

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)**, a legal person duly incorporated under the
laws of the province of Nova Scotia, having a place
of business at 1, Place Ville Marie, 37th Floor,
Montreal, Quebec H3B 3P4 (at the offices of its
attorney ("fondé de pouvoir"))

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

**FOURTH REPORT OF THE MONITOR
ON THE STATE OF PETITIONER'S FINANCIAL AFFAIRS
December 16, 2013**

INTRODUCTION

1. On August 6, 2013, Montreal, Maine & Atlantic Canada Co. (hereafter in this Report "MM&A" 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").

2. On August 21, 2013, the Petitioner filed a Motion to Amend the Initial Order and Seek a Charge and Security on the Property of Petitioner to Secure Funds for Self-Insured Obligations ("Charge and Security Motion"). The Monitor filed its First Report in respect of the Charge and Security Motion. On August 23, 2013, the Court granted an order amending the Initial Order to include the Self-Insured Obligation Charge.
3. On September 3, 2013, the Petitioner filed a Motion for an Order Extending the Stay Period and to Approve a Cross-Border Insolvency Protocol ("First Extension Motion"). The Monitor filed its Second Report on September 3, 2013 in support of the First Extension Motion. On September 4, 2013, the Court extended the stay of proceedings until October 9, 2013 and approved the cross-border insolvency protocol.
4. On October 4, 2013, the Petitioner filed a Motion for a Second Order Extending the Stay Period ("Second Extension Motion") requesting an extension of the stay of proceedings to January 28, 2014. The Monitor filed its Third Report on October 4, 2013 in support of the Second Extension Motion. On October 9, 2013, the Court extended the stay of proceedings until January 28, 2014.
5. On October 4, 2013, the Petitioner also filed a Motion to Increase the Amount of the Administration Charge, which increase was approved by the Court on October 9, 2013.
6. On December 13, 2013, the Petitioner filed a Motion for an Order Approving a Compromise and Settlement with Travelers Property Casualty Company of America ("Travelers Motion").
7. On December 13, 2013, the Petitioner filed a Motion for an Order Approving a Process to Solicit Claims and for the Establishment of a Claims Bar Date ("Claims Motion").
8. On December 13, 2013, the Petitioner and the Monitor jointly filed a Motion to Increase the Amount of the Administration Charge ("Administration Charge Motion").
9. On December 16, 2013, the Petitioner filed a Motion for an order (a) Approving Bid Procedures for the Sale of the Debtor's Assets, (b) Approving a Stalking Horse Bid, (c) Approving a Break-Up Fee and Expense Reimbursement, (d) Scheduling an Auction, (e) Approving Procedures for the Assignment and Assumption of Certain Executory Contracts and Unexpired Leases and (f) Approving a Form of Notice of Sale ("Sale Motion").
10. The hearing date of the Travelers Motion, the Claims Motion and the Administration Charge Motion is December 19, 2013 (the "December 19, 2013 Hearing").
11. The Motion for an order appointing Class representatives filed by the Class Action's counsel on or about November 1, 2013 will also be heard at the December 19, 2013 Hearing.

12. The hearing date of the Sale Motion will be on December 20, 2013 (the December 20, 2013 Hearing”).
13. All amounts reflected in this report are stated in Canadian currency unless otherwise noted.
14. The purpose of this Fourth Report of the Monitor is to inform the Court on the following subjects:
 - General Corporate Information and Purpose of CCAA filing;
 - Canadian Transportation Agency;
 - Railway Cars Located at Farnham, Quebec;
 - Reconnection of the Railway Line in Lac-Mégantic;
 - Interim Financing;
 - Financial Position;
 - Sale Process and Bid Procedures;
 - Compromise and Settlement with Travelers Property Casualty Company of America (“Travelers”);
 - Claims Process and Claims Bar Date;
 - Class Representatives’ Motion;
 - Increase in Administration Charge;
 - Chapter 11 Proceedings;
 - Activities of the Monitor;
 - Recommendations of the Monitor.
15. We inform the Court that the Monitor has not conducted an audit or investigation of the information which has been provided to it by the Petitioner and that accordingly, no opinion is expressed regarding the accuracy, reliability or completeness of the information contained within this Report. The information contained herein is based on a review of unaudited financial information provided to the Monitor by the Petitioner’s management as well as discussions with the Petitioner’s management and employees.

GENERAL CORPORATE INFORMATION AND PURPOSE OF CCAA FILING

16. As noted in the Monitor’s prior reports, the Petitioner operates a shortline freight railroad company in the Province of Quebec. It is a wholly owned subsidiary of Montreal, Maine & Atlantic Railway

Ltd. ("MM&AR") which operates a shortline railroad in the States of Vermont and Maine (MM&A and MM&AR are hereinafter collectively referred to as the "Companies"). Together, the Companies operate approximately 500 route miles and service customers in Canada and the United States. An affiliated company, LMS Acquisition Corp. ("LMS") located in Hermon, Maine, operates a 130,000 square foot warehouse offering warehousing and lumber distribution.

17. As also noted in the Monitor's prior reports, the purpose of the CCAA proceedings is to:
- Continue the operations of the railway to the fullest extent possible in order to service the many customers and municipalities located along its route who are dependent on the railway for the operations of their business and this has been the case to date;
 - Set up a sale process, in order to achieve a going-concern sale of the assets of MM&A and MM&AR. As noted below, the sale process has now advanced to the selection of a potential purchaser with a potential auction in January 2014;
 - Provide continued employment for the experienced work force still employed by the Petitioner which will also serve to enhance the going-concern value of the Petitioner's business and hopefully ensure continued employment for that work force after a sale. As appears from the Stalking Horse Bid, the majority of the current employees of MM&A should be retained by the purchaser of the assets;
 - Set up a claims process, to avoid a multiplicity of individual legal recourses and deal efficiently with the claims of all stakeholders including the families of the victims and all holders of claims resulting from the derailment ("Derailment Victims"). Approval of a formal claims process and a bar date is summarized elsewhere in this report;
 - Facilitate the negotiation with its various insurers and other third parties in order to maximize proceeds available for distribution and ensure the proper distribution of such indemnities and other proceeds pursuant to the claims process. A potential settlement with one insurer regarding business interruption insurance is addressed below.

