

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-EIGHTH REPORT OF THE MONITOR
June 7, 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 seventeen times with the most recent extension having been granted to June 29, 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 May 31, 2018, counsel to the Petitioner was served with a Demande Introductive D'Instance filed with the Superior Court, Civil Division, District of Megantic ("Demande Introductive").
6. On June 6, 2018, the Petitioner filed a Motion for an Eighteenth Extension of the Stay Period and for the Approval of Professional Fees ("Eighteenth Extension Motion"). The Eighteenth Extension Motion will be heard on June 19, 2018.
7. On June 7, 2018, Class Counsel filed a Motion entitled 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 June 19, 2018.
8. The purpose of this Twenty-Eighth Report of the Monitor is to inform the Court on the following subjects:
 - Claims Review and Status of Distributions;
 - Extension Request;
 - Demande Introductive D'Instance;
 - Approval of Professional Fees;
 - Class Counsel Motion;
 - 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 \$47.2 million has been distributed to 4,327 claimants.

As summarized most recently in the Monitor's Twenty-Seventh Report dated December 5, 2017 ("Twenty-Seventh Report"), all unresolved contestations were the subject of hearings before the Claims Officer from June 13, 2017 to June 15, 2017. Following the decisions rendered by the Claims Officer, three claimants appealed the decision of the Claims Officer to the Court. All three of these appeals have been resolved directly by the Monitor and Class Counsel and the appeals have been withdrawn. In addition, a contestation which was not the subject of a hearing before the Claims Officer has now been resolved.

Consequently, with all claims now resolved, the Monitor will be proceeding to the issuance of a supplemental distribution in the approximate amount of \$2.8 million ("Supplemental Moral Distribution") to the category of Bodily Injury and Moral Damages. As noted in the Twenty-Seventh Report, this Supplemental Moral Distribution emanates from the release of various reserves established by the Monitor to ensure it could pay all Bodily Injury and Moral Damage Claims once each claim amount was finalized.

A small number of the distribution payments (24 payments totalling approximately \$62,000) 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:** 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, 2018				
	# of claims	Claims Value as Filed	Claims Value - as accepted (by the Monitor)	Distribution amount
Final claim values	1,810	\$ 197,124,012	\$ 45,288,760	\$ 25,633,438
Difference between \$75M and final claim values	-	-	29,711,240	-
Reallocation	-	-	-	16,770,364
Total	1,810	\$ 197,124,012	\$ 75,000,000	\$ 42,403,802

As noted above, the Monitor has now completed and finalized its review of the 1,810 claims filed in the category of Property and Economic Damages Claims. As of the issuance of the Twenty-Seventh Report, there remained 14 contested claims which had not yet been resolved. The Monitor with the assistance of Class Counsel and other counsel has now resolved all of these contested claims with the corresponding distributions issued to all claimants in this category.

Consequently pursuant to Section 4.2 of the Amended Plan, the difference between the \$45.3 million of Proven Claims and the allocated claims value of \$75 million for this category will result in a reallocation of approximately \$16.8 million in distributions to other claimants and categories of claimants (“Economic Savings”), summarized as follows:

Montreal, Maine & Atlantic Canada Co.	
Reallocation of Economic Savings	
As of May 31, 2018	
	Distribution
<u>Breakdown of redistribution by category:</u>	
Wrongful Death Claims	\$ 8,193,000
Bodily Injuries and Moral Damages Claims	1,335,000
Government Claims ¹	6,725,000
Subrogated Insurer Claims	526,000
Total	\$ 16,779,000
¹ Amount is prior to the Reallocated Dividends as set out in section 4.3 of the Amended Plan.	

The Monitor will review the reallocation with Class Counsel and other counsel prior to distributing the Economic Savings;

- Government Claims:** We refer to the Twenty-Fifth Report for a summary of the treatment of claims in the government category. In our Twenty-Seventh Report, we advised that the Province of Quebec (“Province”) submitted an amended and final proof of claim (“Final Claim”) on December 1, 2017 in the approximate amount of \$340.2 million (versus an initial claim of \$409 million) which consisted of actual expenses to March 31, 2017 of approximately \$260.2 million and a provision of future expenses of approximately \$80.0 million (“Expense Provision”).

