UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re: MONTREAL MAINE & ATLANTIC RAILWAY, LTD., Debtor.	Bk. No. 13-10670 Chapter 11

DECLARATION OF ROBERT J. KEACH, CHAPTER 11 TRUSTEE, IN SUPPORT OF CONFIRMATION OF TRUSTEE'S REVISED FIRST AMENDED PLAN OF LIQUIDATION DATED JULY 15, 2015

I, Robert J. Keach, pursuant to 28 U.S.C. § 1746, state as follows:

INTRODUCTION

1. I am the duly appointed chapter 11 trustee (the "Trustee") in the chapter 11 case of the above-captioned debtor and debtor-in-possession (the "Debtor"). Unless otherwise specified, I have personal knowledge of all matters set forth in this Declaration, and I believe all such matters to be true and correct. I am competent to testify under oath to the matters set forth in the Declaration if called to do so.

2. I submit this Declaration 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. I am a shareholder at Bernstein, Shur, Sawyer & Nelson, P.A. I am licensed to practice in the states of Maine and Massachusetts and am admitted to practice in the United States District Courts of Maine and Massachusetts as well as before the United States Courts of Appeals for the First and Seventh Circuits. I am a Fellow of the American College of

[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").

Bankruptcy, a Past President (2009-2010) of the American Bankruptcy Institute ("ABI"), and certified in business bankruptcy by the American Board of Certification.

COMMENCEMENT OF THE CHAPTER 11 CASES

4. On the Petition Date, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On August 8, 2013, MMA Canada commenced the CCAA Case in the Superior Court of Canada pursuant to the Companies' Creditors Arrangement Act ("CCAA"). Richter Advisory Group Inc. ("Richter") was appointed as the monitor in the CCAA Case.

5. After the Petition Date and until the Appointment Date (as defined below), the Debtor continued to manage and operate its business and property as a debtor-in-possession under §§ 1107 and 1008 of the Bankruptcy Code, and pursuant to the *Debtor's Chapter 11 First Day Motion for Order Authorizing Continued Business Operations Pending Appointment of a Chapter 11 Railroad Trustee* [D.E. 14] and the Order *Authorizing the Debtor's Continued Business Operations Pending Appointment of a Chapter 11 Railroad Trustee.*

6. On August 21, 2013 (the "Appointment Date"), the United States Trustee for Region 1 appointed me as chapter 11 trustee in the Chapter 11 Case. Commencing on the Appointment Date, I operated the Debtor's railroad, which included overseeing the restoration, and eventual operation, of MMA Canada as well, until the System was sold.

SATISFACTION OF CONFIRMATION REQUIREMENTS[2]

7. The Plan complies with all applicable provisions of the Bankruptcy Code as required by section 1129(a)(1) thereof, including, without limitation, sections 1122, 1123 and 1129. Consistent with section 1122 of the Bankruptcy Code, each Class of Claims and Equity

[2] The following points and authorities are set forth at length in my brief in support of confirmation of the Plan (the "Confirmation Brief"), which was filed substantially contemporaneously herewith, and which is incorporated as if fully set forth herein.

Interests contains only Claims or Equity Interests that are substantially similar to the other Claims or Equity Interests within that Class.

8. Pursuant to section 1123(a)(1) of the Bankruptcy Code, Article 3 of the Plan designates Classes of Claims and Equity Interests. Pursuant to sections 1123(a)(2) and (3) of the Bankruptcy Code, Article 4 of the Plan specifies all Classes that are unimpaired under the Plan and the treatment of each impaired Class of Claims and Equity Interests.

9. Unless otherwise agreed to by particular holders, all of the holders of Claims or Equity Interests within each of the Classes are provided the same treatment under the Plan as required by section 1123(a)(4) of the Bankruptcy Code.[3]

10. Pursuant to section 1123(a)(5) of the Bankruptcy Code, the Plan provides adequate means for its implementation, including, without limitation: (a) approval and implementation of the Settlement Agreements; (b) other sources of consideration for Plan distributions; (c) exhaustion of policies of Insurance Companies that are Contributing Parties; (d) execution of the WD Trust Agreement and funding and administration of the WD Trust; (e) management of the Post-Effective Date Estate; (f) duties and powers of the Estate Representative; (g) continued corporate existence and cancellation of existing agreements; and (h) authorization for certain effectuating transactions.