CANADIAN TRANSPORTATION AGENCY ("CTA")

18. As noted in the Monitor's Third Report, the CTA sought additional information from the Petitioner in respect of the Petitioner's request to continue operating to January 15, 2014. The Petitioner provided the CTA with the requested information on October 4, 2013 and requested that its ability to operate coincide with the current stay of proceedings granted by this Court.
19. On October 16, 2013, the CTA issued an order/directive amending the effective date of the suspension of Petitioner's Certificate of Fitness to February 1, 2014.

20. It is expected that a further extension of MM&A's Certificate of Fitness will be requested in January 2014 to enable MM&A to continue operating while it completes the sale of its assets which, as noted below, may only occur in March 2014.

RAILWAY CARS LOCATED AT FARNHAM, QUEBEC

21. As discussed in the Monitor's Third Report, the nine tanker cars containing crude oil that were not destroyed in the derailment were relocated to the Petitioner's facility in Farnham, Quebec. In addition, a second train containing 84 cars of crude oil were already located in Farnham, Quebec, awaiting delivery at the time of Derailment. Pursuant to an order from Transport Canada, these tanker cars could not be moved until their contents had been properly and accurately identified, documented, labeled and classified and only then be transported in accordance with the safety requirements for the type and class of product contained in the tanker cars.
22. MM&A entered into discussions with World Fuel Services Inc. ("WFSI"), the shipper of the product to obtain the required information including revised bills of lading.
23. On October 30, 2013, Transport Canada directed MM&A and Irving Oil ("Irving"), the direct or indirect purchaser of the crude oil to remove or cause to be removed, from the Farnham yards, all the tanker cars no later than the end of the day November 4, 2013. MM&A requested and received an extension to the end of the day on November 10, 2013.
24. On or about November 10, 2013 and following receipt of the necessary documentation from WFSI and approval from Transport Canada, 92 of the 93 tanker cars were delivered to the St. Luc yards in Montreal, Quebec to the care, custody and control of CP Rail.
25. One rail car was deemed unfit for transport. On or about December 5, 2013, its contents were subsequently loaded onto another tanker car which was then moved/ transferred to a third party who purchased the crude oil. The damaged tanker car remains in Farnham pending approval from regulatory authorities to move the car.

RECONNECTION OF THE RAILWAY LINE IN LAC-MÉGANTIC

26. Following the derailment and the damage to the line, all east-west operations through the City of Lac-Mégantic ("City") were suspended to enable the necessary clean-up operations to be commenced. In addition, MM&A was unable to service customers located in the industrial park in the City.
27. In respect of the reconnection of the east-west railway line in Lac-Mégantic, the Government of Quebec ("Province") retained the services of Canarail Consultants Inc. ("Canarail") to oversee the

necessary work. MM&A is cooperating with Canarail and the Province's reconnection efforts. The cost of the reconnection is being paid by the Province.

28. By the end of November 2013, the reconnection work was completed. As decontamination efforts continue, certain of the reconnection work, while temporary in nature, will allow for the resumption of service to the City's industrial park and eventually for east-west traffic to resume.
29. On November 25, 2013, a meeting was held between the City, MM&A, the Province, the Monitor and the Chapter 11 Trustee to discuss various matters including the resumption of train service. Following this meeting and ongoing communications, MM&A provided the City with a proposed operating plan which would see the resumption of service commence in two phases:
 - Phase 1: Resumption of service to the City's industrial park which will allow clients such as Tafisa Canada Inc. and Logi-Bel Entrepotage Inc. to resume train service to their customers.
 - Phase 2: Will consist of east-west traffic between Quebec and Maine being resumed. Further discussions between the City and MM&A will be held prior to the commencement of any east-west traffic.
 - MM&A will continue to self-embargo the transport of any crude oil.
30. On December 13, 2013, MM&A and the City reached an agreement covering Phase 1 of MM&A's operating plan allowing the resumption of service to the industrial park on or about December 18, 2013. MM&A has agreed that it will not transport any hazardous materials while it services the industrial park and that it will observe various maximum speed limits amongst other conditions.
31. The City and MM&A have agreed that this interim agreement does not bind any subsequent purchaser of MM&A's assets as they will likely seek a more permanent agreement.
32. The City and MM&A have agreed to continue discussions regarding Phase 2 of MM&A's operating plan which will involve the resumption of service between Quebec and Maine; again, any such agreement would not bind a purchaser.

INTERIM FINANCING

33. As discussed in the Monitor's Third Report, the Chapter 11 Trustee and the Monitor were exploring various avenues in an attempt to seek additional financing for the Companies to support the operations through to an eventual sale. On October 2, 2013, the Chapter 11 Trustee received a commitment letter from Camden National Bank ("Camden") approving a commercial line of credit to MM&AR.

34. On October 4, 2013, the Chapter 11 Trustee filed a motion to obtain US\$3 million of Debtor in Possession (“DIP”) financing from Camden that is secured solely on collateral of MM&AR located in the United States. On October 7, 2013, the United States Bankruptcy Court for the District of Maine (“US Court”) granted the motion.
35. The DIP financing is available through August 30, 2014 and is repayable on demand with a fixed interest rate of 5%. The term sheet indicates that the loan proceeds will be used for the working capital needs of the Companies until the assets of MM&AR are sold. MM&AR commenced borrowing under the DIP financing on October 21, 2013.
36. Based on the Companies’ projections, the US\$3 million of DIP financing is sufficient to support the operations of the Companies, but is generally not sufficient to permit capital expenditures for necessary track repairs, nor for the payment of professional fees. However, as noted below, certain urgent and necessary track repairs are being funded from the DIP financing.
37. As of the date of this report, the Companies have US\$1.3 million remaining to be drawn on the Camden line of credit. Based on projections provided by the Petitioner, there will be sufficient funds available through the stay period ending January 28, 2014. An extended cash flow is being prepared to determine financing requirements beyond this date and will be reviewed and commented upon by the Monitor in a subsequent report.

