

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

**DECLARATION OF NANCY A. WASHINGTON ON BEHALF OF THE CIT PARTIES
IN SUPPORT OF CONFIRMATION OF TRUSTEE'S REVISED FIRST AMENDED
PLAN OF LIQUIDATION DATED JULY 15, 2015**

I, Nancy A. Washington, pursuant to 28 U.S.C. § 1746, state as follows:

INTRODUCTION

1. 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. 1495] (the "Plan").¹

2. I am the Senior Vice President and Chief Litigation Counsel of CIT Group, Inc. ("CIT") (together with its affiliates, two of CIT's insurance companies, and their affiliates, as specified on Exhibit 2 to the Plan, the "CIT Parties"), headquartered at [11 West 42nd Street, New York, NY 10036]. I am authorized to make this declaration on behalf of the CIT Parties.

3. All facts set forth herein are based on my personal knowledge, on information supplied to me by others within the CIT organization, upon my review of relevant documents, or on my opinion based upon my experience and knowledge of CIT's operations. If I were called to testify, I could and would testify competently to the facts set forth herein.

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").

RELEVANT BACKGROUND

4. The CIT Group/Equipment Financing, Inc. ("CIT Equipment"), a subsidiary of CIT Group, Inc., and MMA were parties to that certain Master Net Locomotive Lease, dated March 18, 2013 (together with any applicable schedules, the "Locomotive Master Lease") and that certain Master Railcar Lease, dated December 20, 2007 (together with any applicable schedules, the "2007 Master Railcar Lease"). In addition, CIT Equipment, as assignee of certain of the rights and obligations of Flex Leasing II, LLC, a subsidiary of CIT Group, Inc., was also a party to that certain Master Car Lease Agreement, dated May 28, 2004 (together with any applicable schedules, the "CIT Equipment 2004 Master Railcar Lease," and together with the 2007 Master Railcar Lease, the "CIT Equipment Railcar Leases").

5. Flex Leasing I, LLC ("Flex Leasing"), a subsidiary of CIT Group, Inc., and MMA were parties to that certain Master Car Lease Agreement, dated May 28, 2004 (together with any applicable schedules, the "Flex Leasing 2004 Master Railcar Lease").

6. Pursuant to the Locomotive Master Lease, the CIT Equipment Railcar Leases, and the Flex Leasing 2004 Master Railcar Lease, CIT Equipment and Flex Leasing had leased certain locomotives and railcars to MMA (the "Leased Equipment") as of the Petition Date.

7. On July 6, 2013, an unmanned eastbound train operated by MMA and/or MMA Canada comprised of five locomotives and 72 railcars carrying crude oil derailed in Lac-Mégantic, Quebec, Canada (the "Derailment"). Two of the locomotive units that were on that train were leased to MMA by CIT Equipment pursuant to Schedule No. 01 to the Locomotive Master Lease.

8. The CIT Parties are included in the definition of "Released Parties" under the Plan and, accordingly, will be the beneficiaries of the Releases and Injunctions contained in the Plan if confirmed.

THE PLAN RELEASES AND INJUNCTIONS

A. Background to the CIT Parties' Derailment Claims

9. CIT has been named as a defendant in seven of the wrongful death suits arising from the Derailment filed in the Circuit Court of Cook County, Illinois (collectively, the "Derailment Wrongful Death Suits"). In addition, CIT Equipment was named as a defendant in the class action related to the Derailment pending in the Québec Superior Court for the Judicial District of Mégantic (the "Québec Class Action").

10. The CIT Parties have significant claims against Montréal Maine & Atlantic Railway Ltd., the above-captioned debtor ("MMA" or the "Debtor"), for, *inter alia*, contribution and indemnity on account of the Derailment. On June 11, 2014, CIT and CIT Equipment filed several proofs of claim on against MMA's estate that included such contribution and indemnity claims. Absent confirmation of the Plan and the effectiveness of the Releases and Injunctions contained therein in favor of CIT, CIT intends to pursue its claims against the MMA estate. In addition, certain of the CIT Parties (including CIT and CIT Equipment) are entitled to protection under the XL Policies. Absent confirmation of the Plan and the effectiveness of the Releases and Injunctions, CIT and CIT Equipment intend to pursue all their rights to coverage under the XL Policies.

B. The CIT Parties Have Contributed Substantial Assets to the MMA and MMAC Estates

11. In an effort to resolve the contingent claims of the CIT Parties against the MMA and MMAC estates and the alleged claims of Derailment victims against the CIT Parties, representatives of the CIT Parties engaged in substantial settlement negotiations with, among other constituents, Robert J. Keach, trustee for the Debtor's Chapter 11 Case (the "Trustee"). After several months of good faith, arm's-length negotiation, the CIT Parties agreed to contribute \$5,000,000 to the settlement fund formulated by the Trustee for satisfaction of

Derailment Claims against the Debtor (the "Settlement Payment"), 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. In addition, subject to the same terms and conditions, CIT Parties agreed to release any claims against the XL Policies (the "Insurance Claims").

