

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670  
Chapter 11

**DECLARATION OF SMBC RAIL SERVICES, LLC F/K/A FLAGSHIP RAIL SERVICES, LLC, AND TLP RAIL TRUST I, A DELAWARE STATUTORY TRUST IN SUPPORT OF CONFIRMATION OF TRUSTEE'S REVISED FIRST AMENDED PLAN OF LIQUIDATION DATED JULY 15, 2015**

I, Timothy D. Stevens, 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 Chief Risk Office of SMBC Rail Services LLC f/k/a Flagship Rail Services, headquartered at 300 S. Riverside Plaza, Suite 1925, Chicago, Illinois 60606. I am authorized to make this declaration on behalf of SMBC Rail Services, LLC and TLP Rail Trust I, a Delaware Statutory Trust of which SMBC Rail Services, LLC is the owner participant and sole beneficiary. Hereafter, SMBC Rail Services, LLC and TLP Rail Trust I are referred to as "SMBC" or the "Released Party."

3. All facts set forth herein are based on my personal knowledge, on information supplied to me by others within the SMBC organization, upon my review of relevant documents, or on my opinion based upon my experience and knowledge of SMBC'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. SMBC (TLP Rail Trust I) was the owner of eight railcars (the “Railcars”) that were involved in the Derailment, as that terms is defined herein.

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”). The Railcars were destroyed in the Derailment. Certain claims have been made by the Trustee in this action and by other parties due to the Railcars being part of the train that derailed.

6. SMBC and its affiliates and insurers 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. MMA and SMBC Share an Identity of Interest with Respect to the Claims Covered by the Releases and Injunctions**

7. SMBC is presently a defendant in not less than 35 lawsuits filed in state court in Cook County, Illinois, as well as not less than 3 other lawsuits that were filed in Cook County and later transferred to the District of Maine, as well as a class action pending in the Quebec Superior Court for the Judicial District of Mégantic (the “Québec Class Action”), each in connection with the Derailment. SMBC is also subject to cross-claims asserted by co-defendants for contribution and indemnity in numerous and possibly all of the cases.

8. SMBC has significant claims against MMA for, *inter alia*, contribution and indemnity. On June 12, 2014, TILC on behalf of TLP Rail Trust I filed a proof of claim (Claim No. 132-1) against MMA. Absent confirmation of the Plan and the effectiveness of the

Releases and Injunctions contained therein in favor of SMBC and its affiliates, SMBC intends to pursue its claims against the MMA estate.

9. In addition, SMBC has 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 SMBC against another Contributing Party would serve to increase the size of such Contributing Parties' claims against the MMA estate.

10. Moreover, SMBC is entitled to protection under the certain insurance policies issued to parties with whom the MMA estate has entered into valuable settlements. It is my opinion that the MMA estate would not have convinced certain insurers to settle but for anticipated confirmation of the Plan in the form proposed by the Trustee. Absent confirmation of the Plan and the effectiveness of the Releases and Injunctions, SMBC intends to pursue all rights to coverage under these insurance policies, thus preventing access or diluting the policy proceeds available to victims of the Derailment.

11. Given that any liability of SMBC related to the Derailment would cause a like increase in the amount of claims assertable against the MMA estate, there is plainly an identity of interests between MMA and SMBC.

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

12. In an effort to resolve SMBC's contingent claims against the MMA estate and the alleged claims of Derailment victims against SMBC, SMBC engaged in substantial settlement negotiations with Robert J. Keach, trustee for the Debtor's Chapter 11 Case (the "Trustee"). After several months of good faith, arm's-length negotiation, SMBC and its insurers 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.

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

14. SMBC believes that 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 SMBC to the MMA estate pursuant to the Settlement Agreement, and certainly would not be able to realize any recovery whatsoever from SMBC 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 any others). Under these circumstances and by any measure, the total settlement contribution to the MMA estate by and on behalf of SMBC is “substantial.”

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

15. The Releases and Injunctions apply to SMBC and its affiliates. The Settlement Agreement requires SMBC and its affiliates to receive global releases and an 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 SMBC Settlement Agreement are to be achieved through confirmation of a plan in MMA’s bankruptcy case.

16. SMBC and its insurers 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 SMBC and its insurers, but also any potential liability of related parties, including SMBC’s direct and indirect affiliates and their present and former officers,

directors, agents, insurers and employees. It was with this understanding that SMBC and the insurers agreed to make their significant contribution to the MMA estate.

17. SMBC and its insurers would not have settled with the Trustee if SMBC and its affiliates 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 SMBC's insurers, as well as corporate affiliates, officers, directors, agents and employees would leave SMBC 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 would make SMBC vulnerable to future claims for indemnity. There is no way that SMBC would settle 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.

18. In light of SMBC'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 SMBC if the Plan were not confirmed and the Releases and Injunctions contained therein were not made effective. And under that scenario, each judgment awarded to an MMA Derailment creditor would reduce the amount available to pay to other tort creditors, as each claim paid under certain other parties' insurance policies would reduce the amount available to satisfy other claims.

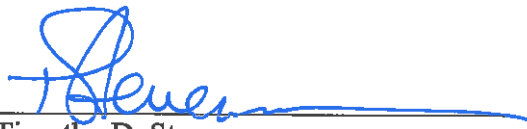
19. For these reasons, I believe that the Releases and Injunctions in favor of SMBC, its insurers, and agents and affiliates of each are not only appropriate but are in the best interests of MMA's creditors and are essential to consummation of the proposed Plan.

20. Finally, I, on behalf of SMBC, 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 17, 2015

  
Timothy D. Stevens  
Chief Risk Officer  
SMBC Rail Services LLC