

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)

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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SEVENTEENTH REPORT OF THE MONITOR  
April 24, 2015

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INTRODUCTION

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. (hereafter in this report "MMAC" 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"). An initial stay of proceedings was ordered until September 6, 2013 ("Stay Period").
2. The Stay Period was extended by the Court twelve times with the most recent extension to December 15, 2015 having been granted by the Court on April 15, 2015.

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 March 30 and 31, 2015 and on April 14, 2015, five insurance companies filed motions seeking to file claims after the bar date ("Late Claim Motions").
5. On April 10, 2015, the Petitioner filed a Motion for an Order for the Convening, Holding and Conduct of a Creditors' Meeting and for a Twelfth Extension of the Stay Period ("Creditors' Meeting and Extension Motion").
6. On April 10, 2015, the Petitioner filed a Motion for an Order Establishing a Procedure for the Review and Determination of Claims ("Claims Resolution Motion").
7. On April 14, 2015, the Court Appointed Representatives of the Class Members filed the following motions:
  - Motion for an Order Authorizing the Filing of Additional Claims;
  - Motion for an Order Accepting the Filing of an Amended Plan and for Advice and Directions ("Amended Plan Motion").
8. Pursuant to a hearing on April 15, 2015, the Court issued the following orders and set out the following timeline for the hearing of various motions as follows:
  - Order for the Twelfth Extension of the Stay Period;
  - Claims Resolution Order;
  - Amended Additional Claims Motion (as defined below) will be heard on April 27, 2015;
  - Creditors' Meeting Motion filed by Petitioner and the Amended Plan Motion will be heard on April 30, 2015;
  - Late Claim Motions will be heard on May 11, 2015.
9. On April 20, 2015, the Court Appointed Representatives of the Class Members filed the Fresh as Amended Motion of the Court Appointed Representatives of Class Members for an Order Authorizing the Filing of Additional/Late Claims ("Amended Additional Claims Motion").
10. The purpose of this Seventeenth Report of the Monitor is to inform the Court with respect to the Amended Additional Claims Motion.

## CLAIMS PROCESS

11. On April 4, 2014, the Court issued the Claims Procedure Order which set out the process by which creditors could file claims in these proceedings. The Claims Procedure Order established a bar date of 5:00 p.m. (Montreal time) on June 13, 2014 ("Bar Date"). Pursuant to the Amended Claims Procedure Order issued on June 13, 2014, the Bar Date was extended to 5:00 p.m. (Montreal time) on July 14, 2014 but solely for claims of wrongful death victims.
  
12. Pursuant to the Claims Procedure Order, in order to notify creditors of the Bar Date and the claims process, the Monitor undertook various steps to both inform creditors of the Bar Date and to provide assistance in completing a proof of claim prior to the Bar Date. The following steps have been summarized in prior Monitor reports (most notably in the Ninth Report dated April 25, 2014) however, it is relevant to summarize those steps in this report:
  - On April 11, 2014, the Monitor posted the proof of claim form package on it's website;
  - During the week of April 7, 2014, the Monitor met with a representative of the City to review a communications plan. Further, the City posted on its website a notice alerting residents to the commencement of the claims process, the information sessions and where to obtain further information;
  - On April 12 and 19, 2014, the Monitor placed advertisements in La Presse, the Gazette and La Tribune as required under the Claims Order. These advertisements also appeared on April 18 and 25, 2014 in L'Echo de Frontenac and the Sherbrooke Record to inform creditors of the claims process, the claims bar date and information sessions (see Exhibit "3" of the Monitor's Ninth Report);
  - During the week of April 14, 2014, the Monitor mailed via Canada Post to all residents and businesses in the MRC du Granit region a public notice ("Public Notice") (see Exhibit "4" of the Monitor's Ninth Report) which described the claim process;
  - On April 14, 2014, the Monitor mailed the proof of claim form to all known creditors and other parties including the service list, various governmental agencies and bodies, insurers and employees of MM&A;
  - On April 15, 2014, representatives of the Monitor opened a temporary office in the City of Lac-Mégantic ("Lac-Mégantic") to meet with creditors to provide assistance in the completion of proofs of claim. This office remained open through June 13, 2014;
  - On April 17, 2014, the Monitor provided the Public Notice to the CLD du Haut-Richelieu and requested that they circulate this notice to their members as well as enlist the aid of other CLD's in the region for the distribution of the Public Notice;