11. In accordance with section 1123(a)(6) of the Bankruptcy Code and the Plan, the Post-Effective Date Estate's certificate of incorporation and bylaws shall be deemed amended to include a provision prohibiting the issuance of non-voting equity securities.

12. Pursuant to section 1123(a)(7) of the Bankruptcy Code, the terms and conditions of the Plan contain provisions consistent with the interests of the Debtor's creditors and with

[3] As set forth in the Confirmation Brief, any contention that 1123(a)(4) is not met with respect to Class 7 is moot because the claimants objecting to such classification are Unimpaired and thus would not be entitled to vote in any event.

public policy as to the manner and selection of any officer, director or trustee and any successor thereto. As more fully described in the Plan, I shall be appointed as the Estate Representative.

13. The Plan complies with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of the United States Bankruptcy Court for the District of Maine, thus satisfying the requirements of section 1129(a)(1) of the Bankruptcy Code.

14. I have complied with all applicable provisions of the Bankruptcy Code, as required by section 1129(a)(2) of the Bankruptcy Code, including, without limitation, sections 1125 and 1126 and Bankruptcy Rules 3017, 3018 and 3019. As evidenced by: (a) the *Affidavit of Service of Solicitation Materials and Chapter 15 Documents* [D.E. 1562], (b) *Certificate of Publication Related to the Confirmation Hearing Notice* [D.E. 1622], filed on August 26, 2015; and (c) other relevant documents, the solicitation of, acceptances of, and consent to the Plan were (x) in compliance with all applicable laws, rules, and regulations governing the adequacy of disclosure in connection with such solicitation, and (y) solicited after disclosure to the Holders of Claims or Equity Interests of adequate information as defined in section 1125(a) of the Bankruptcy Code.

15. Pursuant to section 1129(a)(3) of the Bankruptcy Code, I proposed the Plan in good faith and not by any means forbidden by law. The filing of the Plan and all of its terms were properly approved and authorized by me, in my capacity as Trustee. Further, consistent with the overriding purpose of chapter 11 of the Bankruptcy Code, I assert that the Plan enables Holders of Claims to realize the highest possible and most certain recoveries under the circumstances. The Plan is the result of extensive and transparent arms-length negotiations among me, counsel to various Holders of Derailment Claims, and counsel to various Contributing Parties, as well as certain other major constituents.

16. In accordance with section 1129(a)(4) of the Bankruptcy Code, all fees and expenses of professionals through the Effective Date are subject to final review for reasonableness by the Court under section 330 of the Bankruptcy Code. Finally, all other payments required to be disclosed under section 1129(a)(4) of the Bankruptcy Code have, in fact, been disclosed.

17. Pursuant to section 1129(a)(5) of the Bankruptcy Code, as of the Effective Date, I shall be appointed as the sole officer and director of the Post-Effective Date Estate to serve in accordance with the certificate of incorporation and the bylaws of the Post-Effective Date Estate, as such may be amended to carry out the provisions of the Plan.

18. Section 1129(a)(6) of the Bankruptcy Code permits confirmation only if any regulatory commission that will have jurisdiction over the debtor after confirmation has approved any rate change provided for in the plan. Section 1129(a)(6) is inapplicable because the Debtor is not within the jurisdiction of any regulatory commissions.