FINANCIAL POSITION

38. In conjunction with the filing of the Second Extension Motion on October 4, 2013, the Petitioner submitted weekly cash flow projections covering the period from September 30, 2013, to January 31, 2014 (“Period”), a copy of which was attached as Exhibit “R-7” to the Second Extension Motion.
39. Wheeling & Lake Erie Railway Company (“Wheeling”) provided the Companies with a US\$6 million line of credit, which had been utilized in full as of the commencement of restructuring proceedings. The accounts receivable and inventory of MM&AR secure the line of credit. Subsequent to the aforementioned DIP financing, MM&AR has set up an escrow account to deposit proceeds of all U.S. accounts receivable collected for sales through October 18, 2013. MM&AR has been remitting escrow funds to Wheeling on a regular basis. As at December 6, 2013 the total amount remitted to Wheeling was US\$0.5 million. A further US\$0.2 million is being held in escrow, and may be remitted to Wheeling depending on the overall realization of assets subject to Wheeling’s security.
40. As of December 6, 2013, the consolidated cash balances of the Companies amounted to US\$0.4 million as compared to the projected consolidated balance of US\$0.3 million. In addition, the Companies used only US\$1.7 million of the line of credit as compared to a projected use of the

line of credit of US\$2.0 million. The overall positive variance of US\$0.4 million is primarily attributable to the following:

- US\$0.6 million positive cash receipts variance resulting from the better than forecasted collection of accounts receivable and ISS freight revenue (~\$0.4 million) and other items (~\$0.2 million) consisting of switching, car hire revenue and insurance proceeds from a 2012 claim;
 - US\$0.3 million favorable cash disbursements variance attributed primarily to lower than forecasted wages, materials and supplies, offset by;
 - US\$0.3 million of unbudgeted urgent track repairs (see below); and
 - US\$0.2 million transferred in escrow on behalf of Wheeling, which payment was not forecasted.
41. As a result of favorable cash flow during the Period, the Petitioner was able to perform certain important track repairs to ensure the continued operation of the railroad and the resumption of service to the City. The total capital expenditures approximate US\$0.3 million.
42. For additional details, we refer you to Exhibit “1” attached hereto, entitled Comparative Cash Flow for the period September 30, 2013 to December 6, 2013.

SALE PROCESS AND BID PROCEDURES

Selection of Stalking Horse Bid

43. As previously reported, the Petitioner, with the Monitor’s approval, and the Chapter 11 Trustee reached an agreement to jointly engage Gordian Group (“Gordian”) to act as investment banker to conduct a sale of the assets of the Companies.
44. The sale process of the Companies’ assets is on a going-concern basis only, this to ensure the continued service to clients in Quebec, Maine and Vermont.
45. Gordian began the sale process by contacting interested parties and sending out teasers to more than 40 potential bidders in the second week of October, 2013. Of these, 18 parties executed confidentiality agreements and were provided with access to a virtual data room, which continues to be updated on a regular basis.
46. As part of the due diligence, various interested parties requested access to the Companies’ tracks and were able to inspect same in the first half of November 2013.

47. While the original timeline contemplated seeking confirmation of a stalking horse and the approval of bid procedures by mid-November 2013 with an auction in December 2013, this timeline was extended upon the recommendation of Gordian to enable interested parties to perform additional due diligence which Gordian believes will help maximize the sale value of the assets.
48. Following ongoing discussions with various interested parties, Gordian identified a potential stalking horse bidder, Railroad Acquisition Holdings LLC (“Stalking Horse”). Gordian, assisted by the Chapter 11 Trustee, MM&A and the Monitor, began negotiations of an Asset Purchase Agreement (“APA”) and bidding procedures. We understand that the Stalking Horse is affiliated with Fortress Investment Group LLC.
49. The terms of an APA were agreed to on December 12, 2013. We summarize certain salient points:
- Purchase of all of the operating assets of the Companies for US\$14.25 million and the assumption of certain liabilities by way of agreeing to pay up to US\$1.3 million in cure costs to assume designated executory contracts and leases. Purchaser shall also assume the collective bargaining agreement between MM&A and the United Steelworkers of America in respect of the Canadian unionized employees. Certain assets including cash, accounts receivable and most causes of action are excluded from the purchase price;
 - The Stalking Horse will pay a deposit of US\$750,000 within 5 days of executing the APA which will be held in trust by the Chapter 11 Trustee;
 - In the event that a higher or better bid is accepted, the APA provides for the payment of a break-up fee (3.5%) and a reimbursement of expenses (up to US\$500,000) (collectively the “Break Fee”) for a total potential of US\$998,500 or approximately 6.4% of the purchase price. (factoring in the value of the assumed liabilities). We note that a Break Fee of 6.4% is higher than what is normally encountered. A key criteria in examining the reasonableness of the Break Fee is whether it will in some fashion, impact or “chill” the bidding process. It is the opinion of the Chapter 11 Trustee and the Monitor that while on the high side, the Break Fee will not unduly deter other bidders;
 - While the APA does not allocate the purchase price between the Petitioner and MM&AR, the Monitor, MM&A and the Chapter 11 Trustee have agreed upon minimum bid prices for the Canadian and US assets and have agreed that these bid prices will serve as a minimum allocation in the event of a single purchaser for the assets of the Companies. Should the Canadian and US assets be sold to separate purchasers, then the sale price of each transaction (which have to be at least equal to the minimum bid per lot) will be used to determine the realization for each company;

- As a condition to close, the purchaser must obtain written assurance that the temporary rail line in and through the City will, within two (2) years of the closing date become a permanent railroad line or be replaced by a permanent railroad line in and through the City to be constructed on the right of way of MM&A's rail lines, or via such alternate route that purchaser and applicable governmental authorities may agree upon;
 - The purchase is also contingent upon the Stalking Horse acquiring the assets of LMS (for an additional consideration) on or before the closing date of the transaction with the Companies.
50. Gordian is continuing to work with other interested parties and expects that several of the other interested parties will be deemed to be Qualifying Bidders (as defined in the bid procedures) and will participate in the formal auction to be held on January 21, 2014.

