

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**ORDER CONFIRMING TRUSTEE'S REVISED FIRST AMENDED PLAN
OF LIQUIDATION DATED JULY 15, 2015 AND AUTHORIZING AND
DIRECTING CERTAIN ACTIONS IN CONNECTION THEREWITH**

WHEREAS, on March 31, 2015, Robert J. Keach, the chapter 11 trustee (the "Trustee") of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), filed with the United States Bankruptcy Court for the District of Maine (the "Court") the *Trustee's Plan of Liquidation Dated March 31, 2015* [D.E. 1384] and the *Disclosure Statement for the Trustee's Plan of Liquidation Dated March 31, 2015* [D.E. No. 1385];

WHEREAS, on June 5, 2015, the Trustee filed with the Court the *Notice of Filing Plan Supplement* [D.E. 1450];

WHEREAS, on July 7, 2015, the Trustee filed with the Court the *Trustee's First Amended Plan of Liquidation Dated July 7, 2015* [D.E. 1495] and the *First Amended Disclosure Statement with Respect to Trustee's Plan of Liquidation Dated July 7, 2015* [D.E. No. 1497];

WHEREAS, on July 8, 2015, the Trustee filed with the Court the *Notice of Filing Revised Exhibits to Plan Supplement* [D.E. 1502];

WHEREAS, on July 15, 2015, the Trustee filed the *Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1534] (as may be amended in accordance with the

Disclosure Statement Order, the “Plan”¹) and the *Revised First Amended Disclosure Statement with Respect to Trustee’s Plan of Liquidation Dated July 15, 2015* [D.E. No. 1535] (as may be amended in accordance with the Disclosure Statement Order, the “Disclosure Statement”);

WHEREAS, on July 17, 2015, this Court entered the *Order (I) Approving Proposed Disclosure Statement; (II) Establishing Notice, Solicitation and Voting Procedures; (III) Scheduling Confirmation Hearing; and (IV) Establishing Notice and Objection Procedures for Confirmation of the Plan* [D.E. 1544] (the “Disclosure Statement Order”);

WHEREAS, on July 22, 2015, the Trustee filed the (a) *Notice of Order (I) Approving Proposed Disclosure Statement; (II) Establishing Notice, Solicitation and Voting Procedures; (III) Scheduling Confirmation Hearing; and (IV) Establishing Notice and Objection Procedures for Confirmation of the Plan* [D.E. 1548] and (b) *Notice to Holders of Derailment Claims of Order (I) Approving Proposed Disclosure Statement; (II) Establishing Notice, Solicitation and Voting Procedures; (III) Scheduling Confirmation Hearing; and (IV) Establishing Notice and Objection Procedures for Confirmation of the Plan* [D.E. 1549];

WHEREAS, also on July 22, 2015, the Trustee caused the Confirmation Hearing Notice to be published in the Bangor Daily News; Portland Press Herald; Wall Street Journal; and in the following Canadian newspapers: La Presse (in French); La Tribune (in French); The Gazette (in English); and The Sherbrooke Record (in English), as directed by the Disclosure Statement Order and as set forth in the *Certificate of Publication related to the Confirmation Hearing Notice* [D.E. 1622] (the “Certificate of Publication”);

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan or the Trustee’s *Motion for an Order (I) Approving Proposed Disclosure Statement; (II) Establishing Notice, Solicitation and Voting Procedures; (III) Scheduling Confirmation Hearing; and (IV) Establishing Notice and Objection Procedures for Confirmation of the Plan* [D.E. 1432] (the “Disclosure Statement Motion”), as applicable.

WHEREAS, on July 24, 2015, the Trustee caused the Confirmation Hearing Notice to be published in L'Echo de Frontenac (in French), as directed by the Disclosure Statement Order and as set forth in the Certificate of Publication;

WHEREAS, Solicitation Packages conforming to the requirements of the Disclosure Statement Order were transmitted to creditors and parties-in-interest in accordance with the Disclosure Statement Order, as set forth in the *Affidavit of Service of Solicitation Materials and Chapter 15 Documents* [D.E. 1562] (the "Certificate of Service");

WHEREAS, the following objections to confirmation of the Plan were timely filed (collectively, the "Objections"): (a) *Objection of New Brunswick Southern Railway Company Limited and Maine Northern Railway Company to Confirmation of the Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1656]; (b) *Canadian Pacific Railway Company's objection to trustee's July 15, 2015 plan of liquidation* [D.E. 1657]; and (c) *Wheeling & Lake Erie Railway Company's Objection to Confirmation of the Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1659];

WHEREAS, on September 17, 2015, Prime Clerk, LLC ("Prime Clerk"), the Trustee's noticing and solicitation agent, filed 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 Liquidation Dated July 15, 2015* [D.E. 1689] (the "Voting Certification") certifying the results of the ballot tabulation for the votes to accept or reject the Plan;

WHEREAS, on September 17, 2015, the Trustee filed the *Trustee's Memorandum of Law in Support of, and Omnibus Reply to Objections to, Confirmation of the Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1684] (the "Confirmation Brief");

WHEREAS, on September 17, 2015, the Trustee filed the following declarations in support of confirmation of the Plan (collectively with the Settling Defendant Declarations in Support and the XL Declaration in Support, each as defined below, the “Declarations in Support”):

- (a) *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 [D.E. 1686];*
- (b) *Declaration of Andrew Adessky, Monitor in the CCAA Case, in Support of Confirmation of Trustee’s Revised First Amended Plan of Liquidation Dated July 15, 2015 [D.E. 1687]; and*
- (c) *Declaration of Fred C. Caruso in Support of Confirmation of Trustee’s Revised First Amended Plan of Liquidation Dated July 15, 2015 [D.E. 1688];*

WHEREAS, on September 22 and 23, 2015, the Trustee filed the following declarations in support of confirmation of the Plan (collectively, the “Settling Defendant Declarations in Support”):

- (a) *Declaration of Stacey McLey in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015 [D.E. 1697];*
- (b) *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 [D.E. 1698];*
- (c) *Declaration of ConocoPhillips Company in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015 [D.E. 1699];*
- (d) *Declaration of Edward A. Burkhardt (D&O Parties), 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 [D.E. 1700];*
- (e) *Declaration of Devlar Energy Marketing, LLC in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015 [D.E. 1701];*

