

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-SIXTH REPORT OF THE MONITOR
June 8, 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. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in MMAC's Plan of Compromise and Arrangement filed on June 8, 2015 (the "Amended Plan"). All amounts reflected in this report are stated in Canadian currency unless otherwise noted.
5. On December 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. Following a hearing on January 25, 2017 before the Honourable Martin Bureau, J.S.C., an order was rendered on February 6, 2017 granting the CP Document Motion ("CP Document Order").
6. On May 3, 2017 the Province of Quebec ("Province") filed the Demande pour Obtenir la Levée de la Suspension des Procédures ("Province Lift Stay Motion") strictly in relation to the legal action filed by the Province against CP. On May 11, 2017, the Court granted the Lift Stay Motion.
7. On June 8, 2017, the Petitioner filed a Motion for a Sixteenth Extension of the Stay Period and for the Approval of Professional Fees ("Sixteenth Extension Motion"). The Sixteenth Extension Motion will be heard on June 16, 2017.
8. The purpose of this Twenty-Sixth Report of the Monitor is to inform the Court on the following subjects:
 - Claims Review and Status of Distributions;
 - Extension Request;
 - Approval of Professional Fees;
 - CP Document Order;
 - Interest Treatment;
 - Chapter 11;
 - Activities of the Monitor;
 - Recommendations of the Monitor.

CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS

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-Fifth Report dated February 22, 2017 ("Twenty-Fifth Report") all the projected distributions have been paid by the WD Trustee and the WD Trustee continues to hold 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:** as reported in the Monitor's Twenty-Fifth Report, 100% of the total distribution payable to claimants who have Proven Claims in this category have been paid (prior to any possible reallocation under section 4.2 of the Amended Plan). In total, as of the date hereof, an amount of approximately \$46.3 million has been distributed to 4,324 claimants.

As summarized most recently in the Twenty-Fifth Report, following the Monitor's review of 4,324 claims and the issuance of 4,324 Avis de Calcul de Votre Distribution et/ou Avis de Rejet Total ou Partiel de Votre Réclamation ("Notices"), the Monitor received 457 contestations with respect to the Notices. Over the past several months, the Monitor has been able to resolve 410 of those contestations through negotiations with individual claimants, Class Counsel (with respect to the claims of Class Members) and counsel to other claimants.

In respect of the remaining unresolved 47 contestations, hearings before the Claims Officer have been scheduled for June 13 to 15, 2017 in Lac-Mégantic for the adjudication of those contestations.

A small number of the distribution payments (approximately 30 payments totalling approximately \$90,000) have either 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:** 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 May 31, 2017

	# of claims	Claims Value as Filed	Claims Value - as accepted/estimated (by the Monitor)	Estimated distribution amount
Review finalized - distribution paid	1,712	\$ 156,891,057	\$ 31,714,760	\$ 17,950,554
Review finalized - disallowance issued and still within 20 day contestation period	3	883,189	336,688	190,565
Review finalized - disallowance contested	82	33,284,484	3,586,073	2,029,717
Review finalized	1,797	191,058,730	35,637,520	20,170,836
Review not completed	10	9,865,220	799,216	452,356
Sub-total	1,807	200,923,950	36,436,736	20,623,193
Difference between \$75M and current estimated claim value	-	-	38,563,264	-
Potential reallocation	-	-	-	21,944,254
Total	1,807	\$ 200,923,950	\$ 75,000,000	\$ 42,567,447

As noted above, the Monitor has completed a review of 1,797 of the 1,807 claims filed in the category of Property and Economic Damages Claims. Of these, 1,712 claims have become Proven Claims and their holders have received an interim distribution of 50% (approximately \$8.9 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.

As noted in the Twenty-Fifth Report, the Monitor had received contestations from 79 claimants in respect of Property and Economic Damages Claims. Since that time, the Monitor has resolved 12 of those 79 contestations, but has received a further 15 contestations. Currently, 82 total or partial disallowances are contested. The Monitor continues and will continue its efforts to resolve those contestations directly with the claimants before the Monitor refers these disputes to the Claims Officer or to the Court. In this respect, the Monitor has scheduled approximately 30 meetings with various claimants with disputed claims in Lac-Mégantic from June 13 to 15, 2017 and anticipates scheduling additional meetings in the near future.

As noted in the Twenty-Fifth Report, 20 claims had not been at that time allowed or disallowed by the Monitor. As noted in the table above, there now remains only 10 claims which have not been allowed or disallowed. As noted in the Twenty-Fifth Report, the Monitor has completed a preliminary review of these claims but has not allowed or disallowed those claims for various reasons including i) that claimants have requested more time to provide additional documentation in support of their claims and ii) that the Monitor is waiting on information to be received from the Province as to the final amounts paid to certain claimants under a provincial aid program. The Monitor expects to issue Notices with respect to all of the remaining claims in the next few months.

As previously reported including most recently in the Twenty-Fifth 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 reallocation of the distribution relating 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 appears in the table above, the amount to be reallocated is currently estimated to be approximately \$22 million.

