

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-SECOND REPORT OF THE MONITOR
June 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-one times with the most recent extension having been granted to June 12, 2020.

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 June 4, 2020, the Petitioner filed a Motion for a Twenty-Second Order Extending the Stay Period and for Approval of Professional Fees ("Twenty-Second Extension and Fee Motion").
6. The purpose of this Thirty-Second Report of the Monitor is to inform the Court on the following subjects:
 - Claims Review and Status of Distributions;
 - Extension Request;
 - Approval of Professional Fees;
 - CP Document Order;
 - Interest Treatment;
 - Chapter 11;
 - Activities of the Monitor;
 - Recommendations of the Monitor.

CLAIMS REVIEW AND STATUS OF DISTRIBUTIONS

7. We summarize the status of the distributions by category as follows:

Montreal, Maine & Atlantic Canada Co.
Summary of Distributions
As of April 30, 2020

	Distribution Paid	Distribution Pending	Total
Wrongful Death Claims	\$ 121 561 892	\$ -	\$121 561 892
Bodily Injury and Moral Damage Claims	51 137 401	-	51 137 401
Property and Economic Damages Claims	25 634 715	-	25 634 715
Government Claims	103 460 319	98 060 399	201 520 718
Subrogated Insurer Claims	17 641 913	-	17 641 913
	<u>\$ 319 436 240</u>	<u>\$98 060 399</u>	<u>\$417 496 639</u> ¹

¹ Excluded from this amount is a \$10 million reserve for litigation of claims under Chapter 11, \$8.2 million of accumulated interest earned and a \$1 million reserve for other items.

- **Distribution Paid:**

- this represents amounts paid to date prior to the deduction of fees and disbursements that were paid by claimants to their attorneys. In total, approximately \$32,000 of the distribution payments have either not yet been released (due to missing information), have been returned because some claimants have moved and not notified the Monitor of their new address or have not yet been cashed. 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;

- **Distribution Pending:** this represents:

- the balance of the distribution payable to the Province of Quebec (“Province”) in respect of their original claim of \$409 million filed in June 2014 (“Original Claim”). 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 on December 1, 2017 (Final Claim) was approximately \$340.7 million including a provision of \$80 million for future expenses (“Expense Provision”).
- The Amended Plan was based upon the Original Claim of the Province and did not foresee the possibility that the actual costs of the Province would be significantly lower. Since our Thirty-First Report dated November 25, 2019, the Monitor and the Province have had numerous discussions regarding next steps. The Province was considering various options which it intended to discuss with the Monitor prior to the expiration of the current stay. However, due to the impact of the COVID-19 pandemic, the Province has been unable to provide its proposed resolution. The Monitor is continuing to follow up with the Province to

resolve this. A full review of the Province's claim will only be performed once the claim amount is finalized.

- **Other:**

- Approximately \$19.2 million composed of the \$10 million reserve for litigation regarding various administrative claims in the Chapter 11 (see prior reports of the Monitor), approximately \$8.2 million of interest earned on the funds held for distribution which will be distributed at the end of the CCAA proceedings and approximately \$1.0 million of other reserves.

EXTENSION REQUEST

8. The Twenty-Second Extension and Fee Motion seeks an extension of the Stay Period to December 11, 2020, to allow for the finalization of the treatment of the Final Claim of the Province, 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

9. The Twenty-Second Extension and Fee Motion also seeks approval for the payment of the Canadian Professional Fees incurred for the period of November 1, 2019 to May 31, 2020, which can be summarized as follows:

Montreal, Maine & Atlantic Canada Co. Administration Charge Summary As of May 31, 2020			
	Fees /		
	Disbursements	Sales Taxes	Total
Administration Charge ¹	\$ 14,150,000	\$ 2,096,000	\$ 16,246,000
Accrued Professional Fees as of October 31, 2019	(13,698,038)	(2,027,099)	(15,725,137)
Balance of Administration Charge to implement the Plan	451,962	68,901	520,863
Richter	42,800	6,409	49,210
Woods	6,470	969	7,439
Gowing WLG	6,429	963	7,391
	55,699	8,341	64,040
Balance of Administration Charge to complete the CCAA ²	\$ 396,264	\$ 60,560	\$ 456,823
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

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

INTEREST TREATMENT

11. As of the date of this report, approximately \$8.2 million has been earned on the Funds for Distribution since the effective date of the Amended Plan ("Interest").
12. 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.
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 will need to issue tax slips (see above) to at least 4,400 individuals and corporations.

CHAPTER 11

14. 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 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 November 2020 (extended due to COVID-19 concerns). The parties have also both filed motions for summary judgment. The Estate Representative's motion is fully briefed and submitted; CP's motion is still in process, with the Estate Representative's response due on June 5, 2020, and CP's final response due thereafter;
 - 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: 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 requested extension period. 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. Barring the filing of a petition for certiorari with the Supreme Court, and a grant of that petition, the matter will be concluded by the First Circuit's ruling, and the funds reserved for this claim will be 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 is considering the filing of a petition for certiorari with the Supreme Court. The Monitor continues to maintain a \$10 million reserve in connection with these claims.

ACTIVITIES OF THE MONITOR

15. 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 and the Expense Provision;
- The Monitor has continued to provide monthly updates (for November 2019 to April 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 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 Thirty-Second Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

A) Extension

16. The Monitor is of the opinion that the Court should grant the extension request to December 11, 2020, 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

17. The Monitor supports the approval of the professional fees for the period of November 1, 2019 to May 31, 2020, which fees are fair and reasonable.

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

Richter Advisory Group Inc.
Monitor



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