- (f) *Declaration of Enserco Energy, LLC in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1702];
- (g) *Declaration of Richard Seymour of First Union Rail Corporation Regarding Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1703];
- (h) *Declaration of Enerplus Resources (USA) Corporation in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation* [D.E. 1704];
- (i) *Declaration of Oliver W.R. Champagne on behalf of General Electric Railcar Services LLC in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1705];
- (j) *Declaration of Golden Eye Resources LLC in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1706];
- (k) *Declaration of Halcon Resources Corporation in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1707];
- (l) *Declaration of Inland Oil & Gas Corporation in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1708];
- (m) *Declaration of Kodiak Oil & Gas Corp. (N/K/A Whiting Canadian Holding Company, ULC) in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1709];
- (n) *Declaration of Oasis Petroleum, LLC in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1710];
- (o) *Declaration of Oasis Petroleum, Inc. in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1711];
- (p) *Declaration of Tracker Resources Development III, LLC in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1712];
- (q) *Declaration of Whiting Petroleum Corporation in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1713];

- (r) *Declaration of the UTCC Parties in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1714];
- (s) *Declaration of QEP Resources, Inc. in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1715];
- (t) *Declaration of Edward A. Burkhardt on behalf of the Rail World Parties in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1716];
- (u) *Declaration of Shell Oil Company in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1717];
- (v) *Declaration of Slawson Exploration Company, Inc. in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1718];
- (w) *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* [D.E. 1719];
- (x) *Declaration of Shell Trading (US) Company in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1720];
- (y) *Declaration of Trinity Industries, Inc. in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1721];
- (z) *Declaration of Trinity Industries Leasing Company in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1722];
- (aa) *Declaration of Trinity Rail Leasing 2012 LLC in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1723];
- (bb) *Declaration of Trinity Tank Car, Inc. in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1724];
- (cc) *Declaration of R. Alexander Lake, General Counsel of World Fuel Services Corporation, in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1725];

- (dd) *Declaration of Incorr Energy Group, LLC in Support of Confirmation of the Trustee's Plan of Liquidation Dated July 15, 2015* [D.E. 1727]; and
- (ee) *Declaration of Charlene Ridgeway on behalf of the Hartford Casualty Insurance Company in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1728].

WHEREAS, on September 22, 2015, the Trustee filed the *Declaration of D. Jackson Loughhead (XL Companies) in Support of Confirmation of the Trustee's Plan of Liquidation* [D.E. 1726] (the "XL Declaration in Support");

WHEREAS, this Court conducted a hearing on September 24, 2015 (the "Confirmation Hearing") to consider confirmation of the Plan;

NOW, THEREFORE, based upon the Court's review and consideration of (i) the documents filed in this case, (ii) the record of the Confirmation Hearing (including the statements of counsel in support of confirmation at the Confirmation Hearing and all testimony presented and evidence admitted at the Confirmation Hearing), (iii) the declarations filed in support of confirmation of the Plan, including the Voting Certification, the Certificate of Publication and the Declarations in Support, (iv) the Confirmation Brief, and (v) the entire record of this chapter 11 case (the "Chapter 11 Case") and the Chapter 15 Case; and this Court finding that (a) notice of the Voting Deadline, the Confirmation Objection Deadline, and the Confirmation Hearing and the opportunity of any party in interest to object to confirmation of the Plan were adequate and appropriate, in accordance with Bankruptcy Rule 2002(b) and the Disclosure Statement Order, as to all parties to be affected by the Plan and the transactions contemplated thereby, and (b) the legal and factual bases presented at the Confirmation Hearing and as set forth in this Confirmation Order establish just cause for the relief granted herein; and after due deliberation thereon, and good cause appearing therefor, the Court hereby makes the following findings of fact, conclusions of law, and orders:

FINDINGS OF FACT AND CONCLUSIONS OF LAW²

1. Jurisdiction and Venue. This Court has jurisdiction over this Chapter 11 Case pursuant to 28 U.S.C. §§ 157 and 1334. Confirmation of the Plan is a “core proceeding” pursuant to 28 U.S.C. §§ 157(b)(2)(L) and (O), and this Court has jurisdiction, as well as constitutional authority, to finally determine whether the Plan complies with the applicable provisions of the Bankruptcy Code, to determine whether the Plan should be confirmed and to enter and enforce a final order with respect hereto. Venue of this Chapter 11 Case is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Chapter 11 and Chapter 15 Docket. Judicial notice is hereby taken of the docket of the Chapter 11 Case and Chapter 15 Case maintained by the Clerk of this Court, including, without limitation, all pleadings and other documents filed, all orders entered, and transcripts of, and all evidence and arguments made, proffered, or adduced at, the hearings held before the Court during the pendency of the Chapter 11 Case and the Chapter 15 Case.

A. Compliance with the Bankruptcy Rules and Local Rules

3. The Plan complies with the applicable Bankruptcy Rules and Local Rules of the United States Bankruptcy Court for the District of Maine (the “Local Rules”), including, without limitation, Bankruptcy Rules 3016, 3017 and 3018. In particular:

- (a) The Plan is dated and identifies the entity submitting it, thereby satisfying Bankruptcy Rule 3016(a) and Local Rule 3018-1.
- (b) The filing of the Disclosure Statement with the Court satisfies Bankruptcy Rule 3016(b).
- (c) All acts to be enjoined and identification of entities subject to such injunction under the Plan are set forth in specific and conspicuous bold text in the Plan and Disclosure Statement, thereby satisfying Bankruptcy Rule 3016(c).

² Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052.

- (d) The Trustee has given notice of the Confirmation Hearing and the Confirmation Objection Deadline as required by Bankruptcy Rule 3017(d) and Local Rule 3017-3. Such notice, including by publication in several newspapers, including a newspaper of national circulation in both the United States and in Canada, in both French and English, was good and sufficient under the particular circumstances, and no other or further notice is or shall be required. In addition, the opportunity of any party in interest to object to confirmation of the Plan was adequate, fair and reasonable, in accordance with Bankruptcy Rule 2002(b) and the Disclosure Statement Order, as to all parties to be affected by the Plan and the transactions contemplated thereby.
- (e) The Trustee has also provided further notice of the releases and injunctions in the Plan as required by Bankruptcy Rule 3017(f). In addition to posting links providing all parties in interest with access to, among other documents, copies of the Plan, the Disclosure Statement, the Disclosure Statement Order and the Confirmation Hearing Notice on the website maintained by Prime Clerk, Prime Clerk mailed the Voting Solicitation Packages to approximately 7,200 voting parties. It also mailed Non-Voting Solicitation Packages and Notice Solicitation Packages (each including the Confirmation Hearing Notice), as applicable and in accordance with the Disclosure Statement Order, to approximately 1,300 additional non-voting parties who might be subject to the Releases and Injunctions. Further, the Confirmation Hearing Notice was published in several U.S. and Canadian newspapers, in both French and English. Such notice was good and sufficient under the circumstances, and no other and further notice is or shall be required.
- (f) Notice of the Voting Deadline was adequate, fair and reasonable, and the solicitation of votes to accept or reject the Plan satisfies Bankruptcy Rule 3018. The Plan was transmitted to all creditors entitled to vote on the Plan, and sufficient time was prescribed for such creditors to vote to accept or reject the Plan, thereby satisfying the requirements of Bankruptcy Rule 3018.