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

- **Government Claims:** We refer to the Twenty-Fifth Report for a summary of the treatment of claims in the government category. The Monitor is still awaiting an update from the Province of Quebec in respect of the final amount of their claim.
- **Subrogated Insurer Claims:** We refer to the Twenty-Fifth Report for a summary of the treatment of claims in the subrogated insurer category.

EXTENSION REQUEST

10. The Sixteenth Extension Motion seeks an extension of the Stay Period to January 31, 2018, to allow for the completion of the ongoing review and adjudication of claims as more fully discussed in this report and the distribution of the remaining Settlement Funds to claimants.

APPROVAL OF PROFESSIONAL FEES

11. The Sixteenth Extension Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of January 1, 2017 to May 31, 2017 which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co.			
Administration Charge Summary			
As of May 31, 2017			
	Fees /		Total
	Disbursements	Sales Taxes	
Administration Charge ¹	\$ 13,500,000	\$ 2,022,000	\$ 15,522,000
Accrued Professional Fees as of December 31, 2016	(11,641,767)	(1,719,542)	(13,361,309)
	<hr/>	<hr/>	<hr/>
Balance of Administration Charge to implement the Plan	1,858,233	302,458	2,160,691
<u>Fees and Disbursements - January 1, 2017 to May 31, 2017</u>			
Richter	549,023	82,216	631,239
Woods	178,158	26,679	204,837
Gowling	131,368	19,672	151,040
Claims Officer	11,844	1,774	13,618
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	870,393	130,341	1,000,734
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Balance of Administration Charge to complete the CCAA ²	\$ 987,840	\$ 172,117	\$ 1,159,957
¹ As per the Amended Plan of Compromise and Arrangement dated June 8, 2015 and Order dated March 3, 2017. ² In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.			

CP DOCUMENT ORDER

12. Pursuant to the issuance of the CP Document Order, on or about February 28, 2017, the Monitor remitted to CP's attorneys (as well as Class Counsel) the requested documents which were received by the Monitor as of January 31, 2017. These documents consisted of:
- proofs of claim filed by all creditors with the Monitor;
 - all medical declarations in support of post-traumatic stress claims;
 - copies of all contestations filed by creditors; and
 - the amounts distributed to the creditors.
13. Furthermore, as of the date of this report, the Monitor has provided monthly updates (for February 2017 to April 2017) to CP's attorneys (as well as to Class Counsel).

INTEREST TREATMENT

14. Approximately \$2.3 million of interest has been earned on the Funds for Distribution since the effective date of the Amended Plan. Following communications between the Monitor, its legal counsel and counsel to MMAC with both the Federal and Provincial revenue agencies, the Monitor

has been informed that it will be required to issue tax slips to all creditors whose *pari passu* share of the interest exceeds \$50 in a given calendar year. The issuance of the tax slips can only occur once all claims have been settled and the final allocation of interest can be calculated.

CHAPTER 11

15. The Monitor refers to the Twenty-Fifth Report for a summary of various matters which have an impact on the Amended Plan both in terms of distribution and in respect of the overall administration and provides the following update from the Estate Representative:
- Proceedings under the Carmack Amendment: a CP motion to dismiss the case was granted in part. The WD Trustee has appealed that decision to the United States Court of Appeals for the Eighth Circuit. Briefing has begun and a decision is expected late this year, at the earliest.
 - Estate Representative's separate litigation against CP: The court has indicated that a decision will be issued within the next month or two on a CP motion to dismiss.
 - 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.

ACTIVITIES OF THE MONITOR

16. 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 continued its review of contestations filed in respect of Notices issued to holders of Property and Economic Damages including the resolution of 12 contestations and the receipt of 15 new contestations.
 - The Monitor has continued to issue payments of interim dividends or Notices to holders of Property and Economic Damages Claims and to respond to numerous inquiries from creditors regarding the calculation of their Property and Economic Damages Claims.
 - On April 20, 2017, the Monitor met with representatives of the Chambre de Commerce Région de Mégantic, Commerce Lac-Mégantic and the SADC (Société d'aide du développement de la collectivité de la région de Mégantic) to respond to their questions and concerns regarding the treatment and evaluation of economic claims.

- The Monitor has resolved a further 21 contestations filed by holders of Bodily Injury and Moral Damage Claims.
- The Monitor has communicated with the Claims Officer to organize formal hearings in Lac-Mégantic from June 13 to 15, 2017 in respect of unresolved contestations relating to Bodily Injury and Moral Damage Claims and has prepared and issued 48 dispute packages in connection with the hearings.
- The Monitor has also scheduled meetings in Lac- Mégantic from June 13 to 15, 2017 with claimants who have unresolved economic contestations to see if they can be resolved consensually without the involvement of a claims officer.
- 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-Sixth Report.
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Extension

17. The Monitor is of the opinion that the Court should grant the extension request to at least January 31, 2018 in order to pursue the review of claims and the distribution of the Settlement Fund to the Creditors.

B) Professional Fees

18. The Monitor supports the approval of professional fees for the period of January 1, 2017 to May 31, 2017, which fees are fair and reasonable and are secured by the Administration Charge.

Respectfully submitted at Montreal, this 8th day of June, 2017.

Richter Advisory Group Inc.
Monitor



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