On May 10, 2018, in response to information requested by the Monitor to support the Expense Provision, the Province provided certain limited explanations and advised that the Expense Provision as of March 31, 2018 now approximated \$68.9 million.

The Monitor is continuing its review both in terms of the reasonableness of the Expense Provision as well the implications to all claimants of the Final Claim in the context of the Amended Plan;

- **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 Eighteenth Extension Motion seeks an extension of the Stay Period to December 14, 2018, to allow for the issuance of the Supplemental Moral Distribution, the reallocation of the Economic Savings, the finalization of the treatment of the Final Claim of the Province, allocation and distribution of interest income (as discussed below) and the advancement of various litigation in the Chapter 11 (as discussed below).

DEMANDE INTRODUCTIVE D'INSTANCE

11. The Demande Introductive was filed against Canadian Pacific Railway Company, the Petitioner and Thomas Harding seeking approximately \$5.2 million in respect of economic and moral damages on behalf of 48 plaintiffs (versus 49 in paragraph 1 of the Demande Introductive).
12. The Monitor has reviewed the Demande Introductive and provided the Plaintiffs obtain *nunc pro tunc* a lifting of the stay of proceedings against MMA the Monitor will not take a position with respect to this proceeding.

APPROVAL OF PROFESSIONAL FEES

13. The Eighteenth Extension Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of December 1, 2017 to April 30, 2018 which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co.
Administration Charge Summary
As of April 30, 2018

	Fees /		Total
	Disbursements	Sales Taxes	
Administration Charge ¹	\$ 13,500,000	\$ 1,998,000	\$ 15,498,000
Accrued Professional Fees as of November 30, 2017	<u>(13,172,900)</u>	<u>(1,948,761)</u>	<u>(15,121,661)</u>
Balance of Administration Charge to implement the Plan	327,100	49,239	376,339
Richter	144,431	21,629	166,060
Woods	34,897	5,226	40,122
Gowling WLG	14,425	2,161	16,586
Claims Officer ²	2,451	367	2,818
	<u>196,203</u>	<u>29,382</u>	<u>225,586</u>
Balance of Administration Charge to complete the CCAA ³	<u>\$ 130,896</u>	<u>\$ 19,857</u>	<u>\$ 150,753</u>

¹ As per the Amended Plan of Compromise and Arrangement dated June 8, 2015 and Order dated March 3, 2017.

² The work of the Claims Officer is now complete as all contested claims have been resolved.

³ In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.

The balance of the Administration Charge will likely not be sufficient to cover the work required to complete the administration of the CCAA, which work can be summarized as follows:

- Issuance of the Supplemental Moral Distribution to approximately 4,300 claimants having Bodily Injury and Moral Damage Claims including the follow-up communications with claimants regarding the distribution;
- Reallocation of the Economic Savings from Property and Economic Damages Claims category to the other claims categories and proceeding to the issuance of these distributions (approximately 4,300) as well as responding to queries regarding the distributions;
- 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 tax slips (approximately 900), communications with the Federal and Provincial revenue agencies and responding to claimant inquiries;
- 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.

Neither the Monitor, its counsel nor Debtor's counsel will seek a further increase to the Administration Charge at this time. Rather, the Petitioner will submit the future professional fees of the Canadian Professionals to the Court for review and approval on a regular basis.

CLASS COUNSEL MOTION

14. Pursuant to the Class Counsel Motion, Class Counsel will be seeking the approval of a payment of approximately \$1.2 million of accrued fees as of May 31, 2018, summarized as follows:

	<u>Distribution to Class Members on which class counsel fees were calculated</u> ⁽¹⁾	Fees @ 25%	Total estimated fees
<u>Fees earned to date</u>			
Moral claims	\$ 39,301,312	25%	\$ 9,825,328
Economic claims	8,820,239	25%	2,205,060
Total fees earned to date pursuant to Class Counsel Fee order dated Nov 26/15 ⁽²⁾			12,030,388
Class counsel fees paid to date			10,802,872
Total Class Counsel Fees owing as at May 31, 2018 (excluding taxes)			\$ 1,227,516

⁽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

15. 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 April 2018) to CP's attorneys as well as to the Class Counsel.