B. Bankruptcy Code Sections 1129(a)(1)—Compliance of the Plan with Applicable Provisions of the Bankruptcy Code

4. The Trustee has met his burden of demonstrating that the Plan complies with the applicable provisions of the Bankruptcy Code by clear and convincing evidence, thus satisfying the requirements of section 1129(a)(1) thereof.

i. Sections 1122 and 1123(a)(1)—Proper Classification

5. The classification of Claims and Interests under the Plan is proper under the Bankruptcy Code. Pursuant to Bankruptcy Code sections 1122(a) and 1123(a)(1), Article 3 of the Plan provides for the separate classification of Claims and Interests into fifteen (15) Classes, based on differences in the legal nature or priority of such Claims and Interests (other than Administrative Expense Claims, Priority Tax Claims and statutory fees owed to the U.S. Trustee, which are addressed in Article 2 and 12.4 of the Plan and which are not required to be designated as separate Classes pursuant to Bankruptcy Code section 1123(a)(1)). Valid business, factual and legal reasons exist for the separate classification of the various Classes of Claims and Interests created under the Plan and the classifications were not done for any improper purpose. In addition, the creation of such Classes does not unfairly discriminate between or among holders of Claims or Interests.

6. As required by Bankruptcy Code section 1122(a), each Class of Claims and Interests contains only Claims or Interests that are substantially similar to the other Claims or Interests within that Class. Accordingly, the requirements of Bankruptcy Code sections 1122(a) and 1123(a)(1) have been satisfied.

ii. Section 1123(a)(2)—Specification of Unimpaired Classes.

7. Article 3 of the Plan specifies that Claims in Classes 1 through 7 are Unimpaired under the Plan. Accordingly, the requirements of Bankruptcy Code section 1123(a)(2) have been satisfied.

iii. Section 1123(a)(3)—Specification of Treatment of Impaired Classes.

8. Article 3 of the Plan specifies the treatment of each impaired Class under the Plan, including Classes 8 through 15. Accordingly, the requirements of Bankruptcy Code section 1123(a)(3) have been satisfied.

iv. Section 1123(a)(4)—No Discrimination.

9. Pursuant to Bankruptcy Code section 1123(a)(4), Article 3 of the Plan uniformly provides for the same treatment of each Claim or Interest in a particular Class, unless the holder of a particular Claim has agreed to a less favorable treatment with respect to such Claim or Interest. Accordingly, the requirements of Bankruptcy Code section 1123(a)(4) have been satisfied.

v. Section 1123(a)(5)—Adequate Means for Plan Implementation.

10. Pursuant to Bankruptcy Code section 1123(a)(5), Article 5 and various other provisions of the Plan specifically provide in detail adequate and proper means for the Plan's implementation, including, but not limited to: (a) approval 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) cancellation of existing agreements and continued corporate existence; and (h) authorization for certain effectuating transactions. Accordingly, the requirements of Bankruptcy Code section 1123(a)(5) have been satisfied.

vi. Section 1123(a)(6)—Voting Power of Equity Securities.

11. As provided in Article 6.6 of 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, thereby satisfying the requirements of Bankruptcy Code section 1123(a)(6).

vii. Section 1123(a)(7)—Selection of Officers and Directors.

12. Article 6.1(a) of the Plan, regarding the selection of the Estate Representative, is consistent with the interests of creditors and equity security holders and with public policy, thereby satisfying Bankruptcy Code section 1123(a)(7).

viii. Section 1123(b)—Discretionary Contents of the Plan.

13. The Plan contains various provisions that may be construed as discretionary, but are not required for confirmation under the Bankruptcy Code. As set forth below, such discretionary provisions comply with Bankruptcy Code section 1123(b) and are not inconsistent with the applicable provisions of the Bankruptcy Code. Thus, Bankruptcy Code section 1123(b) is satisfied.

(i) Section 1123(b)(1)-(2)—Claims and Executory Contracts

14. Pursuant to Bankruptcy Code sections 1123(b)(1) and 1123(b)(2), Article 3 of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Interests, and Article 8 of the Plan provides for the rejection of the executory contracts and unexpired leases of the Debtor not previously assumed or rejected and not pending assumption pursuant to Bankruptcy Code section 365.

(ii) Section 1123(b)(3)—Settlement, Releases, Exculpation, Injunction, and Preservation of Claims and Causes of Action

15. The Plan implements the Settlement Agreements as approved by this Confirmation Order. The Settlement Agreements are the product of extensive good-faith, arm's-length negotiations among the Trustee, MMA Canada and the Contributing Parties, each of which was represented by counsel. The Trustee has entered into the Settlement Agreements in exchange for fair and reasonable consideration. The Settlement Agreements are (a) within the reasonable range of possible litigation outcomes; (b) fair, equitable and reasonable; and (c) an

essential element of the resolution of the Chapter 11 Case and in the best interest of the Debtor's Estate. The Settlement Agreements (i) are within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a), (b) and (d); (ii) are an essential means of implementing the Plan pursuant to Bankruptcy Code section 1123(a)(5) and (b)(3); (iii) are an integral element of the transactions embodied in the Plan; (iv) confer material benefits on, and are in the best interests of, the Debtor, the Debtor's Estate and the Debtor's creditors; and (v) are vital to the overall objectives of the Plan to fully and finally resolve all Derailment-Related Causes of Action and claims among or against the parties in interest in the Chapter 11 Case.

16. The release of Claims described in Article 10 of the Plan constitutes a good-faith compromise and settlement of the matters covered thereby. Such compromises and settlements are made in exchange for the consideration identified in the Settlement Agreements; are in the best interests of the holders of Claims; are fair, equitable, and reasonable; and are integral elements of the Plan. Each of the release, indemnification and exculpation provisions set forth in the Plan (a) is within the jurisdiction of the Court under 28 U.S.C. §§ 1334(a) and (b); (b) is an essential means of implementing the Plan pursuant to section 1123(a)(5) of the Bankruptcy Code; (c) is an integral element of the Settlement Agreements identified in the Plan; (d) confers material benefits on, and is in the best interest of, the Debtor, the Estate and its creditors; (e) is important to the overall objectives of the Plan to finally resolve all Claims among or against the parties-in-interest in the Chapter 11 Case; and (f) is consistent with sections 105, 1123, 1129 and other applicable provisions of the Bankruptcy Code.