Bid Procedures

The Monitor, the Chapter 11 Trustee and MM&A have agreed upon bid procedures to be used in soliciting the highest and best offer for the assets of the Companies. The following summarizes certain important aspects:

- The Monitor, the Chapter 11 Trustee and MM&A will determine whether other interested parties are Potential Bidders, the whole as set forth in the Bid Procedures;
- In order to participate in the auction, each interested party ("Qualifying Bidder") must submit a bid that meets various requirements ("Qualifying Bid") including identification of the assets to be purchased and the value ascribed thereto, leases and executory contracts to be assumed, include a 5% deposit and provide satisfactory evidence of financing and the ability to close a transaction;
- An initial minimum bid increment over and above the US\$14,250,000 Stalking Horse bid has been set at US\$1,498,750 ("Initial Minimum Bid Increment") resulting in an initial minimum bid amount of US\$15,748,750 for the purchase of the All Asset Lot (as defined below). The Initial Minimum Bid Increment consists of the US\$998,750 Break Fee plus US\$500,000. Thereafter, the minimum subsequent bid increment has been set at US\$500,000 for the All Asset Lot. The Bid Procedures also set out minimum subsequent bid increments for the other lots detailed below;
- The assets of the Companies (as defined in the APA) can be sold "en bloc" or in separate lots with the minimum initial bid for each lot as follows:
 - i. All Asset Lot (all assets in Canada and the United States) – US\$15,748,750
 - ii. MM&AR Lot (United States assets only) – US\$10,551,662

- iii. MM&A Lot (Canadian assets only) – US\$5,197,088
 - iv. Modified MM&AR Lot (All United States assets excluding the Newport subdivision located in Vermont) – US\$9,801,662
 - v. Newport Subdivision Lot (located in Vermont only) – US\$750,000
- In the absence of any Qualifying Bids, there will be no auction, and the assets will be sold to the Stalking Horse;
 - The Monitor, the Chapter 11 Trustee and MM&A reserve the right to conduct a round of sealed bidding;
 - In addition, procedures have been filed to allow for the assumption and assignment of executory contracts and leases that are selected by the Stalking Horse.

Timeline

The following timeline has been established based on the terms of the APA and the Bid Procedures:

- Hearings on December 18 and 20, 2013 by the US and Canadian Bankruptcy Courts respectively to approve the Stalking Horse and the Bid Procedures and entry of necessary orders by December 23, 2013;
- Submission of Qualifying Bids by January 17, 2014 and identification of Qualifying Bidders by January 20, 2014;
- Auction on January 21, 2014, assuming Qualifying Bids are received;
- Joint sale hearing on January 23, 2014 to approve the winning bidder or the Stalking Horse bid as the highest and best offer if no auction is held;
- Closing to take place by March 14, 2014, with a possible 60 day extension to allow for additional time in the event delays are encountered in obtaining regulatory approval in both Canada and the United States.

COMPROMISE AND SETTLEMENT WITH TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA

51. As noted in our Second Report, on or about April 19, 2013, Travelers Property Casualty Company of America (“Travelers”) issued a commercial property insurance policy to the Companies as well as other named insureds namely LMS, Rail World Inc. and Montreal, Maine & Atlantic Corporation

(all hereinafter referred to as “Named Insureds”). This policy provides US\$7.5 million of coverage for rolling stock, track bed repairs and business interruption.

52. Following the derailment and the request of the Companies for payment of the full amount of the policy coverage in respect of property damages and business interruption coverage, Travelers contested the Companies interpretation of the policy coverage and further took the position that any reference to business interruption insurance was an error and that no amounts are due in respect of lost income. Travelers did eventually consent to the payment of US\$250,000 in respect of damage to the track, which amount has been received.
53. As previously reported, Travelers filed a motion in both the CCAA and Chapter 11 proceedings to lift the stay of proceedings to enable them to seek a declaratory judgment in the State of Maine District Court as to the interpretation of its coverage obligation. This Motion was opposed by the Petitioner, the Monitor and the Chapter 11 Trustee. On October 9, 2013, this Court and the Chapter 11 Court dismissed the motion and agreed that the Canadian Court had jurisdiction to adjudicate the issue of coverage. Travelers appealed the decisions rendered in both courts and such appeals had been stayed pending efforts by the parties to reach a negotiated solution.
54. Following lengthy negotiations, involving the Petitioner, the Monitor, the Chapter 11 Trustee and respective counsel, a settlement was reached with Travelers as follows:
 - Travelers will pay a total of US\$3,800,000 (“Settlement Payment”) to MM&A and MM&AR in full and final settlement of the Named Insureds claim from the Derailment, following the necessary Court approvals;
 - The Settlement Payment shall be allocated 65% to MM&A or US\$2,470,000 and 35% to MM&AR or US\$1,330,000. The allocation of the Settlement Payment has been based on an analysis performed by the financial advisor of the Chapter 11 Trustee, Development Specialists, Inc. (“DSI”). DSI’s analysis was based on the projected loss of business suffered by the Companies as a result of the Derailment, in particular looking at the change in tonnage that would have been carried on the Canadian and US railway lines if not for the Derailment versus the actual carried tonnage. Based on the Monitors review of this analysis and discussions with DSI as well as historical revenue trending, the Monitor agrees with the allocation of the Settlement Payment;
 - The payments to MM&A and MM&AR shall be made in trust to the Monitor (in respect of the allocation for MM&A) and to MM&AR respectively;
 - The settlement is conditional on Travelers receiving releases from LMS, Montreal, Maine & Atlantic Corporation and Rail World, Inc. which releases are in the process of being obtained;

- The settlement will represent a full and final payment of any and all claims of the Named Insureds in respect of coverage arising from the Derailment.
55. The Monitor will hold the funds in trust pending a further order by the Court permitting it to pay accrued professional fees owing to the Professionals that are secured by the Administration Charge.
56. Although the terms of the insurance policy had a limit of US\$7,500,000, the Monitor supports the settlement and believes it is in the best interest of the Petitioner for the following reasons:
- Travelers' is challenging the terms and extent of the coverage and this likely would have been the subject of costly and extensive litigation with no certainty as to the outcome. Indeed, while the Petitioner believes it has a reasonable probability of success, the risk remains that the Petitioner may not be successful and thus would not recover any funds;
 - The policy itself contains limitations on the time periods in respect of the calculation of loss of business, i.e., it can only be claimed through the "period of restoration". There would likely be disputes on the definition of the "period of restoration" such that depending on the outcome, the losses that could be claimed could in fact be less than the US\$7,500,000 policy limit;
 - The certainty of an immediate settlement versus a prolonged and expensive dispute was also taken into consideration by the Monitor in agreeing to recommend the Settlement Payment.

