

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

**DECLARATION OF SHELL OIL COMPANY IN SUPPORT OF
CONFIRMATION OF TRUSTEE'S REVISED FIRST AMENDED
PLAN OF LIQUIDATION DATED JULY 15, 2015**

I, Zena Habal, pursuant to 28 U.S.C. § 1746, state as follows:

Introduction

1. This Declaration is submitted in support of confirmation of the *Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [Docket No. 1495] (the "Plan").¹

2. I am Legal Counsel - Litigation with Shell Oil Company ("Shell Oil"), registered at One Shell Plaza, P.O. Box 2463, Houston, Texas 77252. I am authorized to make this declaration on Shell Oil's behalf.

3. All facts set forth herein are based on my personal knowledge without waiving any attorney-client privilege, on information supplied to me by others within the Shell Oil organization, upon my review of relevant documents, or on my opinion based upon my experience and knowledge of Shell Oil's operations. If I were called to testify, I could and would testify competently to the facts set forth herein.

Relevant Background

4. On July 6, 2013, an unmanned eastbound train operated by Montréal Maine & Atlantic Railway Ltd., the above-captioned debtor ("MMA" or the "Debtor") and/or MMA

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").

Canada, comprised of five (5) locomotives and seventy-two (72) railcars carrying crude oil, derailed in Lac- Mégantic, Quebec, Canada (the “Derailement”). Shell Oil is presently a defendant in at least three lawsuits in federal and state courts connected with the Derailement.

5. Shell Oil is included in the definition of “Released Parties” under the Plan and accordingly, will be the beneficiary of the Releases and Injunctions contained in the Plan if confirmed.

The Plan Releases and Injunctions

A. MMA and Shell Oil Share an Identity of Interest with Respect to the Claims Covered by the Releases and Injunctions

6. As I previously stated, Shell Oil is presently a defendant in at least three lawsuits in federal and state courts connected with the Derailement.

7. Shell Oil may have claims against MMA for, *inter alia*, contribution. Absent confirmation of the Plan and the effectiveness of the Releases and Injunctions contained therein in favor of Shell Oil and its affiliates, Shell Oil intends to pursue its claims against the MMA estate.

8. In addition, Shell Oil may have claims against various other contributing parties for, *inter alia*, contribution and indemnity for any liability arising from the Derailement. In turn, such contributing parties have or may have claims against the MMA estate for, *inter alia*, contribution and indemnity for any liability arising from the Derailement. Thus, any claim asserted by Shell Oil against another contributing party would serve to increase the size of such contributing parties’ claims against the MMA estate.

B. Shell Oil Has Contributed Substantial Assets to the MMA and MMA Canada Estates

9. Shell Oil engaged in substantial settlement negotiations with Robert J. Keach, trustee for the Debtor’s Chapter 11 Case (the “Trustee”). After several weeks of good faith,

arm's-length negotiation, Shell Oil agreed to contribute to the settlement fund formulated by the Trustee for satisfaction of Claims against the Debtor, subject to the terms and conditions of the Plan Support and Settlement Agreement (the "Settlement Agreement"), which terms and conditions include the requirement that the Releases and Injunctions become effective.

10. The Settlement Agreement with the trustee will enable the multiple parties to largely avoid the expense and delay of protracted litigation relating to alleged liability for the Derailment. That being said, Shell Oil believes it has strong legal and factual defenses to all claims relating to the Derailment.

11. It is thus by no means certain that MMA's Derailment creditors would be able to realize through litigation the significant value that will be contributed by and on behalf of Shell Oil to the MMA estate pursuant to the Settlement Agreement, and certainly would not be able to realize any recovery whatsoever from Shell Oil without incurring the delay, expense and risks of litigation. Under these circumstances and by any measure, the total settlement contribution to the MMA estate by and on behalf of Shell Oil is "substantial."

C. The Releases and Injunction are Essential to the Success of the Plan

12. The Releases and Injunctions apply to Shell Oil. The Settlement Agreement requires Shell Oil to receive global releases and injunctions protecting them from any and all claims by anyone that was related in any way to MMA or the Derailment. The global releases and injunctions required under the Shell Oil Settlement Agreement are to be achieved through confirmation of a plan in MMA's bankruptcy case.

13. Shell Oil negotiated and entered into a settlement on the condition that any settlement was a final settlement of all MMA and Derailment-related liability—not only that of Shell Oil, but also any potential liability of related parties, Shell Oil's direct and indirect

affiliates and their present and former officers, directors, agents, and employees. Shell Oil thus agreed to make its significant contribution to the MMA estate.

14. Shell Oil expects that as a result of the settlement, it will be protected from (a) further third party claims brought by the Derailment victims and (b) any and all contribution, indemnity and other claims relating in any way to the Derailment. A settlement that did not include Shell Oil's corporate affiliates, officers, directors, agents and employees would leave Shell Oil related entities and individuals at risk for future suits, because there is a subset of possible claims as to which the statute of limitations has not run. This could obviously make Shell Oil vulnerable to future claims, and Shell Oil settled under such circumstances. Thus, the third party releases and injunction were critical to achieving the proposed settlement, which will not be effective if the Plan is not confirmed with the Releases and Injunctions.

15. In light of Shell Oil's strong defenses to liability, it is by no means certain that MMA's Derailment creditors would be able to recover any amounts whatsoever from Shell Oil if the Plan were not confirmed and the Releases and Injunctions contained therein were not made effective.

16. Finally, I, on behalf of Shell Oil, fully support confirmation of the Plan.

[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 21, 2015


ZENA HABAL
Legal Counsel - Litigation
Shell Oil Company

[signature page for Shell Oil Company declaration]