

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

**DECLARATION OF FRED C. CARUSO IN SUPPORT OF
CONFIRMATION OF TRUSTEE'S REVISED FIRST AMENDED
PLAN OF LIQUIDATION DATED JULY 15, 2015**

I, Fred C. Caruso, pursuant to 28 U.S.C. § 1746, state as follows:

Introduction

1. I am the Chief Operating Officer of Development Specialists, Inc. ("DSI"), a turnaround management consulting and financial advisory firm headquartered at Three First National Plaza, 70 West Madison Street, Suite 2300, Chicago, Illinois, 60602-4250. My resume is attached hereto as Exhibit A. DSI was retained by Robert J. Keach, the chapter 11 trustee (the "Trustee") in the above-captioned case of Montreal Maine & Atlantic Railway, Ltd. ("MMA"), as the financial advisor for the Trustee.

2. This Declaration is submitted in connection with and in support of confirmation of the *Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [Docket No. 1534] (the "Plan").¹

3. All facts set forth herein are based on my personal knowledge, on information supplied to me by others within MMA's organization or by the Trustee or his professionals, upon my review of relevant documents, or on my opinion based upon my experience and

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan and/or the Revised First Amended Disclosure Statement for the Trustee's Plan of Liquidations Dated July 15, 2015 [D.E. 1497] (the "Disclosure Statement").

knowledge of MMA's operations, financial condition, and present liquidity needs. If I were called to testify, I could and would testify competently to the facts set forth herein.

Liquidation Analysis

i. The "Best Interests of Creditors" Test

4. It is my understanding that as a condition to confirmation, sections 1129(a)(7) (and in railroad reorganizations, 1173(a)(2)) of the Bankruptcy Code requires that the Bankruptcy Court find that each Holder of a Claim or Equity Interest in each impaired Class: (a) has accepted the Plan or (b) will receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the amount that such Holder would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. Satisfaction of these criteria is often referred to as the "best interests" test.

5. Attached hereto as Exhibit B is an analysis (the "Liquidation Analysis") that I prepared with the assistance of the Trustee and which demonstrates that the Plan satisfies the "best interests" test.² This analysis (a) estimates the realizable value of the Debtor (the "Liquidating Debtor") under a hypothetical chapter 7 liquidation (the "Liquidation"), (b) estimates the distribution to creditors resulting from the Liquidation, and (c) compares that distribution to the distribution contemplated under the Plan.

ii. General Liquidation Analysis Assumptions

6. The Liquidation Analysis is based on a number of estimates and assumptions that are subject to significant uncertainties and contingencies. Further, Allowed Claims against the Liquidating Debtor's estate could vary materially from the estimates set forth in the Liquidation Analysis. Accordingly, while the information contained in the Liquidation Analysis is presented with numerical specificity, the Trustee makes no assurances that the asset

² The Liquidation Analysis was also attached to the Disclosure Statement as Exhibit C.

values and Claim amounts presented in the Liquidation Analysis would not vary materially from actual amounts in the event of a chapter 7 liquidation.

7. The Liquidation Analysis begins with the Debtor's projected cash balance and assets as of July 7, 2015 and estimates the amount of potential litigation recoveries in a chapter 7 case. The difference between recoveries projected in the Disclosure Statement and recoveries projected in the Liquidation Analysis result primarily from that fact that in a Liquidation scenario:

- (a) all Settlement Agreements would terminate, thus eliminating the source for the vast majority of the funds distributable to Holders of Claims under the Plan;
- (b) Derailment Claims would no longer be channeled to MMA Canada and the WD Trust (as they are by agreement under the Plan), and would instead be assertable against the Debtor, greatly diluting recoveries for Holders of General Unsecured Claims; and
- (c) Derailment Claims would no longer be capped (as they are by agreement under the Plan), increasing the estate's Claims exposure exponentially.

8. Specifically, in my opinion, a chapter 7 trustee would not be able to realize any amounts from the Released Parties in settlement due to the fact that a condition to any settlement with these parties is the third-party releases of these parties provided in the Plan. It is my understanding that such releases are not available in a chapter 7 case.

9. In addition, the Liquidation Analysis does not take into account the time it would take to allow a chapter 7 trustee to investigate all causes of action and make all distributions, and the attendant decreased present value of distributions to Holders of Claims.