CLAIMS PROCESS AND CLAIMS BAR DATE

57. The Monitor, with the assistance of its counsel and counsel for MM&A, along with input from the Chapter 11 Trustee and the Province has prepared a Claims Package which will be utilized by all creditors who wish to file a claim in the CCAA proceedings. A draft of the Claims Package was also submitted prior to finalization to counsel for the City.
58. Due to the complexity of the nature of the claims that can be filed by the various creditors, the Claims Package will contain multiple schedules and each creditor (individuals and businesses) will complete different schedules depending upon his, her or its unique situation. In this first phase of the process, the schedules are designed to obtain relevant information both economic and factual, to assist the Monitor in determining the scope, nature and extent of the claims.
59. The Claims Package will include the following documents:
- Creditors' Instructions;
 - Proof of claim form with the following supporting schedules:

- Estate Information Schedule;
- Claim for economic, material or other damages resulting from the death of a person (Schedule 1);
- Claim for economic, material or other damages resulting from bodily injuries suffered by yourself (Schedule 2A);
- Claim for economic, material or other damages resulting from bodily injuries (not resulting in death) of another person (Schedule 2B);
- Claim for economic, material or other damages suffered by an individual (not a business) not resulting from bodily injuries or death of a person (Schedule 3A);
- Claim for economic, material or other damages suffered by a business not resulting from bodily injuries or death of a person (Schedule 3B);
- Subrogated insurer claim directly related to damages sustained as a result of the July 6th Derailment in Lac-Mégantic (Schedule 4);
- Government or Municipality Claim (Schedule 5);
- Contribution or Indemnity Claim (Schedule 6);
- Claim other than for damages as a result of the July 6 derailment (including claims by employees or former employees of the petitioner) (Schedule 7).

60. In addition to the mailing of the Claims Package to known creditors, the Monitor will notify potential creditors of the claims process in the following manner:

- Post the Notice to Creditors and the Claims Package on its website at www.richter.ca;
- Publish a Notice to Creditors in the following local and regional newspapers:
 - La Presse;
 - La Tribune;
 - L'Écho de Frontenac;
 - The Sherbrooke Record; and
 - The Montreal Gazette.
- Send a copy of the Notice to Creditors via a mass mailing by Canada Post to the residents of the MRC du Granite;
- Coordinate with the City to notify residents by additional means which may include a link on the City website, local media and/or other means.

61. In order to assist creditors in completing the Claims Package, the Monitor is coordinating with the City to hold several information sessions in the City to provide an overview of the claims process and answer questions relating to the Claims Package. Further, representatives of the Monitor will attend the City on a regular basis, to assist the residents/claimants, to the extent possible, in the preparation and completion of their proof of claim forms. The Monitor will also respond to questions that may be submitted by e-mail and a toll free number.
62. The Monitor estimates that several thousand claims may be submitted by creditors through the claims process. The Monitor and the Chapter 11 Trustee have agreed upon a common bar date of March 31, 2014 which is believed to provide sufficient time to permit creditors to file their proofs of claim with the necessary supporting documentation. The Bar Date may be extended by the Courts, if necessary.
63. As noted above, the filing of the proofs of claim is only the first step in the claims process. The Monitor will not be able at this stage, to comment or provide any indication on what amounts, if any will be paid pursuant to the claims that have been received. Indeed, the Monitor is not requesting the Court to approve any procedures for the review, determination, adjudication or compromise of the claims, which will only be dealt with in a further phase based on Court approval of further procedures at a later date.
64. As noted on the proof of claim forms, any derailment claim is deemed to be filed in both the MM&A and MM&AR insolvency proceedings if a claimant indicates that the claim is being asserted against both entities. Hence, duplicate claim forms will not be required to be filed with the Chapter 11 Trustee. The Chapter 11 Trustee will be seeking an order in the Chapter 11 proceedings to allow for the deemed filing in the MM&AR proceedings. Additional space is provided in all the claim schedules should the amounts being claimed in the Chapter 11 proceedings differ from those claimed in the CCAA proceedings.

CLASS REPRESENTATIVES' MOTION

65. On November 1, 2013, Yannick Gagné, Guy Ouellet, Serge Jacques and Louis-Serges Parent through their attorneys, filed a motion wherein they requested that the Court appoint them as Class Representatives in the CCAA proceedings, to represent:
- *“all persons and entities (natural persons, legal persons established for a private interest, partnership of associations as defined in the Code of Civil Procedure of Quebec) residing in, owning or leasing property in, operating a business in and/or were physically present in Lac-Mégantic (including their estate, successor, spouse or partner, child, grandchild, parent, grandparent and sibling), who have suffered a loss of any nature or kind relating to or arising*

directly or indirectly from the train derailment that took place on July 6, 2013 in Lac-Mégantic (the "Train Derailment") or any other group determined by the Court."

66. The attorneys for the proposed Class Representatives commenced proceedings in July 2013 to initiate a class action on behalf of the derailment victims. A hearing on the potential certification of the class action is not currently anticipated before June 2014.
67. Following the filing of the Class Representative Motion, the Monitor's counsel communicated with the attorneys for the proposed Class Representatives to obtain clarification on a number of matters which was followed by a meeting held on December 5, 2013 between the Monitor, Monitor's counsel and Petitioner's counsel and the attorneys for the proposed Class Representatives to discuss various issues including:
- Class Representative Fees;
 - Filing of group or class claims versus individual claims;
 - Opting in versus opting out of a class;
 - Ability of the Class Representatives to bind the class.
68. In its Claims Motion, the Petitioner has taken the position that only individual persons, estates (successions) and corporation should be permitted to file claims and that group or class claims not be permitted. As communicated to the attorneys for the proposed Class Representatives, the difficulty that both the Petitioner and the Monitor have with group or class claims in this situation is the following:
- Inability of the Monitor to efficiently and effectively review, adjudicate or compromise the potential rights of each proposed class member in order to ensure that the treatment of other creditors is fair and appropriate. In other words, it will not be possible to evaluate the unique circumstances of each creditor if a class claim is filed;
 - The Chapter 11 Trustee has informed both the Petitioner and the Monitor that group or class claims are permitted in Chapter 11 proceedings only with the prior approval of the Bankruptcy Court and only subject to the claimant meeting all of the normal requirements for a class action under non-bankruptcy procedural rules in the U.S. (which would not likely be met by a class of all derailment claims) thereby rendering ineffective a key objective of this Claims Process, namely the deemed filing of proofs of claim in the CCAA as filed in the Chapter 11 proceedings;
 - The Monitor and the Petitioner have informed the attorneys for the proposed Class Representatives that in their view, a more appropriate role at this stage for the proposed Class

