

CANADA
PROVINCE OF QUEBEC
DISTRICT OF SAINT-FRANÇOIS
No.: 450-11-000167-134

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

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

Monitor

EIGHTEENTH REPORT OF THE MONITOR
May 8, 2015

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, on April 14, 2015, and on May 7, 2015, six insurance companies filed motions seeking to file claims after the bar date ("Late Claims 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) to be heard on April 27, 2015;
 - Creditors' Meeting Motion filed by Petitioner and the Amended Plan Motion to be heard on April 30, 2015;
 - Late Claim Motions to 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. On April 24, 2015, the Court Appointed Representatives of the Class Members filed the Further 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 Motions").

10. On April 24, 2015, the Petitioner filed a Motion for Advice and Directions Pursuant to the Representation Order (“Directions Motion”). The Directions Motion and the Amended Additional Claims Motion were heard on April 27, 2015. A draft order is being reviewed with respect to the Directions Motion and the Amended Additional Claims Motions was postponed to May 11, 2015.
11. On April 24, 2015, the Monitor issued its Seventeenth Report to inform the Court with respect the Amended Additional Claims Motions.
12. On April 29, 2015, the Court Appointed Representatives of the Class Members withdrew their Amended Plan Motion.
13. On May 5, 2015, the Court issued its “Jugement sur la requête pour convocation d’une assemblée de créanciers”.
14. The purpose of this Eighteenth Report of the Monitor is to inform the Court with respect to the Late Claims Motions.
15. Capitalized terms not defined in this Report have the meaning ascribed thereto in the Monitor’s previous reports and all amounts reflected in this report are stated in Canadian currency unless otherwise noted.

CLAIMS PROCESS

16. 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.
17. 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) and again in the Monitor’s Seventeenth Report dated April 24, 2015 in connection with the Amended Additional Claims Motion.

CLAIMS FILED BY THE BAR DATE

18. 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 June 13, 2014 Bar Date ("Bar Date").
19. Included in the approximately 4,300 claims filed in the CCAA by the Bar Date were eight (8) Subrogated Insurer Claims for an amount of \$33.7 million which we summarize as follows:

Montreal Maine & Atlantic Canada Co. Insurance Claims filed prior to Bar Date	
(in 000's)	Claim Filed by Bar Date
Promutuel Monts et Rives	\$ 14,386
Intact Compagnie d'assurance	10,125
AIIG Insurance Company of Canada	4,000
La Mutuelle des municipalités du Québec	2,319
La Personnelle, assurances générales inc.	1,108
Desjardins Assurances générales inc.	1,053
La Compagnie d'assurance Bélair Inc.	625
Zurich Insurance Company Ltd.	83
	<u>\$ 33,701</u>

LATE CLAIM MOTIONS

20. The Late Claims Motions seeks authorization to file six (6) late claims in the Subrogated Insurance category as follows:

Montreal Maine & Atlantic Canada Co. Late Filed Insurance Claims				
	Late Claim Amount (in 000's)	# of Insureds represented by Late Claim	# of Claims Filed by Insureds by the Bar Date	Amount of Claims Filed by the Bar Date (in 000's)
La Garantie Compagnie d'Assurances de L'Amerique du Nord	\$ 2,697	1	1	\$ 5,524
Royal & Sun Alliance du Canada ⁽¹⁾	2,640	7	4	288 ⁽²⁾
La Capitale assurances générales Inc	1,058	41	28	1,055
L'Unique Assurances générales Inc	657	28	14	1,222
Groupe Ledor Inc, Mutuelle d'assurance	501	4	3	1,020
Société d'assurance générale Northbridge	67	2	-	-
	<u>\$ 7,620</u>	<u>83</u>	<u>50</u>	<u>\$ 9,108</u>

(1) Late claim filed in the amount of \$2.2 million, however the annex attached to the claim form indicates an additional \$0.4 million for a total claim of \$2.6 million.

(2) Includes 3 claims filed in the Chapter 11 for "amounts not less than \$75,000".

21. The Late Claims Motions advance various reasons for not having filed claims by the Bar Date which all revolve around a lack of knowledge of the claims process and the implications of the settlements reached with potentially liable third parties, namely that the various insurers filing late claims only become aware of the foregoing between January to April 2015, depending on the insurer ("Late Insurers").
22. In response thereto and following a review of the motions and accompanying affidavits, the Monitor provides the following comments:
- The Monitor refers to its prior reports (including the Ninth and Seventeenth) for a listing of all steps taken to notify creditors or the Bar Date which includes a mailing to creditors, newspaper advertisements, posting all materials on the Monitor's website. The Monitor further notes the intensive media coverage in respect of MMAC's restructuring including articles relating to the Bar Date as well as the concept of releases in favour of potentially liable third parties in exchange for contributions to a settlement fund;
 - The Monitor confirms that the Late Insurers were not specifically listed on the creditor listing provided by MMAC nor did they request to be added to the service list throughout these proceedings while other insurers and numerous others did at a time when there was no particular indication that any distribution would be made to creditors;
 - Had they requested to be added to the service list, the Late Insurers would have received the following materials which all explain the third party release concept:
 - Various Monitor reports including the Eleventh, Twelfth and Fourteenth;
 - Various motion material of the Petitioner including the Motion for a Fourth Order Extending the Stay Period, the Motion for Seventh Order Extending the Stay Period, Motion for an Eighth Order Extending the Stay Period, Motion for a Ninth Order Extending the Stay Period which also contained a draft term sheet in respect of a plan and the Motion for a Tenth Order Extending the Stay Period;
 - Judgments of this Court dated February 17, 2014, March 14, 2014 and March 31, 2014.
 - The affidavits attached to the Late Claim Motions of La Capitale assurances générales Inc. and L'Unique assurances générales Inc. state that attempts to contact the Monitor in January 2015 were unsuccessful and this also caused delays in the ability of these Late Subrogated Insurers to understand the impact of the proposed Plan and their ability to pursue potential third parties to recover claims paid. The Monitor has reviewed its records and thus far has not located any communications from the individual who signed the affidavits on behalf of these two insurers. Further information will be required to know specifically by what methods attempts were made to contact the Monitor and for whom messages were left. Notwithstanding, even if contact had