10. After considering the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to the holders of Claims and interests in this Chapter 11 Case, I believe that confirmation of the Plan will provide each holder of an allowed Claim or

Equity Interest with a recovery that is not less than such holder would receive pursuant to a liquidation under Chapter 7 of the Bankruptcy Code (and in most cases, much more).

11. The statements in the Liquidation Analysis, including estimates of Allowed Claims, were prepared solely to assist the Bankruptcy Court in making the findings required under section 1129(a)(7) for the Plan, and they should not be used or relied upon for any other purpose.

Irving Railroads' Claim

12. Based on my review of (a) the proofs of claim filed by Maine Northern Railway Company (“MNRC”) and New Brunswick Southern Railway Company Limited (“NBSRC”) and, together with MNRC, the “MN/NB Railroads”), Claim Nos. 259-1 and 257-1 (together, the “MN/NB PoCs”), and (b) the objection to Plan confirmation filed by the MN/NB Railroads [D.E. 1656] (the “MN/NB Objection”), I understand that the MN/NB Railroads have asserted, among other things, that certain of their claims are entitled to priority treatment under Bankruptcy Code section 1171(b), commonly referred to as “six-month claims.”

13. I also understand that in this Circuit, to merit treatment under Bankruptcy Code section 1171(b), a creditor must demonstrate each of the following: (i) the claim arose within six months of the filing of the petition; (ii) the obligation was incurred for a current and necessary operating expense in the ordinary course of business; and (iii) the goods or services giving rise to the claim were not furnished in reliance on the railroad’s general credit.³

14. Based on my review of the MN/NB PoCs, I further understand that the nature of the claims asserted are “freight services provided to the Debtor in connection with interline rail shipments.” *See* MN/NB PoCs.

³ This standard is acknowledged by the MN/NB Railroads in the MN/NB Objection.

15. Many railroads participate in the Interline Settlement System (the “ISS”), which provides, in effect, a central clearing house for all participating railroads to net accounts receivable and payable with respect to other participating railroads’ shares of the freight revenue invoiced to a customer by the originating railroad.

16. MMA participated in the ISS.

17. The MN/NB Railroads opted out of the ISS. Instead, the MN/NB Railroads entered into an agreement with MMA whereby MMA either (a) invoiced the customer for “originating traffic” for freight revenue for the customer’s route originated by the MN/NB or (b) received the freight revenue through the ISS for “received traffic” (which was invoiced to the customer by the originating railroad), in either case for both MMA’s and the MN/NB Railroads’ share of the freight revenue. Periodically, MMA and the MN/NB Railroads settled their respective accounts payable and accounts receivable as between themselves. This business decision amounted to a decision to avoid the credit-risk-spreading effect of the ISS and instead relied on the credit of MMA.

18. In addition, the proceeds MMA received from the ISS were arguably Wheeling’s collateral. As such, Wheeling would have had a right to payment from such proceeds that would have been senior to any claims the MN/NB Railroads could make against them. That the MN/NB Railroads’ claim to those proceeds was junior to another stakeholder’s exacerbated the MN/NB Railroads’ reliance on MMA’s credit.

[signature page follows]

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: September ^{sh}16, 2015


FRED C. CARUSO
Chief Operating Officer,
Development Specialists, Inc.

EXHIBIT A

Resume



FRED C. CARUSO
Professional Qualifications



Fred Caruso has over thirty years of insolvency, restructuring and operational experience and currently is the Chief Operating Officer of DSI. His experience is concentrated on the “debtor side,” typically serving either as a Financial Advisor, President, Chief Restructuring Officer, Chief Operating Officer, Chief Financial Officer, or as a Chapter 11 Trustee. He has also provided expert testimony on accounting, forensic and valuation topics.

Notable assignments include:

