

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.,

Debtor.

Chapter 11  
Case No. 13-10670

**DECLARATION OF DEVLAR ENERGY MARKETING, LLC IN SUPPORT OF  
CONFIRMATION OF TRUSTEE'S REVISED FIRST AMENDED  
PLAN OF LIQUIDATION DATED JULY 15, 2015**

I, E.D. Stinson, 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").<sup>1</sup>

2. I am the Senior Vice President of Devlar Energy Marketing, LLC ("Devlar"), with a principal place of business at 727 N. Waco, Suite 400, Wichita, KS 67203. Devlar's entity parents are Lario Oil & Gas Company and Devo Trading & Consulting Company (collectively referred to as "Devlar"). I am authorized to make this declaration on Devlar'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 Devlar organization, upon my review of relevant documents, or on my opinion based upon my experience and knowledge of Devlar's operations. If I were called to testify, I could and would testify competently to the facts set forth herein.

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<sup>1</sup> 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. 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 (5) locomotives and seventy-two (72) railcars carrying crude oil, derailed in Lac- Mégantic, Quebec, Canada (the “Derailment”). Devlar may have sold some of the crude oil that was contained within some of the railcars.

5. Devlar 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 Devlar Share an Identity of Interest with Respect to the Claims Covered by the Releases and Injunctions**

6. Devlar is presently a defendant in at least three lawsuits in federal and state courts connected with the Derailment.

7. Devlar 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 Devlar and its affiliates, Devlar intends to pursue its claims against the MMA estate.

8. In addition, Devlar 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 Devlar against another contributing party would serve to increase the size of such contributing parties’ claims against the MMA estate.

**B. Devlar Has Contributed Substantial Assets to the MMA and MMA Canada Estates**

9. Devlar 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, Devlar 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, Devlar 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 Devlar to the MMA estate pursuant to the Settlement Agreement, and certainly would not be able to realize any recovery whatsoever from Devlar 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 Devlar is "substantial."

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

12. The Releases and Injunctions apply to Devlar. The Settlement Agreement requires Devlar 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 Devlar Settlement Agreement are to be achieved through confirmation of a plan in MMA's bankruptcy case.

13. Devlar 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 Devlar, but also any potential liability of related parties, Devlar’s direct and indirect affiliates and their present and former officers, directors, agents, and employees. Devlar thus agreed to make its significant contribution to the MMA estate.

14. Devlar 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 Devlar’s corporate affiliates, officers, directors, agents and employees would leave Devlar 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 Devlar vulnerable to future claims, and Devlar 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 Devlar’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 Devlar if the Plan were not confirmed and the Releases and Injunctions contained therein were not made effective.

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

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

/s/ E.D. Stinson

**E.D. Stinson**

Senior Vice President

Devlar Energy Marketing, LLC