- On April 22, 23, 30 and May 5, 2014, information sessions were held in Lac-Mégantic to explain the claims process to the residents. Attached as Exhibit “5” to the Monitor’s Ninth Report is the presentation provided to all who attended the information sessions. The attorneys for the Class Representatives were present at the information sessions and had the opportunity to assist the residents who attended the sessions;
  - The Monitor was in frequent communication with the attorneys for the Class Representatives to coordinate efforts to ensure creditors were aware of the claims process, the bar date and were provided with the necessary assistance to file claims.
13. In addition to the above-noted steps, the attorneys for the Class Representatives implemented various measures to inform creditors of the claims process and the importance of filing a claim by the Bar Date, as more fully set out in paragraph 9 of the Amended Additional Claims Motion.
14. It should also be noted that a claims process in the Chapter 11 proceedings of Montreal, Maine & Atlantic Railway Ltd. (“MMA”) was instituted which followed the same timelines as the MMAC Claims Procedure Order and allowed for the deemed filing of claims.

#### **CLAIMS FILED BY THE BAR DATE**

15. The Monitor refers to its Twelfth Report dated July 18, 2014 and its Thirteenth Report dated September 22, 2014 for details regarding the claims filed by the Bar Date. After adjusting for duplications, we note that approximately 4,300 claims were filed in the CCAA and the Chapter 11 (approximately 4,000 in the CCAA and 300 in the Chapter 11).
16. In respect of the 4,300 claims filed, approximately 3,700 included a claim for damages that has been categorized as a Bodily Injury and Moral Damages Claim (as defined in the Plan).

#### **AMENDED ADDITIONAL CLAIMS MOTION**

17. The Amended Additional Claims Motion seeks an authorization to file the following late claims:
- June 2014 Claims (as defined in the Amended Additional Claims Motion);
  - January 2015 Claims and April 2015 Claims (as defined in the Amended Additional Claims Motion).

**June 2014 Claims (Exhibit R-1 to the Amended Additional Claims Motion)**

- 32 claims which were signed June 13, 2014 or prior and that were not submitted to the Monitor prior to the Bar Date as a result of a Class Counsel inadvertence;
- 70 claims which were all dated June 30, 2014, but which have never been remitted to the Monitor;
- In respect of these 102 claims, they can be classified as follows:
  - 65 claims impact solely the Bodily Injury and Moral Damages category;
  - 24 of the claims impact both the Bodily Injury and Moral Damages and the Property and Economic Damages categories;
  - 5 claims impact both the Bodily Injury and Moral Damages and Wrongful Death categories. Upon a preliminary review of these 5 claims and a discussion with Class Counsel, it appears that these creditors likely do not meet the definition of Wrongful Death Claims and should be included solely in the Bodily Injury and Moral Damages category;
  - 6 claims impact solely the Property and Economic Damages category;
  - 2 claims impact solely the Wrongful Death category.
- Based upon a preliminary review of the information listed in Exhibit R-1, the Monitor believes that up to 20 of the 102 claims (including the 2 Wrongful Death Claims) may be duplicates of claims that were already filed with the Monitor prior to the Bar Date and 1 claim is listed twice in this exhibit. Further, the 2 claims which impact solely the Wrongful Death category have already filed claims in the Chapter 11 and have opted out of Class Representation;
- Accordingly, after correcting for claims potentially already filed by the Bar Date or listed in duplicate, and using the points system set out in Schedule F to the Plan, the addition of all of the June 2014 Claims to the Bodily Injury and Moral Damages category is estimated to dilute the distribution to this category by approximately 1.0%;
- At this stage, it is not possible to quantify the impact of these late claims on the distribution to the Property and Economic Damages category;
- It should be noted that the Monitor has based its summary and analysis on the information contained in Exhibit R-1 to the Amended Additional Claims Motion and adjustments may be required following the review of the actual proofs of claim which were submitted to the Monitor on April 22, 2015.