17. The third party releases and injunctions set forth in Article 10 of the Plan are appropriate because: (a) the Debtor and the third-party beneficiaries of the Releases and Injunctions share a unity of interest; (b) the third parties have contributed substantial assets

which are to be distributed to holders of Claims under the Plan; (c) the third party releases and injunctions are essential to the Settlement Agreements and the Plan; (d) the creditors who are affected by the third party releases have voted overwhelmingly in favor of the Plan; (e) the Plan provides a mechanism to resolve and make payment towards Claims of the affected creditors through the CCAA Plan and the WD Trust, and the Trustee has provided notice to affected creditors sufficient to provide them with the opportunity adequately to protect their interests; and (f) the facts and circumstances of this Chapter 11 Case sufficiently establish extraordinary circumstances to warrant approval of the third party releases and injunctions.

18. The releases by the Debtor, as set forth in Article 10.5(b)(i) of the Plan, are being provided as part of the Settlement Agreements, which themselves represent a global compromise that is supported by all major constituencies. In addition, the injunctions set forth in Article 10 of the Plan are necessary and appropriate to carry out the provisions of the Bankruptcy Code for purposes of section 105(a) of the Bankruptcy Code.

19. The exculpation provision set forth in Article 10.3 of the Plan shall be revised as follows (changes from the existing Plan language marked in bold italics):

As of the Effective Date, none of (a) the Trustee, (b) ***the Creditors' Committee***, (c) the Monitor, (d) MMA Canada, or (e) the members, representatives, accountants, financial advisors, consultants and attorneys of the entities described in (a) through (d) of this paragraph shall have or incur any liability to any person for any act taken or omission in connection with or related to the Chapter 11 Case, including but not limited to (i) formulating, preparing, disseminating, implementing, confirming, consummating or administrating this Plan (including soliciting acceptances or rejections thereof), (ii) the Disclosure Statement or any contract, release or other agreement or document entered into or any action taken or omitted to be taken in connection with this Plan or the Disclosure Statement, or (iii) any distributions made pursuant to this Plan, except for any acts determined by Final Order to have constituted willful misconduct, bad faith or gross negligence; ***provided that in the event that the Creditors' Committee (including each member of the Creditor's Committee solely in such member's capacity, and the Creditor's***

Committee's counsel and counsel's authorized agents and representatives) violates or breaches the Stipulation and Order Resolving Trustee's Motion for an Order Disbanding the Official Committee of Victims [D.E. 1671], this provision shall be void ab initio with respect to the Creditors' Committee (including each member of the Creditor's Committee in such member's individual capacity, such members' representatives and agents, and the Creditor's Committee's counsel and counsel's authorized agents and representatives).

As modified, the exculpation provision is appropriate under applicable law because it is part of a Plan proposed in good faith, was vital to the Plan formulation process and is appropriately limited in scope. The exculpation provision, including its carve-out for gross negligence and willful misconduct, is consistent with established practice in this jurisdiction and others.

(iii) Section 1123(b)(4)—Sale of XL Policy Interests to Good Faith Purchasers

20. The XL Settlement Agreement was negotiated and proposed, and has been entered into by the parties to the XL Settlement Agreement, in good faith, from arms-length bargaining positions, and without fraud or collusion. Each party to the XL Settlement Agreement was represented by counsel. The sale consideration to be realized by the Debtor's bankruptcy estate pursuant to the XL Settlement Agreement is fair and reasonable. The XL Companies are good faith purchasers of MMA's and MMA Canada's interests in the XL Policies (the "XL Policy Interests") for value within the meaning of section 363(m) of the Bankruptcy Code and are entitled to the protection thereof. Neither the Trustee, nor the XL Companies, nor any of their representatives, have engaged in any conduct that would (i) cause or permit the XL Settlement Agreement or the sale of the XL Policy Interests to be avoided under Section 363(n) of the Bankruptcy Code; (ii) cause or permit any amounts, costs, attorneys' fees, expenses or punitive damages to be recovered under Section 363(n) of the Bankruptcy Code; or (iii) prevent the application of Section 363(m) of the Bankruptcy Code.

ix. Section 1172—Contents of Railroad Reorganization Plan

21. The Trustee has sold the assets of the Debtor as a going concern, thus facilitating the continuation of rail service by a third party. To the extent applicable, Bankruptcy Code section 1172(a) is thus satisfied, and no other provisions of section 1172 are applicable.

C. Compliance with the Balance of Bankruptcy Code Section 1129(a)

22. Section 1129(a)(2). The Trustee has complied with the applicable provisions of the Bankruptcy Code, including, without limitation, Bankruptcy Code section 1125, thus satisfying the requirements of Bankruptcy Code section 1129(a)(2). The Trustee and his present and former representatives, advisors, attorneys and agents have fairly, in good faith within the meaning of Bankruptcy Code section 1125(e), and in a manner consistent with the applicable provisions of the Disclosure Statement, the Disclosure Statement Order, the Bankruptcy Code, the Bankruptcy Rules and all other applicable rules, laws and regulations, (a) solicited and tabulated votes on the Plan and (b) participated in the activities described in Bankruptcy Code section 1125, and are therefore entitled to the protections afforded by Bankruptcy Code section 1125(e) and the Releases, exculpation, and Third-Party Injunction provisions set forth in Article 10 of the Plan.

23. Section 1129(a)(3). The Plan, and the compromises and settlements embodied therein, have been proposed in good faith and not by any means forbidden by law, thus satisfying the requirements of Bankruptcy Code section 1129(a)(3).

24. Section 1129(a)(4). Subject to the provisions of Section 5.9 and 6.1 of the Plan, all payments that have been made or are to be made under the Plan or by any person acquiring property under the Plan, for services or for costs and expenses in, or in connection with the Chapter 11 Case, or in connection with the Plan and incident to the Chapter 11 Case, have been

approved by, or will be subject to the approval of, the Bankruptcy Court as reasonable, thus satisfying the requirements of Bankruptcy Code section 1129(a)(4).

25. Section 1129(a)(5). The Trustee has made available all necessary information with respect to the identity of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee or the successor to the Debtor under the Plan (including, without limitation, the Estate Representative), and the appointment to such office of each individual is consistent with the interests of creditors and equity security holders and with public policy, thereby satisfying the requirements of Bankruptcy Code section 1129(a)(5).

26. Section 1129(a)(6). The Debtor's business does not involve the establishment of rates over which any regulatory commission has jurisdiction or will have jurisdiction after confirmation. Thus, Bankruptcy Code section 1129(a)(6) is inapplicable to the Chapter 11 Case.

