

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

THIRTY-THIRD REPORT OF THE MONITOR
December 4, 2020

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 twenty-two times with the most recent extension having been granted to December 11, 2020.

3. We refer to the Monitor's prior reports for an overview of the CCAA proceedings and a summary of all motions filed and orders issued 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 December 4, 2020, the Petitioner filed a Motion for a Twenty-Third Order Extending the Stay Period, for Approval of Professional Fees and an Increase to the Administrative Charge for the US Professionals ("Twenty-Third Extension and Fee Motion"). The Twenty-Third Extension and Fee Motion will be heard by December 11, 2020.
6. The purpose of this Thirty-Third Report of the Monitor is to inform the Court on the following subjects:
 - Claims Review and Partial Redistribution by the Province of Part of its Distribution;
 - Extension Request;
 - Approval of Professional Fees;
 - CP Document Order;
 - Interest Treatment;
 - Chapter 11;
 - Increase in US Administration Charge;
 - Activities of the Monitor; and
 - Recommendations of the Monitor.

CLAIMS REVIEW AND PARTIAL REDISTRIBUTION BY THE PROVINCE OF PART OF ITS DISTRIBUTION

7. 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 of Quebec ("Province") on December 1, 2017 was approximately \$340.7 million including a provision of \$80 million for future expenses. The Province has recently informed the Monitor that it has determined the amount of its damages to be approximately \$325 million and that it may upon certain conditions being fulfilled redistribute a portion of the distribution due to the Province under the Amended Plan as appears from the Province's letter annexed as Exhibit A to this report. The table below summarizes the distributions by category paid to date and the expected impact of the redistribution:

Montreal, Maine & Atlantic Canada Co.
Distributions and Estimated Recovery
As at November 30, 2020

	Original Estimated Distribution	Total Redistribution Amount	Redistribution by the Province of Quebec	Revised Estimated Distribution by Category
Wrongful Death Claims	\$ 121,853,060	\$ -	\$ 10,606,005	\$ 132,459,066
Bodily Injury and Moral Damage Claims	51,259,887	-	4,650,061	55,909,948
Property and Economic Damages Claims	25,696,116	-	2,403,466	28,099,582
Province du Quebec Claim	191,965,396	(39,609,585)	19,083,345	171,439,156
Lac Megantic Claim	10,038,010	-	1,174,879	11,212,888
Government of Canada Claim	-	-	-	-
Subrogated Insurer Claims	17,684,170	-	1,691,829	19,375,999
	<u>\$ 418,496,639</u>	<u>\$ (39,609,585)</u>	<u>\$ 39,609,585</u>	<u>\$ 418,496,639</u>

8. The Monitor is currently holding additional funds (currently \$15.8 million) which will be part of a subsequent distribution upon the conclusion of the CCAA as follows:
- The Monitor has been holding a reserve of \$10 million in respect of various administrative claims in the Chapter 11 which were being litigated by the Chapter 11 Trustee. As noted below, the Chapter 11 Trustee was successful in rejecting the larger of the claims but was ultimately ordered to pay approximately \$2.8 million in respect of certain claims. The net amount of \$7.2 million will be available for distribution to the various claimants in the CCAA in accordance with section 4.2 of the Amended Plan.
 - \$8.6 million of interest earned to date on funds held for distribution which will be distributed at the end of the CCAA proceedings once all other matters have been finalized in order to respect tax regulations.
9. A total of approximately \$32,000 of the distribution payments issued to date have either not yet been released (due to missing information), have been returned because some claimants (37 claimants) have moved and not notified the Monitor of their new address or have not yet been cashed. The average cheque amount of the uncashed distribution payments is approximately \$867. 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.