19. Pursuant to section 1129(a)(7) of the Bankruptcy Code, each Holder of a Claim or Equity Interest in an impaired Class will receive under the Plan a recovery at least equal in value to the recovery such Class would receive pursuant to a liquidation of the Debtor under chapter 7 of the Bankruptcy Code. Indeed, it is clear from the Liquidation Analysis, which is attached as Exhibit B to the *Declaration of Fred Caruso in Support of Confirmation of the Trustee's Revised First Amended Plan of Liquation, Dated July 15, 2015,* filed substantially contemporaneously herewith, that the Plan provides for a recovery at least in equal value to, and in most cases much greater than, the recovery such creditors would receive pursuant to a chapter 7 liquidation. A chapter 7 liquidation of the Debtor's estate would result in a substantial reduction in the ultimate proceeds available for distribution to all Creditors in this Chapter 11 Case.

20. Pursuant to sections 1126 and 1129(a)(8) of the Bankruptcy Code, as indicated in the *Declaration of Christina Pullo of Prime Clerk LLC Regarding the Solicitation of Votes and Tabulation of Ballots Cast on the Trustee's Revised First Amended Plan of Liquation, Dated July 15, 2015* (the "Voting Certification"), filed substantially contemporaneously herewith, Holders of Claims in all Voting Classes have overwhelmingly accepted the Plan. Classes 1 through 7 are unimpaired under the Plan and are presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Classes 14 and 15 are not contemplated to receive any distribution under the Plan and thus are deemed to have rejected the Plan pursuant to section 1126(g).

21. In accordance with sections 1129(a)(9)(A), Article 2 of the Plan provides that all Allowed Administrative Expense Claims under sections 503(b) or 507(a)(1) or (2) of the Bankruptcy Code will be paid, in Cash, within thirty (30) days following the later of the Effective Date and the date such Administrative Expense Claim becomes and Allowed Administrative Expense Claim.

22. Pursuant to Article 2 of the Plan, except to the extent that a Holder of an Allowed Priority Tax Claim agrees to a different treatment, on the later of the Effective Date and the date such Priority Tax Claim becomes an Allowed Priority Tax Claim, or as soon thereafter as is reasonably practicable, the Holder of such Claim shall receive Cash in an amount equal to the Allowed amount of such Claim.

23. Pursuant to section 1129(a)(10) of the Bankruptcy Code, and as evidenced by the Voting Certification, all Voting Classes (i.e. the impaired Classes entitled to vote) accepted the Plan, without regard to the votes of an insiders. Specifically, Classes 8 through 13 voted to accept the Plan without regard to the votes of insiders.

24. Pursuant to section 1129(a)(11) of the Bankruptcy Code, I have thoroughly analyzed the Debtor's ability to meet its obligations under the Plan post-confirmation. Moreover, I believe that the Estate will be able to satisfy its obligations under the Plan and that confirmation of the Plan will not be followed by the need for liquidation or further financial reorganization, other than as described in the Plan. Except as otherwise provided in the Plan, all property of the Debtor's Estate will vest in and become property of Post-Effective Date Debtor or in such other Entity as provided in the Plan, principally the WD Trust. Further, the Debtor will be able to satisfy the conditions precedent to the Effective Date and otherwise will have sufficient funds to meet its post-confirmation obligations to pay for the costs of administering and fully consummating the Plan and closing the Chapter 11 Case.

25. As required by section 1129(a)(12) of the Bankruptcy Code, the Plan provides that fees listed in 28 U.S.C. § 1930 will be paid on the Effective Date, and thereafter as may be required with respect to any such fees payable after the Effective Date.

26. The Debtor has no retirement benefit obligations.

27. Based upon the foregoing, I believe that the Plan fully complies with the requirements of Bankruptcy Code Sections 1122 and 1123 and all other provisions of the Bankruptcy Code, and therefore satisfies the requirements of Section 1129(a)(1) of the Bankruptcy Code.

REASONABLENESS OF THE SETTLEMENTS

28. The Plan is built upon numerous settlements with individuals and parties potentially partially responsible for the Derailment and the damages settling therefrom. Among other things and I accordance with Bankruptcy Code section 1123(b), the Plan provides for approval of those Settlement Agreements under Bankruptcy Rule 9019.

