

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-NINTH REPORT OF THE MONITOR
November 14, 2018

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 eighteen times with the most recent extension having been granted to December 14, 2018.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions issued and orders granted to date.
4. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor's previous reports or in MMAC's Plan of Compromise and Arrangement filed on June 8, 2015 (the "Amended Plan"). All amounts reflected in this report are stated in Canadian currency unless otherwise noted.
5. On November 14, 2018, the Petitioner filed a Motion for a Nineteenth Order Extending the Stay Period for an increase in the Administration Charge and for Approval of Professional Fees ("Nineteenth Extension and Fee Motion"). The Nineteenth Extension and Fee Motion will be heard on November 21, 2018.
6. It is our understanding that Class Counsel will file an Application for a direction of payment to counsel for the Court-Appointed Representatives of the Class Members ("Class Counsel Motion"). The Class Counsel Motion will be heard on November 21, 2018.
7. The purpose of this Twenty-Ninth 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 and Increase in Administration Charge;
 - Class Counsel Motion;
 - CP Document Order;
 - Interest Treatment;
 - Chapter 11;
 - Activities of the Monitor;
 - Recommendations of the Monitor.

CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS

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

Montreal, Maine & Atlantic Canada Co.
Summary of Distributions
As of October 31, 2018

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

- **Distribution Paid:** this represents amounts paid to date prior to the deduction of fees and disbursements that were paid by claimants to their attorneys. In total, approximately \$100,000 of the distribution payments have either not yet been released (due to missing information), have been returned because some claimants have moved and not notified the Monitor of their new address or have not yet been cashed. The Monitor will continue to try and obtain the necessary information to ensure the payments are received/deposited, failing which, the funds will be treated in accordance with Section 8.8 of the Amended Plan and donated to charity;
- **Distribution Pending:** this represents the balance of the distribution which would be payable to the Province of Quebec ("Province") in respect of their original claim of \$409 million filed in June 2014 ("Original Claim"). As noted in prior reports including the Twenty-Eighth Report to Court dated June 7, 2018 ("Twenty-Eighth Report"), the amended and final claim submitted by the Province on December 1, 2017 (Final Claim) was approximately \$340.7 million including a provision of \$80 million for future expenses ("Expense Provision").

The Amended Plan was based upon the Original Claim of the Province and did not foresee the possibility that the actual costs of the Province would be lower. The Monitor has had discussions with the Province regarding the implications of this lower claim and is considering next steps should an agreed upon solution not be reached. Discussions have been delayed due to the recent election but in the interim the Province continues to work on updating the Expense Provision and the Monitor is awaiting a further update prior to completing its review of the Province's claim.

In addition to the funds being held for the Province, the Monitor continues to hold approximately \$17 million, which is primarily composed of the \$10 million reserve for litigation regarding

various administrative claims in the Chapter 11 (see prior reports of the Monitor), approximately \$4.8 million of interest earned on the funds held for distribution (which amount includes the reimbursement of \$0.8 million of taxes by the Canada Revenue Agency - see below) which will be distributed at the end of the CCAA proceedings and other reserves.

EXTENSION REQUEST

9. The Nineteenth Extension and Fee Motion seeks an extension of the Stay Period to June 19, 2019, to allow for the finalization of the treatment of the Final Claim of the Province, the advancement of various litigation in the Chapter 11 (as discussed below) and the eventual allocation and distribution of interest income (as discussed below) prior to the conclusion of the CCAA.

APPROVAL OF PROFESSIONAL FEES AND INCREASE IN ADMINISTRATION CHARGE

10. The Nineteenth Extension and Fee Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of May 1, 2018 to October 31, 2018 which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co. Administration Charge Summary As of October 31, 2018			
	Fees /		Total
	Disbursements	Sales Taxes	
Administration Charge ¹	\$ 13 500 000	\$ 1 998 000	\$ 15 498 000
Accrued Professional Fees as of April 30, 2018	<u>(13 369 104)</u>	<u>(1 978 143)</u>	<u>(15 347 247)</u>
Balance of Administration Charge to implement the Plan	130 896	19 857	150 753
Richter	195 278	29 243	224 521
Woods	22 560	3 378	25 938
Gowling WLG	36 015	5 344	41 360
Verrill Dana ²	1 681	-	1 681
	<u>255 534</u>	<u>37 966</u>	<u>293 500</u>
Balance of Administration Charge to complete the CCAA ³	<u>(124 638)</u>	<u>(18 109)</u>	<u>(142 747)</u>
¹ As per the Amended Plan of Compromise and Arrangement dated June 8, 2015 and Order dated March 3, 2017.			
² US counsel to the Monitor, no sales taxes are charged.			
³ In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.			

As noted above, and as predicted in the Twenty-Eighth Report, the Administration Charge has now been fully utilized and there is a need to seek a further increase both to cover costs incurred to October 31, 2018 as well as for ongoing work to complete the administration of the CCAA, which work can be summarized as follows:

- Ongoing analysis and communications with the Province regarding the Final Claim and Expense Provision;
- Allocation and distribution of interest income to the claimants including preparation and issuance of Federal T5 slips and Provincial Relevé 3 slips (approximately 3,200), communications with the Federal and Provincial revenue agencies and responding to claimant inquiries;
- Potential allocation of any reserve funds to the extent they are not required;
- Ongoing communications with claimants regarding queries they may have;
- Monitoring proceedings in the Chapter 11 case including communications with the Estate Representative and resulting implications in terms of the outcome of various litigation;
- Other administrative matters.