27. Section 1129(a)(7). As demonstrated in the Liquidation Analysis, each holder of a Claim or Interest in an impaired Class has accepted the Plan, or will receive or retain under the Plan property having a value, as of the Effective Date, that is not less than the amount that such holder would receive on account of such Claim or Interest if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. The Plan therefore complies with the requirements of Bankruptcy Code section 1129(a)(7) and the "best interests" test set forth therein, as reflected more fully in the evidence introduced on the record at the Confirmation Hearing.

28. Section 1129(a)(8). Classes 1 through 7 are Unimpaired and thus are conclusively presumed to have accepted the Plan under Bankruptcy Code section 1126(f). Notwithstanding anything in the Plan to the contrary, to the extent that the State of Maine has an Allowed Claim for unpaid pre-petition railroad taxes, such Claim shall constitute a Class 7 Claim.

29. Classes 8 through 13 are each Classes of impaired Claims and have each voted to accept the Plan, with unanimous voting results in each such Class save Class 13, where one creditor (out of sixty-one (61) voting creditors) voted to reject the Plan in the claim amount of \$1.00. The Voting Certification properly and correctly sets forth the tabulation of votes in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement Order.

30. Classes 14 and 15 are each impaired and not receiving any property under the Plan and, as such, are presumptively deemed to have rejected the Plan (together, the “Rejecting Classes”). Accordingly, with respect to Classes 14 and 15, the Debtor sought confirmation of the Plan under Bankruptcy Code section 1129(b) rather than Bankruptcy Code section 1129(a)(8). Thus, although Bankruptcy Code section 1129(a)(8) has not been satisfied with respect to the Rejecting Classes, based upon the record before the Bankruptcy Court, the Plan is confirmable because the Plan does not discriminate unfairly and is fair and equitable with respect to the Rejecting Class and thus satisfies Bankruptcy Code section 1129(b) with respect to such Classes.

31. Section 1129(a)(9). The treatment of Administrative Expense Claims satisfies the requirements of Bankruptcy Code section 1129(a)(9)(A). The treatment of Priority Tax Claims under Article 2 of the Plan satisfies the requirements of Bankruptcy Code 1129(a)(9)(C). There are no Claims of the kind specified in Bankruptcy Code sections 507(a)(2), (5), (6) or (7).

32. Section 1129(a)(10). Class 8 (Derailment Moral Damages and Personal Injury Claims), Class 9 (Derailment Property Damage Claims), Class 10 (Derailment Government Claims), Class 11 (Derailment Property Subrogated Insurance Claims), Class 12 (Derailment Wrongful Death Claims) and Class 13 (General Unsecured Claims) are each impaired and have

each voted to accept the Plan, without consideration of any acceptance of the Plan by insiders, thus satisfying the requirements of Bankruptcy Code section 1129(a)(10).

33. Section 1129(a)(11). Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor under the Plan, except as provided in the liquidation provisions of the Plan. The Plan is a plan of liquidation, following a going concern sale of the Debtor's assets earlier in the Chapter 11 Case. Accordingly, the Plan contemplates the liquidation of the Debtor's assets and the winding up of the Debtor's estate by, among other things, making distributions to the WD Trust and the Debtor's creditors. Therefore, because the Plan proposes the liquidation of the Debtor's estate, it is consistent with Bankruptcy Code section 1129(a)(11).

34. Section 1129(a)(12). On the Effective Date, and thereafter as may be required, the Estate Representative shall pay all fees payable pursuant to 28 U.S.C. § 1930, including all quarterly fees pursuant to 28 U.S.C. § 1930 that become due after the Effective Date, thus satisfying the requirements of Bankruptcy Code section 1129(a)(12).

35. Section 1129(a)(13). Section 1129(a)(13) of the Bankruptcy Code requires that a plan of reorganization provide for the continuation, after the effective date, of all retiree benefits at the level established by agreement or by court order pursuant to section 1114 of the Bankruptcy Code at any time prior to confirmation of the plan, for the duration of the period that the debtor has obligated itself to provide such benefits. Because the Debtor does not have any such "retiree benefits," section 1129(a)(13) of the Bankruptcy Code is not applicable.

**D. Compliance with Bankruptcy Code Section 1129(b)—
Confirmation of Plan Over Nonacceptance of Impaired Class**

36. To the extent required, the Trustee has met his burden of proving all applicable elements of section 1129(b) of the Bankruptcy Code by clear and convincing evidence.

37. Notwithstanding the fact that the Rejecting Classes are deemed to have voted not to accept the Plan, the Plan may be confirmed pursuant to Bankruptcy Code section 1129(b)(1) because (i) Classes 8 through 13 are all impaired and have voted to accept the Plan, and (ii) the Plan satisfies the requirements of Bankruptcy Code section 1129(b) with respect to Classes 14 and 15. Specifically, (a) each member of Classes 14 and 15 will equally receive no distribution under the Plan, (b) Class 14 is junior to each of Classes 1 through 13, and (c) Class 15 is junior to Class 15. Thus, the Plan necessarily does not unfairly discriminate with respect to Holders in Classes 14 and 15. In addition, Class 15 is the only Class junior to Class 14, and there is no Class junior to Class 15; as such, no Holder of any Claim or Interest junior to Class 14 or 15 will receive any recovery under the Plan. Further, no senior Class is receiving more than full recovery on account of its Claims (including Claims for interest and other contractual rights).

38. As a result, the Plan satisfies the requirements of Bankruptcy Code section 1129(b). Thus, the Plan may be confirmed even though Bankruptcy Code section 1129(a)(8) is not satisfied. Upon the occurrence of the Effective Date, the Plan shall be binding upon the members of, and holders of Interests in, the Rejecting Classes.

E. Other Bankruptcy Code Confirmation Requirements

i. Section 1173—Confirmation of Railroad Reorganization Plan

39. Section 1173(a)(1) requires compliance with all applicable provisions of section 1129. As section 1129 has been satisfied, so too has section 1173(a)(1).

40. For all the same reasons that section 1129(a)(7) has been satisfied, section 1173(a)(2) has been satisfied as well.

41. For all the same reasons that section 1129(a)(11) has been satisfied (or is inapplicable in a liquidation), so too has section 1173(a)(3) been satisfied (or is otherwise inapplicable).

42. Section 1173(a)(4) requires that a plan be consistent with the public interest. The sale of the Debtor's assets early in the chapter 11 case as a going concern to a third party was consistent with the public interest, as it facilitated the continued operation of the railroad.