29. I have extensive experience in complex chapter 11 cases. In the course and scope of my bankruptcy practice, I have frequently encountered motions filed by a trustee or debtor-in-possession seeking bankruptcy court approval of compromises of controversies pursuant to Federal Rule of Bankruptcy Procedure 9019. I am familiar with the requirements for approval of such motions as prescribed in Protective Committee For Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968), and Jeffrey v. Desmond, 70 F.3d 183 (1st Cir. 1995) (collectively, the "TMT/Jeffrey Factors").[4]

30. I personally participated the settlement negotiations with respect to each and every settlement, attended all or substantially all of the related meetings and participated in the related calls and reviewed the various communications submitted by all of the parties.[5] Based upon that, and taking into consideration of the TMT/Jeffrey Factors, I firmly believe that the facts set forth herein weigh heavily in favor of approval of the Settlements Agreements. I have no doubt that all fall well within the range of reasonableness.

A. Description of the Settlement Agreements

31. In an effort to amass as large a fund as possible for compensation of the victims of the Derailment, I negotiated with (and, in some cases, commenced adversary proceedings against) various parties whom, after due investigation, I determined to be potentially responsible (if only in part) for the Derailment and the damage it caused. After months and, in

[4] As set forth in greater detail in the Confirmation Brief, these factors include:

(a) the probability of success in the litigation being compromised;
(b) the difficulties, if any, to be encountered in the matter of collection;
(c) the complexity of the litigation involved, and the expense, inconvenience and delay attending it; and
(d) the paramount interest of the creditors and a proper deference to their reasonable views in the premise.

In re Am. Cartage, Inc., 656 F.3d 82, 92 (1st Cir. 2011) (citing Jeffrey v. Desmond, 70 F.3d 183, 185 (1st Cir. 1995)).

[5] With respect to the negotiations with Canada, such negotiations were conducted primarily by counsel to MMA Canada and the Monitor; however, I was consulted at every stage and approved the final settlement.

certain circumstances, more than a year of litigation and/or negotiation, I, along with MMA Canada and the Monitor, reached settlement with the twenty-five groups of Contributing Parties listed in the Plan and Disclosure Statement.

32. The Settlement Agreements reached are substantially similar to one another, but for the Settlement Payments contained in each, and in turn are substantially similar to the XL Settlement Agreement, which is attached as an exhibit to the Plan. In general, each Settlement Agreement provided for the Contributing Party's payment to the Estate of their Settlement Payment in exchange for, and conditioned upon Bankruptcy Court approval of, the Releases and Injunctions set forth in the Plan. Via the Plan and the CCAA Plan, the Trustee and the Monitor (respectively) will distribute those Settlement Payments to victims of the Derailment.

B. Compliance with Bankruptcy Rule 9019

33. The Settlement Agreements are the product of extensive arm's-length negotiations that resolve complex and difficult disputes and provide substantial cash to the Estate for the benefit of its creditors. In considering the specific TMT/Jeffrey Factors and the circumstances of this case, all four weigh particularly strongly in support of the proposed settlement. In addition, the proposed Releases and Injunctions (discussed below) were necessary conditions to the Settlement Agreements.

i. The Probability of Success

34. The first TMT/Jeffrey Factor—the difficulty and complexity of the litigation involved and the expense, inconvenience and delay in pursuing the litigation—mandates approval of the Settlement Agreements. In addition to considering coordination of the various existing litigations in an efficient manner, there are the defenses that certain Contributing Parties have to liability, as well as such parties' capacity to fund litigation to prosecute those

defenses. Litigation expenses would be enormous. The Settlement Agreements essentially bypass these litigation risks and expenses, as well as liability concerns.

ii. Difficulty of Collection

35. The second TMT/Jeffrey Factor (difficulty of collection) likewise bodes in favor of approval of the Settlement Agreements. The Contributing Defendants are contributing substantial amounts as part of the Settlement Agreements. If such amounts were awarded through litigation, I believe that collecting such judgments against the Contributing Parties' assets would be extremely difficult, likely involving multiple levels of appeal. Additionally, any such litigation or collection efforts would also be costly, difficult, complex and time consuming.