- Chapter 11 Trustee for Qualteq, Inc.: Fred and members of DSI replaced senior management for these sixteen affiliated family-owned debtors, maintained the customer base despite allegations of fraudulent financial behavior, performed a forensic review of historical information, reissued financial statements, and conducted a 363 sale process that ultimately paid creditors in full with a \$15 million distribution to equity.
- CRO and COO for Giordano’s Enterprises, Inc.: in conjunction with its Chapter 11 Trustee, Fred and members of DSI replaced all senior management, restructured the operations, settled outstanding litigation with a majority of the franchisees, managed a successful 363 sale process, paid secured creditors in full, and made a significant distribution to creditors.
- Financial Advisor for the real estate trust for the Gas City, Ltd. properties: in conjunction with the CRO for Gas City, managed a successful 363 sale process, which was awarded the TMA Consumer and Retail Products Turnaround Award.
- Financial Advisor for Bill Heard Enterprises, which operated 14 urban big-box Chevrolet locations with sales in excess of \$2 billion: managed a successful 363 sale process less than 60 days after the Lehman Brothers collapse brought the automotive industry to a standstill.
- President and Debtor in Possession for Ritchie Risk-Linked Strategies Trading, Ltd.: managed a successful 363 sale process for 1,100 life insurance policies with an insured value of \$2.8 billion.
- Financial Advisor for a \$3 billion hedge fund to manage negotiations with “gated” investors and monetize illiquid investments.
- CRO for BREED Technologies, Inc., a \$1.1 billion tier one automotive supplier with 11,000 employees at 60 facilities: restructured multiple production facilities, renegotiated multi-year product sale contracts with the OEM’s, created \$50 million of additional

liquidity from the existing balance sheet, and raised \$25 million of exit financing to confirm a standalone Chapter 11 plan.

- President and Debtor in Possession for Commercial Financial Services, Inc., the country's largest acquirer of charged-off credit card debt: negotiated a consensual liquidating plan between \$3 billion of asset-backed security holders and the general unsecured creditors.
- COO for Mercury Finance Company: Fred and members of DSI replaced all senior management, closed approximately 200 branch offices, implemented new underwriting criteria, improved collection and repossession processes, repaid over \$400 million of debt from liquidity generated from the subsequent decline in the portfolio, and confirmed a standalone Chapter 11 plan.
- Financial Advisor for a confidential engagement for a 120-unit fast food chain: assisted management in closing unprofitable locations, reduced corporate headcount and expenses and negotiated an out-of-court restructuring with its senior secured lender.
- CRO for Shape, Inc., a manufacturer of extruded video and audio components: confirmed a standalone Chapter 11 Plan while the selling price of a video cassette dropped from \$1.50 to \$.45.
- CEO & CRO for Colfor, Inc. and Colmach, Inc., a tier II manufacturer of automotive drive shafts: after discovery of a \$15 million inventory overstatement, negotiated a consensual cash collateral agreement with 28 lenders and turned a \$1.0 million monthly operating loss into a \$.25 million profit without price concessions from customers. Sold the Companies as a going concern within five months of the bankruptcy petition.
- CRO or Financial Advisor for 3 separate Wendy's fast-food franchises with over 300 units subsequent to the demise of Wendy's famous "Where's the beef?" advertising campaign.

Mr. Caruso began his career in public accounting in the audit division of a Big Eight accounting firm (now Deloitte & Touche). He is a Certified Public Accountant, a Certified Insolvency and Reorganization Accountant, and is a member of the AICPA, Illinois CPA Society, the Association of Insolvency Accountants, and the American Bankruptcy Institute.

He is a graduate of the University of Wisconsin-Madison with Bachelor's degrees in accounting and finance.

EXHIBIT B

Liquidation Analysis

EXHIBIT C TO DISCLOSURE STATEMENT¹

LIQUIDATION ANALYSIS

A. Introduction

Section 1129(a)(7) of the Bankruptcy Code requires that each holder of an impaired Allowed Claim or Equity Interest either (i) accept the Plan or (ii) receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such holder would receive or retain if the Debtor were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date of the Plan. To demonstrate that the Plan satisfies this standard, the Trustee, in consultation with his legal and financial advisors, has prepared the Liquidation Analysis, which (a) estimates the realizable value of the Debtor (the "Liquidating Debtor") under a hypothetical chapter 7 liquidation (the "Liquidation") and (b) estimates the distribution to creditors resulting from the Liquidation.

The Liquidation Analysis is based on a number of estimates and assumptions that are subject to significant uncertainties and contingencies. Further, Allowed Claims against the Liquidating Debtor's estate could vary materially from the estimates set forth in the Liquidation Analysis. Accordingly, while the information contained in the Liquidation Analysis is presented with numerical specificity, the Trustee makes no assurances that the asset values and Claim amounts presented in the Liquidation Analysis would not vary materially from actual amounts in the event of a chapter 7 liquidation.