43. As the Plan is the only plan before the Court, section 1173(b) is inapplicable

ii. Section 1129(c)—Only One Plan

44. Notwithstanding the other chapter 11 plan proposed in the Chapter 11 Case on January 29, 2014 [D.E. 600], for which the Court refused to approve a disclosure statement (and which plan was therefore not prosecuted), the Plan is the only plan confirmed by the Court in the Chapter 11 Case and, accordingly, section 1129(c) is inapplicable to the Plan.

iii. Section 1129(d)—Principal Purpose of the Plan Is Not Avoidance of Taxes

45. No governmental unit has requested that the Bankruptcy Court refuse to confirm the Plan on the grounds that the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act. As evidenced by its terms, the principal purpose of the Plan is not such avoidance. Accordingly, the requirements of Bankruptcy Code section 1129(d) have been satisfied.

F. Conditions to Confirmation and the Effective Date

46. Pursuant to Article 9.1 of the Plan, the conditions precedent to Confirmation, including but not limited to the following, have been satisfied: (a) entry of the CCAA Approval Order and (b) entry of the Chapter 15 Recognition and Enforcement Order.

47. Pursuant to Article 9.3 of the Plan, the following are the conditions precedent to the Effective Date that have not been satisfied as of the date hereof: (a) the CCAA Approval Order shall have become a Final Order; (b) the Chapter 15 Recognition and Enforcement Order shall have become a Final Order; (c) the conditions to implementation of the CCAA Plan have been met; (d) this Confirmation Order has become a Final Order; and (d) the Plan

Implementation Date (as defined in the CCAA Approval Order) shall have occurred. Each of the conditions precedent to the Effective Date is reasonably likely to be satisfied.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

A. General Provisions Regarding Confirmation of the Plan and Approval of the Plan Supplement

48. Approval. The Plan, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference, shall be and hereby is confirmed. The documents contained in the Plan Supplement, and any amendments, modifications and supplements thereto, the Settlement Agreements, and all other documents and agreements related thereto (including all exhibits and attachments thereto and documents referred to in such papers), and the execution, delivery and performance thereof by the Trustee and the Estate Representative, are authorized and approved as finalized, executed and delivered. Without further order or authorization of the Bankruptcy Court, the Trustee or the Estate Representative and their successors are authorized and empowered to make all modifications to all documents included as part of the Plan Supplement that are consistent with the Plan. For the avoidance of doubt, the Settlement Agreements may only be modified in accordance with their respective terms.

49. Confirmation Objections. All confirmation objections and responses to the Plan, including but not limited to the Objections, both filed and informal, to the extent not resolved, withdrawn or otherwise addressed by this Confirmation Order or as set forth on the record at the Confirmation Hearing, including any reservations of rights contained therein, are hereby overruled on the merits. All withdrawn objections are deemed withdrawn with prejudice.

50. Findings of Fact and Conclusions of Law. The findings of fact and the conclusions of law stated in this Confirmation Order shall constitute findings of fact and

conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to the proceeding by Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

51. Immediate Effect. This Confirmation Order shall be effective immediately upon its entry notwithstanding Fed. R. Bankr. P. 3020(e).

52. Binding Effect. The Plan and its provisions (including the Plan Supplement) shall be binding upon (i) the Debtor; (ii) any entity acquiring or receiving property (including cash) under the Plan; and (iii) any creditor or equity security holder of the Debtor, including, without limitation, any governmental unit, as such term is defined in Bankruptcy Code section 101(27); (iv) any Holder of a Derailment Claim; and (v) any existing or potential defendant named in or relating to any Derailment-Related Cause of Action, including any Non-Settling Defendants, whether or not the Claim or Interest of such creditor or equity security holder is impaired under the Plan and whether or not such creditor, equity security holder or governmental unit has accepted the Plan.

53. Plan Modifications. Subsequent to filing the Plan on July 15, 2015, the Trustee made certain non-material modifications to the Plan (the "Plan Modifications"), which are reflected in this Order. Except as provided for by law, contract or prior order of this Bankruptcy Court, none of the modifications made since the commencement of solicitation adversely affects the treatment of any Claim against or Interest in the Debtor under the Plan. The disclosure of the Plan Modifications on the record at the Confirmation Hearing and through the filing of this Order as a proposed order constitute due and sufficient notice thereof. Accordingly, pursuant to Bankruptcy Code section 1127(a), Bankruptcy Rule 3019 and Local Rule 3019-1, none of these

modifications require additional disclosure under Bankruptcy Code section 1125 or resolicitation of votes under Bankruptcy Code section 1126 (especially in light of previously provided disclosures), nor do they require that holders of Claims or Interests be afforded an opportunity to change previously cast acceptances or rejections of the Plan. The Plan as modified by this Order shall constitute the Plan submitted for Confirmation by the Bankruptcy Court.

54. Deemed Acceptance of Plan as Modified. In accordance with Bankruptcy Code section 1127, Bankruptcy Rule 3019 and Local Rule 3019-1, all holders of Claims who voted to accept the Plan or who are conclusively presumed to have accepted the Plan are deemed to have accepted the Plan as modified by the Plan Modifications. No holder of a Claim shall be permitted to change its vote as a consequence of the Plan Modifications.

55. Authorization. In accordance with the relevant provisions of the Plan, the Trustee, the Estate Representative and the WD Trustee are hereby authorized, without further Order of the Bankruptcy Court, to make all distributions and transfers of property required to be made under the Plan. Except as otherwise expressly provided in Bankruptcy Code Section 1141, the Plan, or this Confirmation Order, confirmation of the Plan shall effect the full and final satisfaction, settlement, release, and discharge as against the Debtor of any and all legal and/or equitable Claims against and Interests in and to the Debtor, including, without limitation, any Claim or Interest that arose before the Confirmation Date, and any debt of a kind specified in Bankruptcy Code sections 502(g), 502(h) or 502(i), whether or not (i) a proof of claim or interest is filed or deemed filed under Bankruptcy Code section 501; (ii) such claim or interest is allowed under Code section 502; or (iii) the holder of such claim or interest has accepted the Plan.

56. Plan Classification Controlling. The terms of the Plan shall govern the classification of Claims and Interests for purposes of the distributions to be made thereunder.

The classifications set forth on the ballots tendered to or returned by the holders of Claims or Interests in connection with voting on the Plan pursuant to the Disclosure Statement and Disclosure Statement Order: (a) were set forth on the ballots for purposes of voting to accept or reject the Plan; (b) in no event shall be deemed to modify or otherwise affect, the actual classification of such Claims and Interests under the Plan for distribution purposes; (c) may not be relied upon by any holder of a Claim or Interest as representing the actual classification of such Claim or Interest under the Plan for distribution purposes; and (d) shall not be binding on the Trustee, Estate Representative or WD Trustee except for purposes of voting on the Plan.