been made with the Monitor in January 2015, this would still have been at least six months after the Bar Date;

- The motion of La Garantie Compagnie d'Assurance de l'Amérique du Nord ("La Garantie") as well as the accompanying affidavit refers to information received from the Monitor to the effect that the proof of claim filed by their insured has been partially rejected by the Monitor insofar as it relates to the portion of the claim that was covered by insurance. The Monitor confirms speaking with a representative of La Garantie on January 23, 2015 about the restructuring and the claim filed by their insured. However, the Monitor did not advise La Garantie and could not have advised La Garantie that it had partially rejected the claim of the insured as there was no procedure in place to permit the Monitor to reject any claims received. Indeed, the Claims Resolution Order enabling the Monitor to review and reject claims was only issued on April 15, 2015.

23. The following table summarizes the impact to the creditors in the Subrogated Insurer category if the Court grants the conclusions in the Late Claims Motions:

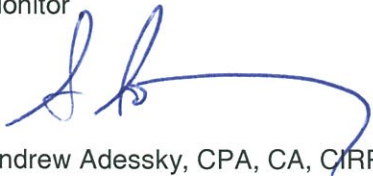
Montreal Maine & Atlantic Canada Co. Dilution Factor of Late Claims Filing				
(in 000's)	As Filed in CCAA	Estimated Distribution Amount (no late claims)	Estimated Distribution Amount - with late claims	Dilution Effect
<u>Claims Filed Prior to the Bar Date</u>				
Promutuel Monts et Rives	\$ 14,386	\$ 4,806	\$ 3,920	\$ (886)
Intact Compagnie d'assurance	10,125	3,383	2,759	(624)
AIG Insurance Company of Canada	4,000	1,336	1,090	(246)
La Mutuelle des municipalités du Québec	2,319	775	632	(143)
La Personnelle, assurances générales inc.	1,108	370	302	(68)
Desjardins Assurances générales inc.	1,053	352	287	(65)
La Compagnie d'assurance Bélair Inc.	625	209	170	(39)
Zurich Insurance Company Ltd.	83	28	23	(5)
	<u>\$ 33,701</u>	<u>\$ 11,259</u>	<u>\$ 9,183</u>	<u>\$ (2,076)</u>
% decrease in distribution		-	-	-18%
<u>Late Claims</u>				
La Garantie, Compagnie d'Assurances de l'Amérique du Nord	\$ 2,697	\$ -	\$ 735	
Royal & Sun Alliance du Canada	2,640	-	719	
La Capitale assurances générales inc.	1,058	-	288	
L'Unique assurances générales	657	-	179	
Groupe Ledor Inc, Mutuelle d'assurance	501	-	136	
Société d'assurance générale Northbridge	67	-	18	
	<u>\$ 7,620</u>	<u>\$ -</u>	<u>\$ 2,076</u>	
Total	<u>\$ 41,321</u>	<u>\$ 11,259</u>	<u>\$ 11,259</u>	

CONCLUSION

24. The relief sought in the Late Claim Motions will reduce the recovery to Subrogated Insurers from 33% to 27% which has a dilutive impact of approximately 18% on those Subrogated Insurers who filed their claims by the Bar Date.
25. Given their active involvement in settling claims following the Derailment, given the intensive media coverage surrounding these restructuring proceedings, it is difficult to comprehend how the Late Insurers could have been completely unaware of the evolution of the restructuring including but not limited to the claims process and related Bar Date as well as the implications of the settlements reached with potentially liable third parties.
26. As noted in the Monitor's Seventeenth Report filed in connection with the Amended Additional Claims Motions, 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 and not necessarily on behalf of insurers could be filed that would have an impact on the Plan and on the recovery of those creditors who have acted in accordance with the Orders of this Court and filed before the Bar Date.
27. As noted by the Monitor, the unique structure of the Plan is a compromise of multiple positions held by numerous stakeholders and was achieved taking into consideration the claims filed by the Bar Date.

Respectfully submitted at Montreal, this 8th day of May, 2015.

Richter Advisory Group Inc.
Monitor



Andrew Adessky, CPA, CA, CIRP