Representatives is to act as an ad-hoc committee to assist derailment victims in completing proofs of claim.

69. The Monitor is well versed and has experience in dealing with large complex cases which can involve large numbers of creditors and has the necessary resources to deal with the number of claims expected to be filed.

INCREASE IN ADMINISTRATION CHARGE

70. As noted in the Monitor's Third Report, the Petitioner originally requested a \$1.5 million Administration Charge to secure the fees and expenses of Petitioner's Counsel, the Monitor and its counsel (the "Professionals"). The Initial Order limited the Administration Charge to \$0.5 million but with the right to apply for an increase of the Administration Charge, at a later date.
71. On October 4, 2013 the Petitioner and the Monitor jointly submitted a request to the Court requesting an increase in the Administration Charge to \$2.5 million in respect of the Professionals. The reasons therefore are detailed in the Monitor's Third Report. On October 9, 2013, the Court approved the increase in the Administration Charge.
72. Since the commencement of the proceedings, the Professionals have assisted the Petitioner on a wide range of matters with a view to stabilizing and ensuring the continuity of the operations while preparing for a going concern sale of the assets and the implementation of a claims process.
73. The Professionals have provided and continue to provide continuous support and guidance to the Petitioner in respect of the following:
- Management of day to day operating issues including but not limited to negotiations with suppliers and deposits requested, collection efforts in respect of outstanding accounts receivable, and employee matters;
 - Assistance to the Chapter 11 Trustee's financial advisor in the preparation of cash flow models and underlying assumptions based on current trending. Monitoring of results on a daily and weekly basis including review and discussion of actual results vs. budget and reporting thereon;
 - Assistance and guidance in dealing with matters relating to the CTA and Transport Canada in particular in respect of railway testing, inspections, and adhering to regulations;
 - Filing of various motions and Monitor reports in support of extension requests, process to solicit claims and the establishment of a claims bar date, approving the compromise and settlement with Travelers, approving the stalking-horse bid and the auction process;

- Meeting and communications with clients of the Petitioner and regional economic development agencies (“CLD”) to respond to provide updates with respect to the restructuring process and respond to their information requests;
 - Meetings and communications with representatives of the City, including assisting in the discussions with the Petitioner, the City and the Province regarding the reconnection of the rail line in Lac-Mégantic and resumption of service;
 - Discussions and negotiations with Travelers regarding the terms and conditions of the settlement of claims filed by the Companies in respect of property and business interruption coverage as well as respond to motions and appeals filed to lift the stay of proceedings in both the CCAA and Chapter 11 proceedings;
 - Ongoing meetings and communications with various Provincial government agencies in respect of a wide variety of matters including railcars in Farnham, Quebec, environmental matters, claims process, sale of assets, etc.;
 - Work relating to the sale process of the assets of the Companies including communications with the Chapter 11 Trustee and the Investment Banker regarding terms and conditions of the sale, timeline and negotiations with potential purchasers;
 - Meeting and communications with the attorneys involved in filing the Class Representative Motion;
 - Preparation of a detailed proof of claim package and coordination of claims filing with the Chapter 11 Trustee.
74. The Professionals continue to work closely with Mr. Robert Keach, the Chapter 11 Trustee of MM&AR to ensure an effective, efficient and coordinated approach to dealing with matters affecting both estates including day to day operations, monitoring, financing, insurance matters, bonds, the sale process, the claims process and other issues.
75. As of November 30, 2013, the total unpaid fees and disbursements of the various Professionals (net of pre-filing retainers and excluding sales taxes) approximates \$2,160,000, summarized as follows:
- Gowling Lafleur Henderson LLP (counsel to MM&A) \$ 1,164,000
 - Richter Advisory Group Inc. (Monitor) \$ 566,000
 - Woods LLP (counsel to Monitor) \$ 430,000

It is projected that as of December 31, 2013, the unpaid fees and disbursements will equal or exceed the current \$2.5 million Administration Charge. While it is difficult to project the ongoing professional fees, based on the current monthly costs, the Monitor estimates that professional fees for the first quarter of 2014 may approximate \$500,000 per month, in particular considering the level of services required to complete the sale of the Petitioner's assets and commence the claims process. The Petitioner and the Monitor have jointly filed the Administration Charge Motion seeking to increase the Administration Charge in favor of the Professionals to \$5 million to cover those estimated fees and avoid a further request if the estimate is insufficient.

76. Since the Initial Order, as a result of the ongoing tight liquidity facing the Petitioner and MM&AR, the Professionals have not requested nor has it been possible for the Petitioner to make any payments to the Professionals, thereby preserving cash flow to enable the continued operations to service the Petitioner's many clients and enable the continued payment of the Petitioner's employees.
77. As noted above, the \$3 million of DIP financing is sufficient to support the operations of the Companies, but is not sufficient to permit for the payment of any professional fees.
78. As set out in the Administration Charge Motion, assuming the increase in the Administration Charge to \$5 million is granted, then any payment to the Professionals will reduce the amount of the Administration Charge.
79. Absent an increase in the Administration Charge, the Petitioner lacks the means to pay the Professionals who are essential to the CCAA process. A failure to continue the CCAA will have serious and negative consequences on the efforts to maximize value for all creditors and enable an orderly and efficient claims process to be implemented.