iii. Complexity of the Litigation Involved and the Expense, Inconvenience and Delay in Pursuing Litigation

36. The third TMT/Jeffrey Factor (complexity, expense, inconvenience and delay in pursuing litigation) also bodes in favor of approval of the Settlement Agreements. Litigating the issues underlying the various Contributing Parties' potential liabilities, likely through various levels of appeal on numerous issues, would be expensive and any ultimate recovery would be subject to considerable delay. I believe that the Settlement Payments aggregate more value than could be secured for the victims of the Derailment were they to succeed in litigation, especially when taking into account, *inter alia*, choice of law issues, not to mention the costs and expenses of any such litigation and inevitable appeals.[6] The Settlement Agreements ensure prompt recovery without the risk of depleting, through years of litigation, any judgments and/or settlements in favor of competing claimants that otherwise might exhaust amounts available for recovery by the Estate.

[6] For example, under Quebec law, wrongful death cases might be worth far less than if United States law, particularly Illinois law, governed.

iv. The Paramount Interest of Creditors

37. Perhaps the most compelling factor supporting approval of the Settlement Agreements is the fourth TMT/Jeffrey Factor (the paramount interest of creditors). The Derailment victims have suffered severe medical and/or financial harm, regardless of whether any of the Contributing Parties is liable for damages. The Settlement Agreements, if approved, will accelerate the progress of this case and provide a mechanism for prompt and meaningful payment to creditors holding Allowed Derailment Claims. Derailment creditors have already waited too long for this case to be resolved. Approval of the Settlement Agreements will accelerate the pace of events necessary to occur to enable payment to such claimants and ameliorate the severe financial hardship from which many claimants are suffering.

38. Perhaps the strongest indicator of creditor support for approval of the Settlement Agreements is that I (as a fiduciary to the estate), the Official Committee of Victims appointed in the Chapter 11 Case (the "Victims' Committee"), and the plaintiffs in the PITWD Cases (the "WD Claimants") and in the Quebec Class Action (the "QCAPS") support approval. The WD Claimants, the QCAPs and the Victims' Committee have among them sophisticated members and/or counsel who approve of the Settlement Payments and support the Plan. That all three groups/committees strongly support approval of the Settlement Agreements and the Plan provides further validation and proof that the Settlement Agreements serve the paramount interests of creditors. A proper deference to their views weighs heavily in favor of approval of the Settlement Agreements, through which claimants will obtain the benefit of payment from the Contributing Parties, without the risk, expense, and delay of protracted litigation and related appeals. Indeed, the Derailment Victims themselves have overwhelmingly expressed their approval: not one voted to reject the Plan in either the CCAA or the Chapter 11 Case.

v. The Releases and Injunctions Were Necessary to Achieve the Settlement Agreements

39. The Contributing Parties are contributing the Settlement Payments to the Estate pursuant to the Settlement Agreements on the condition that the Contributing Parties and their affiliates are Released Parties under the Plan's Releases and Injunctions. The Contributing Parties would not have entered into the Settlement Agreements absent the Releases and Injunctions set forth therein and mirrored in the Plan. The Contributing Parties were only willing to enter into negotiations on the condition that any settlement result in a final settlement of all Derailment-related liability.

40. For all of the reasons set forth above, I believe that the Settlement Agreements (i) will save the Debtor's estate the risk as well as the costs and expenses of prosecuting disputes, the outcome of which is likely to consume substantial resources of the Debtor's estate and require substantial time to adjudicate (and in the end may not bear fruit), and (ii) are the only means for funding distributions under a chapter 11 plan (in lieu of converting to chapter 7), to the great benefit of the Debtor's estate, stakeholders and all parties in interest. I thus believe that all factors weigh in favor of approval of the Settlement Agreements.

