

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

**DECLARATION OF EDWARD A. BURKHARDT, CHAIRMAN OF THE BOARD OF
DIRECTORS OF MONTREAL, MAINE & ATLANTIC RAILWAY, LTD., IN
SUPPORT OF CONFIRMATION OF TRUSTEE'S REVISED FIRST AMENDED
PLAN OF LIQUIDATION DATED JULY 15, 2015**

I, Edward A. Burkhardt, 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 the Chairman of the Board of Directors of Debtor Montreal, Maine & Atlantic Railway, Ltd. I am authorized to make this declaration on behalf of the directors and officers of Montreal, Maine & Atlantic Railway, Ltd. (the "D&O Parties") who are subject to that certain Plan Support & Settlement Agreement executed as of March 30, 2015 (the "Settlement Agreement").

3. The D&O Parties include Edward A. Burkhardt, Larry Parsons, Steven J. Lee, Stephen Archer, Robert C. Grindrod, Joseph R. McGonigle, Gaynor Ryan, M. Donald Gardner, Jr., Fred Yocum, Yves Bourdon and James Howard, each of whom is or was a director or officer of MMA, MMAC, MMA Corporation and/or LMS and who is, individually and in their capacity as a director or officer of MMA, MMAC, MMA Corporation and/or LMS, a party to

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").

the Settlement Agreement. The D&O 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.

4. All facts set forth herein are based on my personal knowledge, upon information provided to me, upon my review of relevant documents, or on my opinion based upon my experience and knowledge of the Debtor and the D&O Parties. If I were called to testify, I could and would testify competently to the facts set forth herein.

The Plan Releases and Injunctions

A. MMA and the D&O Parties Share an Identity of Interest with Respect to the Claims Covered by the Releases and Injunctions

5. 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 Canada comprised of five locomotives and 72 railcars carrying crude oil derailed in Lac-Mégantic, Quebec, Canada (the "Derailment").

6. Certain of the D&O Parties are presently defendants in lawsuits (i) originally filed in state court in Cook County, Illinois and later transferred to the District of Maine (the "Transferred Cases"), (ii) filed in various state courts but not yet transferred to the District of Maine due to orders staying all proceedings in such lawsuits (the "Non-Transferred Cases"), and (iii) a class action pending in the Quebec Superior Court for the Judicial District of Mégantic (the "Québec Class Action" and together with the "Transferred Cases" and "Non-Transferred Cases," the "Pending Cases"). Each of the Pending Cases relates to the Derailment. The D&O Parties who have not been named in the Pending Cases are also subject to potential future claims in the Pending Cases and/or, together with the D&O Parties named in the Pending Cases, are subject to other potential lawsuits related to the Derailment and/or are

subject to potential cross-claims asserted by co-defendants for contribution and indemnity in the Pending Cases or other lawsuits related to the Derailment.

7. The D&O Parties have filed proofs of claim against MMA for, *inter alia*, indemnification under the Debtor's by-laws and related corporate documents. Absent confirmation of the Plan and the effectiveness of the Releases and Injunctions contained therein in favor of the D&O Parties, the D&O Parties intend to pursue their claims against the MMA estate.

8. In addition, the D&O Parties may have 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 the D&O Parties against another Contributing Party would serve to increase the size of such Contributing Parties' claims against the MMA estate.

9. Moreover, the D&O Parties share insurance protection with the Debtor under various insurance policies, including the XL Policies and the Great American Policy. Absent confirmation of the Plan and the effectiveness of the Releases and Injunctions, the D&O Parties intend to pursue all rights to coverage under the XL Policies and Great American Policy, thus potentially preventing access or diluting the policy proceeds available to victims of the Derailment.

B. The D&O Parties Have Contributed Substantial Assets to the MMA and MMA Canada Estates

10. The D&O Parties engaged in substantial settlement negotiations with Robert J. Keach, trustee for the Debtor's Chapter 11 Case (the "Trustee") and the Monitor appointed in the CCAA Case for MMA Canada (the "Monitor") to resolve various claims arising out of the

Derailment. After many months of good faith, arm's-length negotiation, the D&O Parties, the Trustee, the Monitor and the XL Companies (under a separate agreement) agreed to a comprehensive settlement under which the D&O Parties and their insurers would contribute to the settlement fund formulated by the Trustee and the Monitor for satisfaction of Claims against the Debtor and MMA Canada, subject to the terms and conditions of the Settlement Agreement, which terms and conditions include the requirement that the Releases and Injunctions become effective.

11. The D&O Parties ultimately agreed to the Settlement Agreement to avoid the expense and delay of protracted litigation relating to the D&O Parties' alleged liability for the Derailment and any related rights to insurance coverage for such claims. In the Absence of the Settlement Agreement, the D&O Parties would vigorously defend any claim asserted against them relating the Derailment and would assert coverage for any such claims under applicable insurance policies, including the XL Policies and the Great American Policy.

C. **The Releases and Injunction are Essential to the Effectiveness of the Settlement Agreement**

12. The Settlement Agreement requires the D&O Parties to receive global releases and injunctions protecting them from any and all claims, by anyone, that are related in any way to MMA or the Derailment. The global releases and injunctions required under the Settlement Agreement are to be achieved through confirmation of a plan in MMA's bankruptcy case.

13. The D&O 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 of the D&O Parties in their individual capacities and in their capacity as directors and officers of the Debtor. It was with this understanding that the D&O Parties agreed to make their significant contribution to the MMA estate.

14. The D&O Parties and their insurers would not have settled with the Trustee if they 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..

15. Finally, I, on behalf of the D&O Parties, 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

A handwritten signature in black ink, appearing to read "Edward Burkhardt". The signature is written in a cursive style with a long horizontal stroke at the end.

Edward A Burkhardt

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[signature page for [] declaration]