EXTENSION REQUEST

10. The Twenty-Third Extension and Fee Motion seeks an extension of the Stay Period to June 18, 2021, to allow for the resolution of the Province's claim, 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

11. The Twenty-Third Extension and Fee Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of June 1, 2020 to November 30, 2020, which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co.			
Administration Charge Summary			
As of November 30, 2020			
	Fees /		Total
	Disbursements	Sales Taxes	
Administration Charge ¹	\$ 14,150,000	\$ 2,096,000	\$ 16,246,000
Accrued Professional Fees as of May 31, 2020	<u>(13,753,737)</u>	<u>(2,035,440)</u>	<u>(15,789,177)</u>
Balance of Administration Charge to implement the Plan	396,264	60,560	456,823
Richter	47,252	7,076	54,328
Woods	17,588	2,634	20,221
Gowling WLG	<u>13,969</u>	<u>2,092</u>	<u>16,060</u>
	<u>78,808</u>	<u>11,801</u>	<u>90,610</u>
Balance of Administration Charge to complete the CCAA ²	<u>\$ 317,455</u>	<u>\$ 48,758</u>	<u>\$ 366,214</u>
¹ As per the Amended Plan of Compromise and Arrangement dated June 8, 2015, the Order dated March 3, 2017 and the Order dated November 21, 2018.			
² In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.			

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 2020) to CP's attorneys as well as to the Class Counsel.

INTEREST TREATMENT

13. As of the date of this report, approximately \$8.6 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-Ninth Report dated November 14, 2018, the Monitor will ultimately issue provincial and federal tax slips to each claimant who will receive \$50 or more of interest.
15. The issuance of the tax slips 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 to at least 4,400 individuals and corporations.

CHAPTER 11

16. The Monitor provides the following update from the Estate Representative regarding various matters which have an impact on the Amended Plan in respect of the timing and distribution of certain funds and the overall administration of the CCAA:
 - Proceedings under the Carmack Amendment: a Canadian Pacific Railway (“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 moved for a rehearing *en banc* and the Eighth Circuit denied that motion. CP also petitioned for a *writ of certiorari* from the Supreme Court of the United States and that petition was denied. The case was remanded to the United States District Court for the District of North Dakota and is proceeding in that court. The case is in the discovery phase, with a scheduled trial in March 2021 (extended due to COVID-19 concerns). The parties both filed motions for summary judgment. The Estate Representative’s motion was granted in part, with the court finding that CP was strictly liable under the Carmack Amendment. The court did not rule on damages, as the Estate Representative’s motion sought only a determination of liability, with damages to go to trial. Following the assignment of a new judge to preside over the case, CP filed a motion for reconsideration, and the Estate Representative opposed that motion and also filed a limited motion for reconsideration. Both motions have been fully briefed, and the parties are awaiting the court’s decision. (There are also before the court various pleadings relating to CP’s attempts to obtain discovery from World Fuels and affiliates; those matters are also pending decision of the court).
 - Estate Representative’s separate litigation against CP: The case remains in the discovery phase; the discovery phase has been extended due to COVID-19 concerns, likely extending the eventual trial date as well;
 - Potential administrative/secured claims filed in the Chapter 11: 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 appealed the decision to the United States District Court which affirmed the Bankruptcy Court’s decision.

Wheeling then appealed to the United States Court of Appeals for the First Circuit (“First Circuit”). The First Circuit affirmed. Wheeling did not file a petition for certiorari with the Supreme Court, thus ending the case, and the funds reserved for this claim have been freed from the reserve. The Irving Railroads claims were the subject of a direct appeal to the United States Court of Appeals for the First Circuit on a remaining legal issue. The First Circuit affirmed, and the Estate Representative filed a petition for certiorari with the Supreme Court. The petition for certiorari was denied. At the request of the Estate Representative and pursuant to the terms of the confirmed plan in the Chapter 11 case, the Monitor disbursed funds held in reserve, resulting in full payment of the claims of the Irving Railroads.

INCREASE IN US ADMINISTRATION CHARGE

17. The Canadian Professionals believe that at the present time, the remaining charge to complete the CCAA administration is sufficient. Full details are included in the professional fees summary table shown above.
18. Under the Amended Plan, the US Professionals were granted an Administration Charge of \$8 million which according to the Estate Representative is now mostly accounted for. As a result, the Estate Representative has advised the Monitor that additional funding is required to complete the litigation with CP (summarized above) as well as to fund the costs of recent litigation in connection with the settlement of the various administrative claims. The Estate Representative has requested an increase of US\$650,000 (or CDN\$850,000).
19. While the Estate Representative believes it can obtain third-party financing to complete the litigation, the Estate Representative has discussed having this be funded from proceeds held by the Monitor on behalf of all the claimants through an increase in the US Administration Charge. The Monitor supports this increase for the following reasons:
 - a) CP Litigation
 - The potential recovery in a successful litigation against CP, both under the Carmack Amendment and the separate litigation may result in additional distributions to all categories of creditors far in excess of the costs to complete the litigation, which is to the benefit of all creditors;
 - If the Estate Representative were to rely upon third-party financing, the cost to all creditors as a share of any successful litigation will be significantly higher;
 - The various major stakeholders (the Province, US Plaintiff counsel and Class Counsel) have been consulted by either the Estate Representative or the Monitor and agree with the increase; and