### **January / April 2015 Claims (Exhibit R-2 to the Amended Additional Claims Motion)**

- 108 claims on which we comment as follows:
  - 82 of the claims are dated January 30, 2015 or in February 2015;
  - 26 claims are described in Exhibit R-2 to the Amended Additional Claims Motion as:

*“En jaune seulement inscrit au recours collectif pas de prévue de réclamation”*

However, when Class Counsel sent us the copies of the proofs of claims listed in Exhibit R-2, the Monitor notes that in fact claims have been submitted for all 26 of these creditors. 24 of the claims are late as they are dated in April 2015 and 2 of the claims are dated June 12, 2014, prior to the Bar Date.

- These 108 claims can be classified as follows:
  - 56 claims impact solely the Bodily Injury and Moral Damages category.
  - 42 claims impact both the Bodily Injury and Moral Damages category and the Property and Economic Damages category;
  - 9 claims impact both the Bodily Injury and Moral Damages and Wrongful Death categories. Upon a preliminary review of these 9 claims and a discussion with Class Counsel, it appears that these creditors likely do not meet the definition of Wrongful Death Claims and should be included solely in the Bodily Injury and Moral Damages category;
  - 1 claim impacts solely the Property and Economic Damages category.
- Based upon a preliminary review of the information listed in Exhibit R-2, the Monitor believes that 13 of the 108 claims may be duplicates of claims that were already filed with the Monitor prior to the Bar Date;
- Accordingly, after correcting for claims potentially already filed by the Bar Date and using the points system set out in Schedule F to the Plan, the addition of the January / April 2015 Claims to the Bodily Injury and Moral Damages category is estimated to dilute the distribution to this category by approximately 1.0%.
- At this stage, it is not possible to quantify the impact of these late claims on distribution to the Property and Economic Damages category.
- It should be noted that the Monitor has based its summary and analysis on the information contained in Exhibit R-2 to the Amended Additional Claims Motion and adjustments may be required following the review of the actual proofs of claim which were submitted to the Monitor on April 22, 2015.

## CONCLUSION

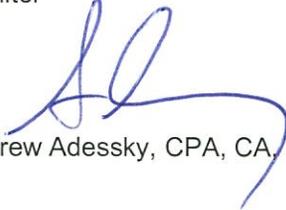
18. The Plan as filed was negotiated over many months with numerous parties and achieves a compromise of a multitude of positions. These complex and delicate negotiations were, among many elements, based on the amount and the nature of the claims filed by the Bar Date. The categorization of these claims and an agreement as to their relative values were essential to the determination of the allocation of settlement funds amongst the differing categories of creditors. Consequently, any decision to authorize the filing of claims after the Bar Date should be taken on the basis of this particular context.
  
19. In the particular case of the Amended Additional Claims Motion, and on the following assumptions:
  - The Plan as eventually approved and sanctioned will provide for the distribution of fixed amounts per category of claims as currently foreseen by its terms; and
  - All of the creditors having claims in the category of claims which would be affected by the filing of the late claims described in the Additional Amended Claims Motion agree to such late filings;the Monitor has no objection to the conclusions sought by the Amended Additional Claims Motion.
  
20. If the agreement of the creditors described in paragraph 19 above cannot be ascertained, than the Monitor believes that:
  - With respect to the June 2014 Claims:
    - The late filing of the claims that are dated prior to the Bar Date should be authorized inasmuch as the reason for the non-filing of these claims by the Bar Date appears to be due to the inadvertence of Class Counsel and thus it would be unfair to these creditors to not allow them to participate in any distribution under the Plan.
    - The late filing of the claims that are dated after the Bar Date requires additional analysis to determine when the creditors actually provided the information to complete their claims before determining if there are circumstances that would justify the acceptance of these late claims.
  - With respect to the January / April 2015 Claims, the Monitor is concerned that there is little justification provided in the Amended Additional Claims Motion to explain why these claims are only being filed seven months or more after the Bar Date.

Further, the Monitor is concerned that if there are no clear and compelling reasons to authorize late filings, the Bar Date may become meaningless and that a significant number of other late claims not yet identified could be filed that would have an impact on the Plan and on the recovery of those creditors who respected the Bar Date.

Respectfully submitted at Montreal, this 24<sup>th</sup> day of April, 2015.

**Richter Advisory Group Inc.**

Monitor

A handwritten signature in blue ink, consisting of stylized, overlapping loops and a long horizontal stroke extending to the right.

Andrew Adessky, CPA, CA, CIRP