12. CIT Equipment and Flex Leasing also agreed, pursuant to the Settlement Agreement, to waive their commercial claims against MMA. In particular, CIT Equipment agreed to waive its commercial claims for (i) outstanding car hire revenues owed under the CIT Equipment Railcar Leases in an aggregate amount of \$424,136.19 (which includes a claim in the amount of \$174,500.69 that is entitled to administrative expense priority under section 1171(b) of the Bankruptcy Code and a claim in the amount of \$136,380.00 that is secured pursuant to CIT Equipment's rights of setoff under sections 506(a) and 553 of the Bankruptcy Code); (ii) outstanding rental fees owed under the Locomotive Master Lease in an aggregate amount of \$19,375.00 that is entitled to administrative expense priority under section 1171(b) of the Bankruptcy Code; (iii) damages resulting from the rejection of the Locomotive Master Lease in an amount not less than \$455,625.00; (iv) damages in an unliquidated amount resulting from the rejection of the CIT Equipment Railcar Leases; and (v) damages in the amount of \$839,748.08, representing the depreciated value of certain railcars destroyed in the Derailment (collectively, the "CIT Equipment Commercial Claims"). Likewise, as part of the Settlement Agreement, Flex Leasing agreed to waive its commercial claims for (i) outstanding car hire revenues owed under the Flex Leasing 2004 Master Railcar Lease in an aggregate amount of \$416,312.93 (which includes a claim in the amount of \$188,837.23 that is entitled to administrative expense priority under section 1171(b) of the Bankruptcy Code and a claim in the amount of \$84,000.00 that is secured pursuant to Flex Leasing's rights of setoff under

section 506(a) and 553 of the Bankruptcy Code) and (ii) damages in an unliquidated amount resulting from the rejection of the Flex Leasing 2004 Master Railcar Lease (collectively, the “Flex Leasing Commercial Claims” and, together with the CIT Equipment Commercial Claims, the “Commercial Claims”). The waiver of the CIT Parties’ contribution and indemnification claims relating to the Derailment, the Settlement Payment, the release of the Insurance Claims, and the waiver of the Commercial Claims are referred to herein collectively as the “Settlement Consideration.”

13. CIT ultimately agreed to settle with the Trustee in part to avoid the expense and delay of protracted litigation relating to CIT’s alleged liability for the Derailment. That being said, CIT has strong legal and factual defenses to all claims relating to the Derailment.

14. CIT believes that it is thus by no means certain that MMA’s Derailment creditors would be able to realize through litigation the significant value of the Settlement Consideration that will be contributed by and on behalf of the CIT Parties to the MMA estate pursuant to the Settlement Agreement, and MMA’s creditors certainly would not be able to realize any recovery whatsoever from the CIT Parties without incurring the delay, expense and risks of litigation. Under these circumstances and by any measure, the total Settlement Consideration to the MMA estate by and on behalf of the CIT Parties is “substantial.”

C. The Releases and Injunctions Are Essential to the Success of the Plan

15. The Releases and Injunctions apply to the CIT Parties. The Settlement Agreement requires the CIT Parties to receive global releases and be the beneficiaries of injunctions protecting CIT from any and all claims by anyone related in any way to MMA or the Derailment. The global releases and injunctions required under CIT’s Settlement Agreement are to be achieved through confirmation of a plan in MMA’s bankruptcy case.

16. CIT and CIT Equipment would not have settled with the Trustee if the CIT Parties were not 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 CIT's insurers, as well as the corporate affiliates, officers, directors, agents and employees of CIT and CIT Equipment would leave CIT and CIT Equipment at risk for future suits. There is no way that CIT and CIT Equipment would settle with the Trustee under such circumstances. Thus, the third party releases and injunctions were critical to achieving the proposed settlement, which will not be effective if the Plan is not confirmed with the Releases and Injunctions.

17. By the conclusion of the negotiations, the CIT Parties were only willing to negotiate and enter into a settlement on the condition that any settlement was a final settlement of all MMA- and Derailment-related liability—not only that of CIT and CIT Equipment, but any potential liability of related parties, including CIT's direct and indirect affiliates and their present and former officers, directors, agents, employees, and insurers. It was with this understanding that CIT agreed to make the significant contribution in the form of the Settlement Consideration to the MMA estate.

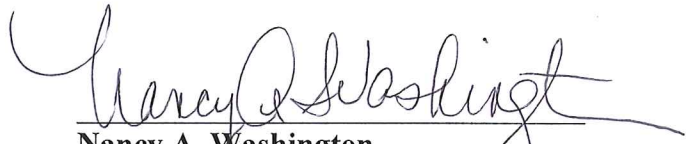
18. In light of CIT's defenses to liability, it is by no means certain that MMA's Derailment creditors would be able to recover any amounts whatsoever from any of the CIT Parties if the Plan is not confirmed and the Releases and Injunctions contained therein are not made effective.

19. For these reasons, I believe that the Releases and Injunctions in favor of the CIT Parties, its agents and affiliates are not only appropriate but are in the best interests of MMA's creditors and are essential to consummation of the proposed 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

A handwritten signature in dark ink, appearing to read "Nancy A. Washington", written over a horizontal line.

Nancy A. Washington
Senior Vice President and Chief Litigation Counsel
CIT Group, Inc.

[signature page for [] declaration]