Based on the foregoing, an increase to the Administration Charge of \$650,000 plus taxes is being sought to cover amounts currently owing as well as for the work required to complete the administration of the CCAA.

CLASS COUNSEL MOTION

11. Pursuant to the Class Counsel Motion, Class Counsel will be seeking the approval of a payment of approximately \$0.8 million of accrued fees as of October 31, 2018, summarized as follows:

	<u>Distribution to Class Members on which class counsel fees were calculated⁽¹⁾</u>	Fees @ 25%	Total estimated fees
<u>Fees earned to date</u>			
Moral claims	\$ 42,575,533	25%	\$ 10,643,883
Economic claims	8,877,080	25%	2,210,547
Total fees earned to date pursuant to Class Counsel Fee order dated Nov 26/15⁽²⁾			12,854,430
Class counsel fees paid to date			12,030,516
Total Class Counsel Fees owing as at October 31, 2018 (excluding taxes)			\$ 823,914

⁽¹⁾ No fees on XL indemnity portion of distribution
⁽²⁾ Excludes fees earned on WD payments as fees were paid directly by the WD Trustee.

CP DOCUMENT ORDER

12. We refer to the Twenty-Sixth Report of the Monitor dated June 8, 2017 for a summary of the CP Document Order. As of the date of this Report, the Monitor has provided monthly updates (for February 2017 to October 2018) to CP's attorneys as well as to the Class Counsel.

INTEREST TREATMENT

13. As of the date of this report, approximately \$4.8 million has been earned on the Funds for Distribution since the effective date of the Amended Plan ("Interest").
14. Further to our update in the Twenty-Eighth Report, the Monitor provides the following update regarding the fiscal treatment of the Interest and of the income tax reporting by the claimants:
 - Revenu Quebec: Revenu Quebec has agreed that at the conclusion of the CCAA, after the Monitor has distributed the Interest the Monitor will issue a Relevé 3 to each claimant who has received \$50 or more of Interest;
 - Canada Revenue Agency ("CRA"): In July 2018, CRA notified the Monitor that it will adopt the same position as Revenu Quebec. CRA has also agreed to refund the Monitor an amount of approximately \$883k of income tax that was paid by the Monitor on March 1, 2018 while CRA was reviewing its position. That payment was made to avoid any penalties being charged to the funds held for distribution.
15. The issuance of the tax slips (see above) can only occur once all claims have been finally determined and the final allocation of interest can be calculated. Based on the information currently available, the Monitor estimates that it will need to issue tax slips (see above) to at least 3,200 individuals and corporations.

CHAPTER 11

16. The Monitor refers to the Twenty-Eighth 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 appealed that decision to the United States Court of Appeals for the Eighth Circuit. The Eighth Circuit issued a decision dated September 14, 2018 which reversed the lower court and reinstated the case. CP has moved for a rehearing *en banc* but the court has not yet ruled on that motion;

- Estate Representative's separate litigation against CP: There has been no further update since our Twenty-Eighth Report. The case is in the discovery phase;
- Potential administrative/secured claims filed in the Chapter 11: these claims and their quantum continue to be contested by the Estate Representative and it is uncertain if these claims will be definitively determined by the end of the requested extension period. Hearings were held on the Wheeling claims on May 24 and 25, 2018, and the Bankruptcy Court issued a decision that Wheeling did not have a security interest in any settlement proceeds. Wheeling has appealed the decision. The Irving Railroads claims are the subject of a joint request for a direct appeal to the United States Court of Appeals for the First Circuit on a remaining legal issue. A decision on that request is pending. The Monitor continues to maintain a \$10 million reserve in connection with these claims.

ACTIVITIES OF THE MONITOR

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

- The Monitor has issued supplemental distributions to 4,445 claimants including review of calculations with both Class Counsel and their representatives as well as responding to queries from claimants with respect to the supplemental distribution;
- The Monitor has been in contact with the Province in connection with the analysis of the Final Claim and the Expense Provision;
- The Monitor has been in contact with representatives of the Federal and Provincial revenue agencies in connection with the treatment of interest owed to claimants;
- The Monitor has continued to provide monthly updates (for May, 2018 to October, 2018) to CP's attorneys as well as to Class Counsel, the whole pursuant to the CP Document Order (as more fully described in the Twenty-Sixth Report dated June 8, 2017);
- The Monitor has continued to cooperate with the Estate Representative and his professionals and with Petitioner's legal counsel to keep apprised of the Chapter 11 proceedings of MMAR;
- The Monitor has maintained regular contact with the major stakeholders to seek their input and discuss various issues;
- The Monitor continues to post copies of Court materials filed in the CCAA and Chapter 11 Proceedings on its website;
- The Monitor has prepared and filed the Twenty-Ninth Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Extension

18. The Monitor is of the opinion that the Court should grant the extension request to at least June 19, 2019 in order to allow for the final review and treatment of the claim of the Province, the redistribution of the remaining Settlement Funds to claimants, the payment of interest and the advancement of various litigation in the Chapter 11.

B) Professional Fees and Increase in Administration Charge

19. The Monitor supports the approval of the professional fees for the period of May 1, 2018 to October 31, 2018, which fees are fair and reasonable and the increase in the Administration Charge to enable the completion of the administration and the full implementation of the Amended Plan under the CCAA.

C) Class Counsel Fees

20. The Monitor supports the approval of the further payment of \$823,914 plus applicable sales taxes to Class Counsel.

Respectfully submitted at Montreal, this 14th day of November, 2018.

Richter Advisory Group Inc.
Monitor



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