57. General Settlement of Claims and Interests. As one element of, and in consideration for, an overall negotiated settlement of numerous disputed Claims and issues embodied in the Plan, pursuant to Bankruptcy Rule 9019 and Bankruptcy Code section 1123 and in consideration for the classification, distributions, Releases and other benefits provided under the Plan, the provisions of the Plan shall, upon Consummation, constitute a good-faith compromise and settlement of all Claims, Interests and controversies resolved pursuant to the Plan. Such compromises and settlements, individually and in the aggregate, are reasonable and constitute proper exercises of the Trustee's business judgment. All distributions made pursuant to the Plan to holders of Allowed Claims and Interests in any Class are intended to be and shall be final.

58. Approval of Settlements. The Settlements Agreements described in Article 5 of the Plan are expressly approved in all respects pursuant to Bankruptcy Rule 9019 as fair, equitable, reasonable and in the best interest of the Debtor's Estate and pursuant to Bankruptcy Code section 1123(a)(5) and (b)(3), are binding upon all entities affected thereby, and shall be effectuated in accordance with the terms thereof. Such compromises and settlements,

individually and in the aggregate, are reasonable and constitute proper exercises of the Trustee's business judgment. The Trustee and the Estate Representative are authorized, without further approval of the Bankruptcy Court or any other party, to execute and deliver all agreements, documents, instruments and certificates relating to such settlements and to perform their obligations thereunder.

B. Releases, Injunctions and Bar Order

59. Item 9 on Exhibit 2 to the Plan shall be revised as follows:

Edward A. Burkhardt, Larry Parsons, Steven J. Lee, Stephen Archer, Robert C. Grindrod, Joseph C. McGonigle, Gaynor Ryan, Donald Gardner, Jr., Fred Yocum, Yves Bourdon and James Howard, **individually and** in their capacity as directors and officers of MMA and MMAC, Montreal, Maine & Atlantic Corporation and/or LMS Acquisition Corporation (the "**D&O Parties**").³

60. **Releases**

(a) **Settlement Agreement Releases Supplemented; No Impact on Rights to Object.** Except as expressly provided in sections 10.5, 10.8 or 10.9 of the Plan, nothing in Section 10.5 of the Plan or otherwise in the Plan or this Confirmation Order, shall affect, release or otherwise limit the rights and duties of the parties to the Settlement Agreements to enforce or comply with the provisions of the Settlement Agreements. The rights and duties of the parties under the Settlement Agreements are set forth in and shall be governed by the Settlement Agreements. The following releases shall be in addition to and are intended to supplement any releases included in the Settlement Agreements as between the parties to such Settlement Agreements. In the event of any inconsistency between the Plan or this Confirmation Order and the Settlement Agreement(s), the terms of the Settlement Agreement(s) will apply with respect to the particular parties thereto; *provided, however*, that all Settlement Agreements are subject to Sections 10.5, 10.8 and 10.9 of the Plan. Except as expressly set forth in the Settlement Agreements, nothing in the Plan or the Releases set forth herein or therein shall affect any rights of the Trustee or the Estate Representative to object to the allowance, amount, priority or secured status of the Claims of any party receiving a release under the Plan as provided in sections 502, 503, 506, 507, 509 or 510 of the Bankruptcy Code, including with respect to any right of setoff or recoupment, to the extent such Claims are not released, discharged or satisfied under any Settlement Agreement, under the Plan, or pursuant to this Confirmation Order. Nothing herein or in the Plan shall affect any limitation contained in any Settlement Agreement with respect to the release granted to any Released Party. Notwithstanding the definition of "Claim" in section 1.36 of the Plan, for the purposes of Article 10 of the Plan, including, without limitation, the Releases and Injunctions, as well as this Section B of this Order (paragraphs 59 through 71),

³ Changes from the version filed with the Plan are indicated in **bold underline**.

“Claim” or “Claims” means, as the context requires, past, present and future claims, causes of action, obligations, rights, liens, suits, judgments, orders, application of any kind including for judicial review, remedies, interests, actions, liabilities, demands, duties, injuries, compensation, damages, expenses, fees, and/or costs of whatever kind or nature (including attorney’s fees and expenses), whether foreseen or unforeseen, known or unknown, asserted or unasserted, contingent or matured, liquidated or unliquidated, whether in tort, contract, extra-contractual responsibility or otherwise, whether statutory, at common law, civil law, public law or in equity, regardless of the legal theory, including but not limited to claims for breach of contract, tort, breach of the implied covenant of good faith and fair dealing, loss of support, loss of consortium, statutory or regulatory violations, for indemnity or contribution, for any damages either moral, material, bodily injury, punitive, exemplary or extra-contractual damages of any type, in any jurisdiction (i) in any way arising out of, based upon, or relating in any way, in whole or in part, directly or indirectly, whether through a direct claim, cross-claim, third-party claim, warranty claim, recursory claim, subrogation claim, forced intervention, contribution claim, indemnity claim, reimbursement claim, class action or otherwise, (A) to the Derailment, including any claims held or asserted by any Person for wrongful death, personal injury, emotional distress, loss of support, loss of consortium, property damage, economic loss, moral damage, material damage and bodily injury or environmental damage, remediation or exposure or (B) to the XL Policies, including the issuance thereof, coverage, reimbursement, or payment thereunder, and any act or omission of an insurer of any type for which a Holder of a Claim might seek relief in connection therewith, or (ii) that would otherwise constitute a claim as against MMA, MMA Canada or their Estates (A) provable in bankruptcy under the Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3, had MMA Canada become bankrupt on August 6, 2013 and/or (B) within the definition of “claim” set forth in section 101(5) of the Bankruptcy Code. Without limiting the foregoing, “Claim” or “Claims” for purposes of Article 10 of the Plan includes all Claims in Classes 8, 9, 10, 11 and 12.

(b) **Releases by the Debtor and Estate Representative(s).** *Subject in all respects to the provisions of Sections 9.1 and 9.3 of the Plan and full performance under the applicable Settlement Agreement(s) applicable to the particular Released Parties, on the Effective Date, the Debtor, the Trustee, the Estate Representative(s) and the Estate shall unconditionally release, and hereby are deemed to forever unconditionally release, the Released Parties, including, without limitation, the Released Parties’ respective attorneys and advisors (solely in their respective capacities as such), from any and all Derailment Claims, Causes of Action, and all other Claims (including any Claims assigned by the Other Released Parties to the Trustee, MMA Canada or their designee pursuant to a Settlement Agreement and (including any Claims or Causes of Action for contribution, indemnity, reimbursement or seeking the enforcement, attachment, collection, contribution or recovery of or from any judgment, award, decree, or order against any one or more of the Other Released Parties or property of any one or more of the Other Released Parties, or otherwise), debts, obligations, demands, liabilities, suits, judgments, damages, rights, remedies and Post-Confirmation Causes of Action, whatsoever (other than the right to enforce the obligations under the Plan, the Settlement Agreements and the contracts, instruments, releases and other agreements and documents delivered thereunder), whether direct or indirect, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, whenever arising, in law, equity or otherwise, that are based upon, arise from and/or are related to events and/or circumstances that occurred or existed on or prior to the Effective Date relating in any way to the Debtor, the*

