

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 INC. (FORMERLY 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

FORTIETH REPORT OF THE MONITOR
December 9, 2024

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 Inc. (formerly 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-nine times with the most recent extension having been granted to December 17, 2024.

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 9, 2024, the Petitioner filed a Motion for a Thirtieth Order Extending the Stay Period and for Approval of Professional Fees ("**Thirtieth Extension and Fee Motion**"). The Thirtieth Extension and Fee Motion will be heard on December 12, 2024.
6. The purpose of this Fortieth Report of the Monitor is to inform the Court on the following subjects:
 - a) Status of Distributions;
 - b) Extension Request;
 - c) CP Document Order;
 - d) Interest Treatment;
 - e) Chapter 11;
 - f) Approval of Professional Fees; and
 - g) Recommendations of the Monitor.

STATUS OF DISTRIBUTIONS

7. The Monitor currently holds approximately \$16.5 million, being the balance of the funds not yet distributed ("**Undistributed Funds**") and which are comprised primarily of interest earned on the funds for distribution, various reserves and the Administration Charge of the Canadian Professionals. These Undistributed Funds will be distributed at the end of the CCAA proceedings once all other matters have been finalized in accordance with section 4.2 of the Amended Plan in order to comply, in an efficient manner, with tax regulations concerning the interest to be distributed to the claimants and the issuance of tax slips.
8. A total of approximately \$29,000 of the distribution payments issued to date have i) not been released due to missing information, ii) been returned to the Monitor because some claimants (29 claimants) have moved and not notified the Monitor of their new address or iii) not been cashed. The average amount of those distribution payments is approximately \$1,000. In accordance with Section 8.8 of the Amended Plan, these unclaimed funds will be donated to charity.

EXTENSION REQUEST

9. The Thirtieth Extension and Fee Motion seeks a 12-month extension of the Stay Period to December 17, 2025, which is similar to the twenty ninth extension, in order to i) pursue the proceedings under the Carmack Litigation against **CP** in the Chapter 11 which as discussed below, are still ongoing. and ii) thereafter proceed with the distribution of the Undistributed Funds. The Monitor supports this one-year extension to reduce the costs of seeking a further extension in six months, should the Carmack Litigation still be ongoing. The Monitor either directly or via the Estate Representative has communicated with the major stakeholders (the Province, the Class Counsel and the US Legal Representatives, who together represent 99% of all claimants and 93% of the value of all claims) and they have all indicated their support and consent for the extension request.

CP DOCUMENT ORDER

10. 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 2024) to CP's attorneys as well as to Class Counsel.

INTEREST TREATMENT

11. As of the date of this report, approximately \$11.0 million has been earned on the Funds for Distribution since the effective date of the Amended Plan.
12. As described in the Twenty-Ninth Report dated November 14, 2018, the Monitor, as required by the tax authorities, will ultimately issue provincial and federal tax slips to each claimant who will receive \$50 or more of interest.
13. 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 may need to issue tax slips to at least 4,400 individuals and corporations.

CHAPTER 11

14. The Monitor provides the following update received from the Estate Representative (formerly the Chapter 11 Trustee) regarding the outstanding proceedings in the United States 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:
 - a) Carmack Litigation: We refer to the Thirty-Fourth Report for details of these proceedings. As previously noted, the district court issued an order limiting the scope of damages to the value of the crude oil and entered a judgment in January 2024 in an amount of approximately \$3.9 million

USD. Both parties appealed the judgment. The WD Trustee appealed the district court's decision limiting the damages to the value of the crude oil as being inconsistent with longstanding US Supreme Court precedent. CP has raised multiple issues on appeal, including the district court's determination that CP had not effectively limited its liability under the Carmack Amendment. The Monitor is informed by the Estate Representative that the appeal is fully briefed and that a hearing should take place late in 2024 or early 2025, to be scheduled by the Court of Appeals. The Monitor is also informed that a decision from the Court of Appeals could reasonably be expected six months to a year after argument; and

- b) Estate Representative's separate litigation against CP: In the Adversary Proceeding in MMA's Chapter 11 case before the bankruptcy court in the District of Maine ("**US Court**"), the parties had fully briefed the record for a summary judgment and were awaiting the bankruptcy court's ruling when the Quebec Superior Court entered judgment in the class action proceeding against CP, *Ouellette v. Compagnie de chemin de fer Canadien Pacifique*, 2022 QCCS 4643 (Dec. 14, 2022) (Bureau, J.S.C.). In the Adversary Proceeding, CP asserted that *Ouellette* has preclusive effect. However, the Plaintiffs in *Ouellette* have since filed appeals of the Superior Court's judgment. These appeals could impact the Adversary Proceeding. Accordingly, the Parties requested that the bankruptcy court stay the Adversary Proceeding pending resolution of the *Ouellette* appeal. The US Court formally entered a stay, which will remain in effect until the *Ouellette* appeal is resolved. The hearing in the *Ouellette* appeal occurred in October 2024. A written decision will follow.

APPROVAL OF PROFESSIONAL FEES

15. The Twenty-Ninth Extension and Fee Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of December 1, 2023 to November 30, 2024, which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co.
Administration Charge Summary
As of November 30, 2024

	Fees /		Total
	Disbursements	Sales Taxes	
Administration Charge ¹	\$ 14,650,000	\$ 2,170,000	\$ 16,820,000
Accrued Professional Fees as of November 30, 2023	<u>(14,556,471)</u>	<u>(2,155,608)</u>	<u>(16,712,079)</u>
Balance of Administration Charge to implement the Plan	93,529	14,392	107,921
Richter	24,026	3,598	27,624
Woods	10,548	1,577	12,124
Gowling WLG	8,412	1,260	9,672
	<u>42,986</u>	<u>6,435</u>	<u>49,420</u>
Balance of Administration Charge to complete the CCAA ²	<u>\$ 50,543</u>	<u>\$ 7,957</u>	<u>\$ 58,501</u>

¹ As per the Amended Plan of Compromise and Arrangement dated June 8, 2015, the Order dated March 3, 2017, the Order dated November 21, 2018 and the Order dated June 16, 2021.

² In addition, the Monitor and its counsel still retain a \$150,000 retainer which will be applied to their final invoices.

RECOMMENDATIONS OF THE MONITOR

A) Extension

16. The Monitor is of the opinion that the Court should grant the extension request to December 17, 2025, in order to allow the Carmack Litigation against CP to follow its course. The major stakeholders support this position.

B) Professional Fees

17. The Monitor supports the approval of the professional fees for the period of December 1, 2023 to November 30, 2024, which fees are fair and reasonable.

Respectfully submitted at Montreal, this 9th day of December 2024.

Richter Inc. (formerly Richter Advisory Group Inc.)
 Monitor



Andrew Adessky, CPA, MBA, CIRP, LIT