CHAPTER 11 PROCEEDINGS

80. As previously reported, on August 7, 2013, MM&AR commenced proceedings under Chapter 11 of the U.S. Bankruptcy Code ("Code") in the US Court.
81. On August 21, 2013, the U.S. Trustee appointed Robert J. Keach, attorney, to be the Chapter 11 Trustee of MM&AR and he has assumed day to day control of the operations of MM&AR.
82. The Monitor and its counsel continue to be in frequent contact with the Chapter 11 Trustee (including a full day meeting on November 12, 2013) and his professionals to coordinate the efficient administration of both estates as well as the sale process and the claims process that are more fully described elsewhere in this report.

83. The Monitor reviews daily and weekly information reports from the Companies as well as variance reports prepared by DSI. In addition, the Monitor reviews the Monthly Operating Report of MM&AR, which is a statutory report filed with the United States Trustee. The United States Trustee has now appointed a Committee of Derailment Victim Creditors to assist the Chapter 11 Trustee. The four creditors appointed all purport to hold claims arising from the Derailment. In addition, the Monitor has been informed that the Province and the City have been granted ex-officio status on the Committee of Creditors. The Monitor understands that this Committee of Creditors is entitled to engage legal counsel (but no other professionals) and will have a limited mandate to primarily assist the Chapter 11 Trustee in plan formulation and to consult with the Chapter 11 Trustee on matters concerning the administration of MM&AR.
84. The Monitor is continuing to post the various relevant motions and orders in respect of MM&AR's Chapter 11 proceedings to its website to permit all stakeholders to follow these proceedings. Recent motions and orders issued to date by the US Court include the following:
- Compromise and Settlement with Travelers Property Casualty Company of America;
 - Approving Bid Procedures for the Sale of Assets and Assumption and Assignment Procedures in respect of Executory Contracts and Leases;
 - Establishing Deadline for Filing Proofs of Claim and Procedures Relating Thereto and approving Form and Manner of Notice Thereof;
 - Order Granting Motion for Authorizing Assignment of Tax Credits;
 - Settlement agreements in respect of various accounts receivable balances;
 - Appointment of Committee of Creditors.

ACTIVITIES OF THE MONITOR

85. The Monitor's activities have included the following:
- Continued monitoring of the Petitioner's operations which has included frequent contact with the Chapter 11 Trustee and his professionals, Petitioner's management and legal counsel all with a view to keeping apprised of material developments and to seek input with respect to the restructuring process. In addition, The Monitor has kept apprised of the restructuring proceedings of MM&AR through the review of Chapter 11 motions and orders as well as frequent communication with the Chapter 11 Trustee and his professionals, including a meeting on November 12, 2013 with all of the professionals to discuss that status of the case and various matters;

- Maintaining regular contact with representatives of the Province, the City and other stakeholders in this restructuring process to seek their input and provide assistance in various areas;
- The Monitor has been in communication with Gordian concerning the management of the sales process for the assets of the Companies including the status of discussions with various interested parties;
- The Monitor has negotiated and reviewed the Asset Purchase Agreement and the Bid Procedures relating to the Stalking Horse Bid;
- The Monitor has met with the legal counsel of the proposed Class Representatives;
- The Monitor has been in contact with the Federal Railroad Administration and its professionals to provide updates in respect of the restructuring;
- The Monitor is continuing to respond to queries from suppliers, creditors and other interested parties;
- The Monitor reviewed the Petitioner's financial affairs and results for the period September 30, 2013 to December 6, 2013;
- Placing on its website copies of all Court materials filed in the CCAA and Chapter 11 Proceedings;
- The Monitor has in conjunction with its counsel and Petitioner's counsel prepared the Claims Package;
- The Monitor has prepared and filed this Fourth Report;
- Other administrative and statutory matters relating to the Monitor's appointment.

RECOMMENDATIONS OF THE MONITOR

I. SALE PROCESS AND BID PROCEDURES

86. Pursuant to a solicitation process carried out by Gordian, potential bidders have been identified who are interested in proceeding with a potential transaction to acquire the assets of the Companies on a going concern basis. One of these parties, Railroad Acquisitions Holdings LLC has been selected to act as a Stalking Horse which provides for a floor price and the terms and the conditions of the proposed Asset Purchase Agreement which will be the model for other bidders to compete against.
87. The Bid Procedures set out clear rules upon which other interested parties may submit qualifying bids as well as bid increments. As noted above, while the Break Fee proposed for the Stalking

Horse is in the view of the Monitor above market, it is not expected to unduly deter other bidders and because it is factored into the initial minimum overbid, will not impact the realization to the estate.

88. The auction (assuming Qualifying Bids are received by January 17, 2014) is set to take place January 21, 2014 with a joint sale hearing on January 23, 2014.
89. The Monitor is supporting the Sale Process and the establishment of Bid Procedures to enable the sale of the Petitioner on a going concern basis, both as a means to maximize value and to enable the continued operation of the railroad for the benefit of its employees, customers and regional economic development.

II. APPROVAL OF THE COMPROMISE AND SETTLEMENT WITH TRAVELERS

90. Travelers is contesting both the nature of the US \$7.5 million of coverage provided to the Companies as well as they have raised concerns about the extent of the coverage provided to the Petitioner and were prepared to proceed with litigation to defend its position.
91. In order to avoid significant costs and time delays resulting from ongoing litigation, substantial negotiations took place with Travelers to settle the amount to be paid from the policy. The settlement will avoid any uncertainty and is in the best interest of the creditors.
92. The Monitor recommends the settlement with Travelers for US\$3.8 million and the allocation of 65% of the proceeds or US\$2,470,000 to the Petitioner to be paid in trust to the Monitor.

III. APPROVAL OF A PROCESS TO SOLICIT CLAIMS AND FOR THE ESTABLISHMENT OF A CLAIMS BAR DATE

93. The establishment of a Claims Bar Date and process to solicit claims is necessary in order to identify the claims that will be asserted against the Petitioner by all creditors including Derailment Victims.
94. The proof of claim form and related schedules will provide enough information to allow the Monitor to determine the scope, the nature and the extent of each claim and be able to then recommend the most efficient process to review and adjudicate the claims in a second phase. Furthermore, the information will allow the Monitor to determine if a claim is entitled to participate in the distribution of the insurance proceeds to be received under the \$25 million XL Insurance Company Ltd. policy.
95. As part of the Claims Process the Monitor is working with the City to coordinate the holding of information sessions to provide an overview of the claims process to residents of the City and the

Monitor will thereafter have representatives present in the City to assist residents to the extent possible in the preparation of the proof of claim forms.