THE RELEASES AND INJUNCTIONS

41. In determining whether a nonconsensual, non-debtor release is appropriate, courts in the First Circuit consider the five-factor test set forth in In re Master Mortgage Investment Fund, 168 B.R. 930 (Bankr. W.D. Mo. 1994) (the "Master Mortgage Factors").[7] I am familiar with the Master Mortgage Factors and believe that the Releases and Injunctions are appropriate thereunder.

[7] The Releases and Injunctions are, however, fully consensual. The relevant law looks only to the consent of the plaintiffs whose claims are released, not of non-settling defendants, such as CP, whose only relevant right with respect to releases and injunctions is the protection of judgment reduction.

i. There is an Identity of Interest Between the Debtor and the Contributing Parties

42. There is an identity of interest between the Contributing Parties and MMA. Those parties have, collectively, been made the subject of lawsuits in both state and federal courts, alleging personal injury, property damage, wrongful death or other damages due to the Derailment. Accordingly, to the extent any of the Contributing Parties is or becomes liable to any party who suffered damages arising from the Derailment, those parties will have claims against MMA, or against a party who has already asserted or who can in turn assert a claim against MMA, for, *inter alia*, contribution and indemnity. Moreover, in the event of litigation against the Contributing Parties, each Contributing Party would assert the fault of MMA. That determination by that trial court would directly determine the amount and value of the Derailment Claims, including the Claims of all victims against MMA and its limited assets, including, without limitation, the XL Policy. MMA would, by necessity, be required to participate in discovery in all such cases, if not formally intervene.

43. Indeed, several Contributing Parties have filed proofs of claim against the MMA estate on those grounds. In addition, several Contributing Parties have significant claims against various other Contributing Parties for, *inter alia*, contribution and indemnity for any liability arising from the Derailment. 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 Derailment. Thus, any claim asserted by a Contributing Party against a Contributing Party with a right to indemnity against MMA would serve to increase the size of the latter Contributing Parties' claims against the MMA estate.

44. Absent confirmation of the Plan and the effectiveness of the Releases and Injunctions contained therein in favor of the Contributing Parties (which is a material condition to each of the Settlement Agreements), I expect the Contributing Parties (who, pursuant to their

Settlement Agreements, waive, release and/or assign to the estate their claims against the estate) to pursue their asserted claims against the MMA estate, as well as against MMA Canada.

45. Thus, because "a suit against the [Contributing Parties] is, in essence, a suit against the debtor or will deplete assets of the estate," Master Mortgage, 168 B.R. at 934, there is plainly an identity of interest between MMA and each of the Contributing Parties.

ii. The Non-Debtors Have Contributed Substantial Assets to the Estate

46. Each and every one of the Contributing Parties has, without question, contributed "substantial" assets to the settlement fund and, therefore, to the Estate. The Contributing Parties are contributing substantial and necessary Settlement Payments to the settlement fund, totaling approximately $CAD446 million, none of which would be available for distribution to the Debtor's creditors absent the Releases in the Plan. And as set forth in more detail above, it is by no means certain that the Derailment victims would be able to realize through litigation the significant sum that the Contributing Parties have contributed to the MMA estate. They certainly would not be able to realize any recovery whatsoever from the Contributing Parties without incurring the delay, expense and risks of litigation (including the risk that one significant judgment in favor of a tort claimant would significantly deplete the amounts available to pay others). Under these circumstances, the Contributing Parties' contributions are each "substantial."

iii. The Releases and Injunctions are Essential to the Reorganization, and Without them, There Is Little Likelihood of Success

47. As is set forth above, each and every settling Contributing Party demanded global releases and an injunction protecting them and their identified affiliates from any and all claims that were related in any way to the Derailment as a non-negotiable condition to settlement. It was only upon my agreement, and the agreement of MMA Canada, to this condition that the Contributing Parties agreed to make their significant contributions to the

MMA estate. As such, the releases in favor of the Contributing Parties were a precondition to those parties' agreement to make their substantial contribution for the benefit of MMA's estate and creditors.

