States District of North Dakota under the Carmack Amendment. Under the settlement agreements with the World Fuel entities (the shipper of the oil) and Irving Oil (the consignee) approved pursuant to and incorporated into the U.S. Chapter 11 plan (and the CCAA plan), the World Fuel entities and Irving Oil assigned to the WD Trust (as the agent for all of the Derailment victim classes) all causes of action against CP, including those arising under the Carmack Amendment. In response, CP has filed a motion for judgment on the pleadings and for a partial summary judgment, which motion has not yet been heard;
 - As noted in the Monitor's Twenty-First Report to Court dated November 24, 2015 and in the Twenty-Second Report to Court dated April 19, 2016, in calculating the Funds for Distribution, a \$10 million reserve (approximately US\$7.5 million) was taken into account for potential administrative/secured claims filed in the Chapter 11. These claims and their quantum continue to be contested by the Estate Representative and it will be at least another six months before these claims are definitively determined and thus the disposition of the reserve will not be known for some time;
 - The Estate Representative's separate litigation against CP for damages suffered by MMAR continues forward. CP has filed its third motion to dismiss the case. The motion has been briefed and argued and is sub judice.
 - On September 28, 2016 the US District Court for the District of Maine ("US Court") granted CP's Amended Motion to Dismiss the wrongful death claimants' lawsuits against CP on the basis, *inter alia*, that the US Court had no personal jurisdiction over CP with respect to that lawsuit, and because Quebec courts provided the more convenient forum for adjudication of those suits. The claimants' motion for reconsideration of that decision was denied, and an

appeal has been filed to the United States Court of Appeals for the First Circuit. Resolution of that appeal will take several months.

ACTIVITIES OF THE MONITOR

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

- The Monitor has continued its review of Property and Economic Damage Claims including communicating with creditors and/or their representatives to obtain additional information required to review their claims;
- The Monitor has commenced a review of 79 contestations filed in respect of Notices issued to holders of Property and Economic Damages;
- The Monitor has proceeded to the payment of the final dividend to holders of Bodily Injury and Moral Damage Claims, has responded to numerous queries from creditors regarding the calculation of their distributions;
- The Monitor has resolved a further 91 contestations filed by holders of Bodily Injury and Moral Damage Claims and is continuing its analysis of the remaining 69 contestations filed in respect of these distributions;
- The Monitor has proceeded to the payment of interim dividends to another 800 holders of Property and Economic Damages Claims and has issued Notices to a further 344 holders of Property and Economic Damages Claims and has responded to numerous inquiries from creditors regarding the calculation of their Property and Economic Damages Claims;
- 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 Twenty-Fifth Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Increase of the Administration Charge

23. The Monitor is of the opinion that the Court should grant an increase in the Administration Charge of \$1.5 million (plus taxes) in order to secure the payment of the fees to be incurred to finalize the administration of the claims review and of these CCAA proceedings.

B) Professional Fees

24. The Monitor supports the approval of professional fees for the period of October 1, 2016 to December 31, 2016, which fees are fair and reasonable and are secured by the Administration Charge.

Respectfully submitted at Montreal, this 22nd day of February, 2017.

Richter Advisory Group Inc.
Monitor



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