96. The Claim Process has been set up to ensure that those affected by the Derailment, may if they so elect, have the claims filed in the CCAA be deemed filed in the Chapter 11 proceedings thereby eliminating the need to filed claims in both restructurings. The Chapter 11 Trustee is in agreement with the foregoing and is seeking an order to this effect in the Chapter 11 case.
97. A claims bar date of March 31, 2014 is believed to provide sufficient time for all creditors to prepare and submit their proof of claim form.
98. The Monitor is supporting the process to solicit claims and the establishment of a claims bar date of March 31, 2014, for the above noted reasons.

IV. INCREASE OF THE ADMINISTRATION CHARGE

99. As of December 31, 2013, it is estimated that the Professionals will have accrued and unpaid professional fees that equal or may exceed the current \$2.5 million Administration Charge.
100. There remains significant work to be done by the Professionals in the CCAA process including, but not limited to, completing the sale of the Petitioner's assets which is expected to occur in the first quarter of 2014 and the implementation of the first phase of the claim process which will include conducting information sessions in the City as well as responding to the large number of inquiries that are expected to accompany the thousands of claims to be filed. As part of the process, the Monitor intends to have representatives present on site in the City for the necessary time period to assist victims to file their claim forms prior to the March 31, 2014 bar date.
101. Absent an increase in the Administration Charge to \$5 million, the Petitioner lacks the means to secure the payment of the fees of the Professionals who are essential to the CCAA process. A failure to continue the CCAA will have serious and negative consequences on the efforts to maximize value for all creditors and an orderly and efficient claims process to be implemented.
102. The Administration Charge will be reduced by the amount of any payments received by the Professionals.

CONCLUSION

103. The Petitioner is acting in good faith, with due diligence and has been cooperating with all stakeholders involved in this process, including but not limited to the Monitor, the various

governmental agencies including the CTA, the Chapter 11 Trustee, the Province, the City and its creditors.

104. The Court should grant the Sale Process and Bid Procedures, the Travelers Compromise and Settlement, the Claims Solicitation Process and the Claims Bar Date and the Increase in the Amount of the Administration Charge. Furthermore:
- The Petitioner needs additional time in order to proceed with the sale process to maximize the value of its assets and sell the company on a going concern basis which is in the best interests of all of its stakeholders, employees and customers;
 - Additional time is needed to implement the claims process to ensure a fair and methodical treatment of all claims;
 - Based on the current cash position of the Companies and the forecasted results for January 2014, the Companies will have sufficient cash to continue operations through to January 28, 2014 at which time the Petitioner will seek a further extension of the stay of proceedings and an updated cash flow will be presented at that time;
 - The Monitor will continue to monitor the operations of the Petitioner and inform the Court and all stakeholders of material events as required.

Respectfully submitted at Montreal, this 16th day of December, 2013.

Richter Advisory Group Inc.

Monitor



Andrew Adessky, CPA, CA, CIRP

Montréal, Maine & Atlantic Railway Ltd./Montreal Maine & Atlantic Canada Co.

Comparative Cash Flow

For the period September 30, 2013 to December 6, 2013

| (in USD) (in 000's) | Forecast Sept 30-Dec 6 | Actual Sept 30-Dec 6 | Variance Sept 30-Dec 6 |
|--|---------------------------|-------------------------|---------------------------|
| <u>MMA Cash Receipts:</u> | | | |
| Deposits & Wire Transfers | 1,024 | 1,320 | 296 |
| ISS ¹ | 226 | 342 | 116 |
| Other items ² | 72 | 307 | 236 |
| DIP financing - Camden National Bank ³ | 2,033 | 1,742 | (291) |
| Total | 3,354 | 3,711 | 357 |
| <u>MMA Disbursements:</u> | | | |
| Payroll & Related Taxes | 1,951 | 1,772 | 179 |
| Materials and supplies | 527 | 418 | 109 |
| Capital expenditures - track repairs ⁴ | - | 275 | (275) |
| Freight car and locomotive | 85 | 123 | (38) |
| Restructuring costs | - | 9 | (9) |
| Other costs | 987 | 968 | 18 |
| Transport revenue offsets | 86 | 84 | 2 |
| Total | 3,635 | 3,648 | (13) |
| Initial amount transferred to escrow a/c for Wheeling & Lake Erie ⁵ | - | 200 | (200) |
| Net Cash Flow | (281) | (137) | 144 |
| Opening Cash Balance - MMA | 581 | 581 | - |
| Closing Cash Balance - MMA | 300 | 444 | 144 |
| <u>Camden National Bank - DIP Lender</u> | | | |
| Opening line of credit | - | - | |
| Funds advanced | 2,033 | 1,742 | 291 |
| Ending Line of credit | 2,033 | 1,742 | 291 |
| Total authorized line of credit | 3,000 | 3,000 | - |
| Total available line of credit | 967 | 1,258 | (291) |
| Loan balance - net of cash | \$ 1,733 | \$ 1,298 | \$ 435 |

¹ - The Interline Settlement System ("ISS") is the centralized process for the rail industry used to negotiate and agree upon for the sharing of revenue generated for a movement when two or more tracks are involved in a shipment route.

² - Other items includes switching revenue, car hire revenue, equipment rentals and approximately \$100k of insurance proceeds from a 2012 claim (which was not budgeted).

³ - Commenced on October 21, 2013.

⁴ - MMA engaged sub-contractors to perform various unbudgeted track repairs to enable it to maintain necessary levels of service.

⁵ - As part of the switch to the DIP financing with Camden National Bank, MMA was required, pursuant to a court order, to set aside \$200k of cash on hand which may be subject to Wheeling's cash collateral. This amount was not in the cash flow filed in court on October 4, 2013.