48. Simply put, the Contributing Parties would not have agreed to make their substantial contributions for the benefit of MMA's estate and creditors if they, their affiliates, insureds, directors, officers, employees and other agents would have remained vulnerable to Derailment-related litigation and liability after Plan confirmation. Among other things, the affiliated parties benefitting from the Releases and Injunctions also may: (a) have had indemnification or contribution rights as against the Contributing Parties; (b) be named "insureds" whose express consent and release of their "policy rights" were required for the insurers to consummate their settlements with me; or (c) otherwise have an identify of interest with other Contributing Parties such that settlement would otherwise prove impossible.

49. Absent the Releases and Injunctions, there would be no chance of a plan of liquidation—releases would be necessary even for a limited distribution of the XL Policy insurance proceeds. And absent the Plan, dismissal of the Chapter 11 Case is the only option, with no return to any creditor, including victims of the Derailment, other than through costly, time-consuming, and uncertain litigation. Accordingly, I believe that the releases and injunctions in favor of all of the Contributing Parties were and are essential to the successful consummation of the Plan.

iv. A Substantial Majority of the Creditors Agree to the Releases and Injunctions, and the Impacted Classes Have "Overwhelmingly" Voted to Accept the Plan

50. The Voting Certification shows that the Plan enjoys the *unanimous* support of the Holders Derailment Claims—the Classes impacted by the Plan's Releases and Injunctions, and indeed unanimous support from other Classes, save a *single, one-dollar vote* by CP to reject

the Plan. Moreover, the Victims' Committee, the WD Claimants and the QCAPs have each expressed their strong support for the Plan, and the Voting Certification demonstrates the Derailment Victims' "overwhelming" support of the Plan.

v. The Plan Provides a Mechanism for the Payment of All, or Substantially All, of the Claims of the Classes Affected by the Injunction

51. The establishment of the Indemnity Fund in the CCAA Plan and the WD Trust in the Plan, which will be funded from the net proceeds of the Trustee's settlements with the Contributing Parties, also satisfies the fifth Master Mortgage Factor. Courts analyzing this factor (whether a plan provides a mechanism for the payment of all, or substantially all, of the claims of the class or classes affected by the injunction) have not read that requirement to mean that claims of the affected class must be "paid in full" (although that may be the case here, depending on choice of law). Rather, courts, including circuit courts, have held that releases are appropriate where there is a mechanism for payment of all the affected claims—for example, a trust or settlement fund, like the WD Trust, into which the affected claims are channeled. *See, e.g.*, Nat'l Heritage Found., Inc. v. Highbourne Found., No. 13-1608, 2014 U.S. App. LEXIS 12144, at **15-16 (4th Cir. June 27, 2014). As the Plan provides for such a mechanism, and indeed, full or near full satisfaction, this factor is likewise satisfied.

52. Moreover, the Releases and Injunctions mirror those already provided by the CCAA Approval Order (the sanction order confirming the CCAA Plan) and by the Chapter 15 Recognition and Enforcement Order. The Releases and Injunctions will not additionally burden Holders of Derailment Claims, Released Parties or CP, as a Non-Settling Defendant.

CONCLUSION

53. I believe that confirmation of the Plan, including approval of the Settlement Agreements and the Releases and Injunctions, provides for an exceptional outcome for creditors and MMA's estate. The Plan provides a settlement fund that could exceed CAD$446 million, without the costs, complexity and delay of litigation. The vast majority of the MMA assets, including the proceeds of the Settlement Agreements, will inure to the benefit of the Derailment victims, but Residual Asset proceeds will also produce a fair payment to other Claims.

54. As such, and for all of the foregoing reasons, I believe that confirmation of the Plan is appropriate given that the Plan meets all statutory requirements necessary for confirmation under the Bankruptcy Code, that the settlements included therein are fair and reasonable, and that the interests of the Derailment victims are best served by confirmation of the Plan forthwith.

[*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 17, 2015

Robert J. Keach
Chapter 11 Trustee
Montreal Maine & Atlantic Railway, Ltd.

[*signature page for Keach declaration*]