- This increase does not reduce the distributions to the creditors from the initial settlement fund. In essence, it comes from interest earned on the settlement funds which was not foreseen at the time.
- b) Administrative Claims
 - The litigation of these claims has resulted in the reduction of a \$10 million reserve to \$2.8 million resulting in an additional \$7.2 million to be distributed to the creditors.

ACTIVITIES OF THE MONITOR

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

- The Monitor has issued distributions to various claimants as well as responding to queries from claimants with respect to the distributions;
- The Monitor has been in contact with the Province in connection with the analysis of the final claim to be provided and redistribution of its dividend;
- The Monitor has continued to provide monthly updates (for May 2020 to October 2020) 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 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 Thirty-Third 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 June 18, 2021, in order to allow additional time for the resolution and finalization 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

22. The Monitor supports the approval of the professional fees for the period of June 1, 2020 to November 30, 2020, which fees are fair and reasonable.

C) US Administration Charge

23. The Monitor supports the increase in the Administration Charge for the US Professionals in the amount of US\$650,000 (CDN\$850,000) in order to continue with litigation against CP with the ultimate goal of realizing additional amounts for distribution to all creditors and in recognition of the costs incurred in increasing the proceeds available for distribution through a successful reduction of a contested claim.

Respectfully submitted at Montreal, this 4th day of December, 2020.

Richter Advisory Group Inc.
Monitor

A handwritten signature in blue ink, appearing to read 'A. Adessky', with a long horizontal flourish extending to the right.

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

Exhibit A

Le 4 décembre 2020

Monsieur Gilles Robillard
Monsieur Andrew Adessky
Richter Groupe Conseil inc.
La Tour Richter
1981, McGill College, #1100
Montréal (Québec) H3A 0G6

Messieurs,

Nous vous écrivons aujourd'hui en tant que contrôleur nommé par la Cour supérieure aux termes des procédures en vertu de la *Loi sur les arrangements avec les créanciers des compagnies* dans l'affaire du plan de transaction et d'arrangement de Montréal, Maine & Atlantique Canada Cie (le « Plan d'arrangement »).

Le gouvernement du Québec a maintenant terminé son analyse des dommages qu'il a subis à la suite de la tragédie de Lac-Mégantic. Le montant final de ces dommages se chiffre à 324 856 477 \$, plutôt qu'au montant de 409 313 000 \$ qui avait été fixé dans le Plan d'arrangement.

Dans ce contexte, il nous fait plaisir de vous informer que le gouvernement serait disposé à procéder à la redistribution, à l'ensemble des créanciers, incluant le gouvernement du Québec, d'une partie du dividende qui lui est dû, à savoir un montant de 39 609 585 \$, correspondant à la différence entre i) le montant du dividende calculé selon les termes du Plan d'arrangement sur une créance de 409 313 000 \$, soit un montant de 191 965 396 \$ et ii) le montant du dividende calculé selon le pourcentage prévu au Plan d'arrangement mais sur la base d'une créance de 324 856 477 \$, soit un montant de 152 355 811 \$.

Cette redistribution serait toutefois conditionnelle à ce que les avocats des créanciers qui ont des conventions d'honoraires basés sur un pourcentage des sommes reçues par les créanciers confirment avant le 29 janvier 2021 qu'ils ne tenteront pas de percevoir des créanciers des honoraires additionnels en raison de cette redistribution.

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À défaut de recevoir cette confirmation, le gouvernement demandera au contrôleur le versement du dividende selon les termes du Plan d'arrangement.

Vous pouvez informer la Cour et les créanciers de ce qui précède au moment qui vous conviendra.

Nous vous prions de recevoir, Messieurs, nos salutations distinguées.

A handwritten signature in blue ink, appearing to read 'F. Maheux', with a stylized, cursive script.

Me Frédéric Maheux