B. Liquidation Analysis Summary

The difference between recoveries projected in the Disclosure Statement and recoveries projected in the Liquidation Analysis result primarily from that fact that in a Liquidation scenario:

- (a) all Settlement Agreements would terminate, thus eliminating the source for the vast majority of the funds distributable to Holders of Claims under the Plan;
- (b) Derailment Claims would no longer be channeled to MMA Canada and the WD Trust (as they are by agreement under the Plan), and would instead be assertable against the Debtor, greatly diluting recoveries for Holders of General Unsecured Claims; and
- (c) Derailment Claims would no longer be capped (as they are by agreement under the Plan), increasing the estate's Claims exposure exponentially.

The Liquidation Analysis does not take into account the time it would take to allow a chapter 7 trustee to investigate all causes of action and make all distributions, and the attendant decreased present value of distributions to Holders of Claims.

¹ Capitalized terms used but not defined in this Exhibit C shall have the meanings ascribed to such terms in the Disclosure Statement or the Plan, as applicable.

As the Liquidation Analysis on the following pages makes clear, the recoveries for Holders of all Claims or Equity Interests that are impaired under the Plan will not be less (and in most cases, will be far greater) than they would be in a Liquidation.

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Montréal, Maine & Atlantic Railway, LTD (US Railway): Chapter 11 Plan Distribution vs. Liquidation Analysis

	Plan Analysis		Liquidation Analysis	
	Conservative	Best Case	Conservative	Best Case
All information in US\$:				
Cash on Hand	1,866,181	1,866,181	1,866,181	1,866,181
MMA's Share of Administrative Fund	6,339,200	6,339,200	-	-
Other Causes of Action:				
Preference Claims	500,000	2,000,000	500,000	2,000,000
Trustee's Derailment Liquidation-MMA Estate Only	6,000,000	30,000,000	4,020,000	20,100,000
Improper Dividend Litigation	-	13,000,000	-	8,710,000
Total Estimated \$ Available for Distribution	14,705,381	53,205,381	6,386,181	32,676,181
Less Secured Claims:				
Class 1 Wheeling	(4,181,556)	-	(4,181,556)	-
Class 2 FRA	(820,424)	(820,424)	(637,353)	(820,424)
Class 3 MDOT	-	-	-	-
Class 4 Bangor Savings Bank	-	-	-	-
Amount Available for Admin., Prepetition Priority & Unsecured Claims	9,703,401	52,384,957	1,567,273	31,855,757
Less Administrative Claims	(6,338,559)	(8,689,200)	(2,068,759)	(3,824,300)
Amount Available (Shortfall) for Priority Claims	3,364,842	43,695,757	(501,486)	28,031,457
Less Priority Claims				
Class 5 State Income Tax	(260,448)	(260,448)	(260,448)	(260,448)
Class 6 Municipal Tax Claims	-	-	-	-
Class 7 Other Priority Claims (US Customs & Employees)	(121,781)	(121,781)	(121,781)	(121,781)
Class 7 Alleged 1171(b) Claim	(2,139,064)	-	(2,139,064)	-
Amount Available(Shortfall) for General Unsecured Claims	843,549	43,313,528	(3,022,779)	27,649,228
Class 13 General Unsecured	66,000,000	49,000,000	71,000,000	54,000,000
Derailment Claims- Liquidation Analysis Only			2,550,000,000	2,550,000,000
Total General Unsecured-Liquidation Analysis Only			2,621,000,000	2,604,000,000
% Distributed to General Unsecured Claims	<u>1.3%</u>	<u>88.4%</u>	<u>0.0%</u>	<u>1.1%</u>
Other Creditor Classes:				
Class 14 Subordinated Claims	<i>no distribution</i>	<i>no distribution</i>	<i>no distribution</i>	<i>no distribution</i>

Montréal, Maine & Atlantic Canada Co. (CDN Railway); CCAA Plan Distribution Analysis**

All Information in CDN \$

Estimated Net Settlement Funds (Before Class Legal Fees) 409,950,000

Derailment Claims:

Class 8	Derailment Moral & Personal Injury	48,850,000
Class 9	Derailment Property	41,550,000
Class 10	Derailment Gov't	191,520,000
Class 11	Derailment Property Subrogated Ins	16,810,000
Class 12	Derailment Wrongful Death	<u>111,220,000</u>

Total Estimated Distribution to Derailment Claims 409,950,000

**** See Company Creditors Arrangement Act Plan ("CCAA") for additional description for the plan details.**