

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
No.: 500-11-045094-139

SUPERIOR COURT
(Commercial Division)
The Companies' Creditors Arrangement Act

**IN THE MATTER OF THE PLAN OF
COMPROMISE OR ARRANGEMENT OF:**

**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, 37th 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, 12th Floor, in the city and
district of Montreal, Quebec, H3A 0G6

Monitor

**FIRST REPORT OF THE MONITOR
ON THE STATE OF THE PETITIONER'S FINANCIAL AFFAIRS
August 21, 2013**

INTRODUCTION

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. ("MM&A" or the "Petitioner") filed with the Quebec Superior Court 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. ("Richter") as Monitor (the "Monitor").

2. On August 21, 2013, MM&A filed with the Court a Motion to amend the initial order and seek a charge and security on the property of the Petitioner to secure funds for self-insured obligations (“Charge and Security Motion”). The Charge and Security Motion requests a charge of \$250,000 in favor of any person having a valid claim under the XL Insurance Company Ltd policy (RCL 0003808301) (“Policy”) in connection with an Accident, as defined in the Policy, occurring after the date of the issuance of the Initial Order, as a condition to maintain its Certificate of Fitness from the Canada Transportation Agency (“CTA”) as more fully explained below. The effect of not providing this priority charge would be to require the Petitioner to cease operations in Canada effective 5:00 pm, August 23, 2013.
3. All amounts reflected in this report are stated in Canadian currency unless otherwise noted.
4. The purpose of this First Report of the Monitor is to inform the Court of the following:
 - Purpose of CCAA Filing;
 - CTA Requirement;
 - Impact of Immediate Cessation of Operations;
 - Impact on Realization Value;
 - Monitor’s Recommendation.
5. We inform the Court that the Monitor has not conducted an audit or investigation of the information 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.

PURPOSE OF CCAA FILING

6. 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 in the States of Vermont and Maine. Together, these companies operate 510 route miles and service customers in Canada and the United States.
7. Following the tragic train derailment in the town of Lac-Mégantic, Quebec on July 6, 2013 and the ensuing financial and other operational challenges, as well as the legal chaos resulting from the said tragedy, MM&A was obliged to seek protection under the CCAA for the numerous reasons

enumerated below. At the same time, MM&AR filed for protection under Chapter 11 of the U.S. Bankruptcy Code on August 7, 2013.

8. The Petitioner commenced CCAA proceedings in order to accomplish the following:
 - Enable continued operations of the railway 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;
 - Commence efforts, with the assistance of the Monitor, to seek a purchaser for the assets of MM&A as well as MM&AR as a going concern, which should enhance the market value of the assets;
 - Provide continued employment for its experienced work force, which will also serve to enhance the going-concern value of the Petitioner and possibly offer them continued employment under a new owner;
 - Create a formal and orderly claims process, acceptable to the Court, to deal efficiently with the claims of all stakeholders including the families of the victims;
 - Intervene as required with the various insurers in order to maximize the proceeds from available policies and ensure the proper distribution thereof pursuant to the claims process.

CTA REQUIREMENT

9. On July 13, 2013, the CTA issued Order No. 2013-R-266 dated August 13, 2013, suspending MM&A's Certificate of Fitness No. 02-004-3, effective August 20, 2013, unless it was able to provide proof of adequate third party liability insurance including the ability of MM&A to pay the \$250,000 self-insured portion of said liability policy.
10. Following further submissions by MM&A, the CTA varied its Order No. 2013-R-266 on August 16, 2013, by amending the date of effect of the suspension of MM&A and MM&AR's Certificate of Fitness to October 1, 2013. However, the CTA made this variance conditional on MM&A/MM&AR confirming that it has secured funds for the self-insured retention portion of the policy by filing a confirmation with the Agency no later than 5:00 p.m. Eastern Time August 23, 2013, failing which the suspension shall take effect as of that time. It is the Monitor's understanding that the charge referred to in the Charge and Security Motion will satisfy the CTA's requirements.

IMPACT OF IMMEDIATE CESSATION OF OPERATIONS

A) Employees

11. In the event that MM&A is compelled to cease its operations effective 5:00 p.m., August 23, 2013, the loss of ongoing revenues will leave it no alternative but to lay off all of its Canadian employees.
12. At the present time, the Petitioner has 62 employees, of which 34 are currently active with the balance being on temporary lay-off (14), on CSST (12) and on disability (2).
13. Effective August 23, 2013, it is estimated the active employees will be owed approximately \$97K in accrued payroll, which is due to be paid in the week ending September 6, 2013, in accordance with the Petitioner's payroll cycle.
14. Accrued vacation pay to all employees is estimated by the Petitioner to be \$440K (which includes \$40K for recently laid off employees). The cash flow will not permit the payment of these amounts in the event of an immediate cessation of operations.

B) Customers

15. For the twelve months ended June 30, 2013, MM&A originated or delivered in excess of 10,000 rail cars from/to approximately 60 customers in the Province of Quebec. The immediate cessation of operations will impact the Petitioner's numerous direct and indirect customers by forcing them to find alternate means of transportation, be it for the acquisition of raw materials or the shipment of finished goods, at higher costs and longer delivery times as alternate means of transportation are not readily available.
16. The Petitioner's customers and the regions they service may be forced to lay off employees and/or postpone expansion projects.
17. This is more fully detailed in the supporting affidavits of the Centre local de développement (CLD) de Brome-Missisquoi and the Conseil économique du Haut-Richelieu (Exhibit R-5 and Exhibit R-6 to the Charge and Security Motion).
18. Further, customers who are unable to continue relying upon MM&A for transportation may claim damages which would also negatively affect the collection of existing accounts receivable balances.
19. The potential disruption of deliveries currently in process by MM&A would cause direct and indirect damages to certain customers, which might continue for an undetermined period of time.

IMPACT ON REALIZATION VALUE

20. The realization value of MM&A's assets is dependent on numerous factors, including its tangible assets, its experienced workforce, its integrated operations with MM&AR as well as its established customer base. All of these attributes will be negatively impacted by a shutdown of operations and will result in a lower realization available to all of the claimants.

MONITOR'S RECOMMENDATION

21. The Monitor supports the Petitioner's Charge and Security Motion for the following reasons:

- Preservation and maximization of the realization value of the Petitioner's assets, for the benefit of all claimants;
- Continued employment for active employees;
- Ongoing service to MM&A's and MM&AR's customers, who may otherwise suffer serious economic losses and operational problems;
- The Petitioner itself is not the true beneficiary of this charge; rather, it is the claimants who benefit from the continued operations of MM&A and MM&AR;
- Absent a continuation of its operations, MM&A may determine that the ultimate goal sought by the filing under the CCAA is no longer achievable and may decide to file for bankruptcy. This would negatively affect the claims process that would otherwise be available in a CCAA and might diminish the insurance proceeds available to all claimants as the insurer will no longer benefit from a stay and might, under the terms of the policy, be obligated to pay claims on a "first come, first served basis", as well as assume significant defense costs in the process.

Respectfully submitted at Montreal, this 21st day of August 2013.

Richter Advisory Group Inc.

Monitor



Gilles Robillard, CPA, CA, CIRP