INTEREST TREATMENT

16. As of the date of this report, approximately \$3.9 million has been earned on the Funds for Distribution since the effective date of the Amended Plan.
17. Further to our update in the Twenty-Seventh Report, the Monitor has continued its discussions with both the Federal and Provincial revenue agencies and provides the following update regarding the treatment of interest and tax reporting by the claimants:
- Revenu Quebec: Revenu Quebec has informed the Monitor that after further analysis, it is of the view that the Monitor must issue a single tax slip to each claimant only for the calendar year in which each claimant actually receives the interest and not for each calendar year that interest was earned. Thus, at the conclusion of the CCAA, when the Monitor distributes the

interest earned, it will issue a single tax slip to each claimant who receives more than \$50 of interest;

- Canada Revenue Agency: to date, the Canada Revenue Agency (“CRA”) has maintained its position that tax slips should be issued to all creditors whose *pari passu* share of the interest exceeds \$50 in a given calendar year. As a result, based on tax advice received by the Monitor, a payment of \$883k was made on March 1, 2018 to ensure that penalties are not charged to claimants on late payment of taxes relating to the 2016 tax year. CRA has confirmed to the Monitor that it is continuing to review the file and the Monitor’s request that CRA harmonize their tax position with that of Revenu Quebec. The Monitor will provide an update in a future report.

18. The issuance of the tax slips can only occur once all claims have been settled and the final allocation of interest can be calculated. Based on the current information, the Monitor estimates that it will issue tax slips to at least an estimated 900 individuals and corporations in connection with interest earned.

CHAPTER 11

19. The Monitor refers to the Twenty-Seventh 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 is complete, and oral argument was held. A decision is expected in mid-2018;
 - Estate Representative’s separate litigation against CP: The case is now 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 current extension period. Hearings are scheduled on the Wheeling claims on May 24 and 25, 2018, but those dates could be affected by rulings on certain interlocutory motions (when a decision will be rendered following the hearings, if any, cannot be determined at this time.). The Irving Railroads claims are awaiting decisions by the Bankruptcy Court, but those decisions are likely to be followed by a direct appeal to the United States Court of Appeals for the First Circuit on a remaining legal issue. The Monitor continues to maintain a \$10 million reserve in connection with these claims.

ACTIVITIES OF THE MONITOR

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

- The Monitor has completed 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 and has resolved the remaining 14 contestations;
- The Monitor has issued the second and final interim dividend to 810 holders of Proven Claims in the category of Property and Economic Damages Claims and has responded to numerous inquiries from creditors regarding the calculation of their Property and Economic Damages Claims;
- The Monitor has resolved the remaining 4 contestations filed by holders of Bodily Injury and Moral Damage Claims and issued the final dividend in respect thereto;
- 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 Quebec and Federal revenue agencies in connection with the treatment of interest owed to claimants;
- The Monitor has continued to provide monthly updates (for November, 2017 to April, 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);
- 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-Eighth Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Extension

21. The Monitor is of the opinion that the Court should grant the extension request to at least December 14, 2018 in order to allow for the redistribution of the remaining Settlement Funds to

claimants including the reallocation of Economic Savings, the payment of interest and the advancement of various litigation in the Chapter 11.

B) Professional Fees

22. The Monitor supports the approval of professional fees for the period of December 1, 2017 to April 30, 2018, which fees are fair and reasonable and are secured by the Administration Charge.

C) Class Counsel Fees

23. The Monitor supports the approval of the further payment of \$1,227,516 plus applicable sales taxes to Class Counsel.

Respectfully submitted at Montreal, this 7th day of June, 2018.

Richter Advisory Group Inc.
Monitor



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