Derailment, the Chapter 11 Case, the Plan, the Disclosure Statement, the Estate, the XL Policies, and the Settlement Agreements; provided, however, and without limiting any provision of the Affiliated Parties Settlement Agreement, including any provision that limits, conditions or affects any release or injunction in favor of the Affiliated Released Parties, this release shall not extend, and shall not be construed as extending, to any Claim brought or that could be brought in the future by the Trustee, the Estate Representative or MMA Canada against any of the Affiliated Released Parties to the extent there is, or may be, coverage for such claims under the Great American Policy, and the assignment of rights under such policies to the Estate, the Trustee or the Estate Representative shall not affect, reduce, discharge or diminish such coverage, or provide a defense to any such insurer, or trigger any exclusion under any such policy, including, without limitation, any insured vs. insured exclusion.

(c) **Releases in Favor of the Estate and Estate Representative(s).** *Subject in all respects to the provisions of Sections 9.1, 9.3, 10.8 and 10.9 of the Plan, and full performance under the applicable Settlement Agreement(s), and subject to any express limitations and/or obligations contained in each Released Party's respective Settlement Agreement, on the Effective Date, each of the Trustee, the Estate Representative(s), and the Estate shall be forever and unconditionally released from any and all Claims, debts, obligations, demands, liabilities, suits, judgments, damages, rights and causes of action whatsoever by the Released Parties and by all Persons or entities receiving consideration under the Plan (other than the right to enforce the obligations under the Plan, the Settlement Agreements and the contracts, instruments, releases and other agreements and documents delivered thereunder), whether direct or indirect, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, whenever arising, in law, equity or otherwise, that are based upon, arise from and/or are related to events and/or circumstances that occurred or existed on or prior to the Effective Date, relating in any way to the Debtor, including, without limitation, arising from the Derailment, the Chapter 11 Case, the Plan, the Disclosure Statement, any prepetition act or omission of the Debtor, the Estate, the XL Policies and the Settlement Agreements; provided, however, that this release shall not apply to any Claims arising in the ordinary course of business that are unrelated to the Derailment and that are held by Affiliates of any Contributing Party (unless such Claims are expressly released pursuant to any Settlement Agreement). For the avoidance of doubt, the releases in this section do not extend to any breaches of the Settlement Agreement(s).*

(d) **Releases by Affiliated Released Parties.** *Subject in all respects to the provisions of Sections 9.1 and 9.3 of the Plan and the Affiliated Parties Settlement Agreement, on the Effective Date, each of the Affiliated Released Parties shall unconditionally release, and hereby are deemed to forever unconditionally release, each of the Debtor, the Estate, the Trustee, the Estate Representative(s), the Creditors' Committee, the Creditors' Committee members, and the Other Released Parties, including, without limitation, the foregoing persons' and entities' respective attorneys and advisors (solely in their respective capacities as such) from any and all Claims (including any Claims or Causes of Action for contribution, indemnity, reimbursement or seeking the enforcement, attachment, collection, contribution or recovery of or from any judgment, award, decree, or order against any one or more of the Other Released Parties or property of any one or more of the Other Released Parties, or otherwise), debts, obligations, demands, liabilities, suits, judgments, damages, rights, and*

causes of action whatsoever, whether direct or indirect, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part upon any act or omission, transaction, transfer, event, or other occurrence taking place on or prior to the Effective Date in any way relating to the Debtor, the Derailment, the Chapter 11 Case, the Plan, the Disclosure Statement, the Estate, or the negotiation or funding of the Settlement Agreements; provided, however, that this release shall not apply to (A) any Claims or rights, under the Great American Policy, assigned by the Affiliated Released Parties to the Debtor or to the Chapter 11 Trustee pursuant to the Affiliated Parties Settlement Agreement, (B) any right to enforce the obligations under the Plan, the Settlement Agreements, and the contracts, instruments, releases and other agreements and documents delivered thereunder, provided, however, that such assigned Claims or rights will not be asserted against Other Released Parties, or (C) any Claims or rights of any of the Rail World Parties and/or the D&O Parties (as defined in the CCAA Plan) to seek recovery from their insurers, including Hartford and the XL Companies, for any attorneys' fees, expenses or costs incurred prior to the Effective Date.

(e) **Releases in Favor of Affiliated Released Parties.** *Subject in all respects to the provisions of Sections 9.1, 9.3, 10.8 and 10.9 of the Plan and full performance under the Affiliated Parties Settlement Agreement, on the Effective Date, all persons and entities shall unconditionally release, and are hereby deemed to forever unconditionally release, the Affiliated Released Parties, including, without limitation, the foregoing persons' and entities' respective attorneys and advisors (solely in their respective capacities as such), from any and all Derailment Claims, Causes of Action, and all other Claims, debts, obligations, demands, liabilities, suits, judgments, damages, rights, remedies and causes of action whatsoever, whether direct or indirect, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, whenever arising, in law, equity or otherwise, that are based upon, arise from and/or are related to events and/or circumstances that occurred or existed on or prior to the Effective Date relating in any way to the Derailment, the Debtor, the Chapter 11 Case, the Plan, the Disclosure Statement, the Estate, and the negotiation or funding of the Settlement Agreements; provided, however, and without limiting any provision of the Affiliated Parties Settlement Agreement, including any provision that limits, conditions or affects any release or injunction in favor of the Affiliated Released Parties, this release shall not extend, and shall not be construed as extending to, any Claim brought or that could be brought in the future by the Trustee, the Estate Representative, MMA Canada or the Holders of Derailment Wrongful Death Claims (as applicable pursuant to the Affiliated Parties Settlement Agreement) against any of the Affiliated Released Parties (or certain of them, as applicable) to the extent there is, or may be, coverage for such claims under the Great American Policy, but only to the extent such coverage is actually provided and without any obligation on the part of the Rail World Parties or the D&O Parties to make any payment or contribution to supplement what is actually obtained from the Great American Policy, and the assignment of rights under such policy to the Estate, the Trustee or the Estate Representative shall not affect, reduce, discharge or diminish such coverage, or provide a defense to any such insurer, or trigger any exclusion under any such policy, including, without limitation, any insured vs. insured exclusion; provided further, however, that any right or recovery by Holders of Derailment Wrongful Death Claims pursuant to the action authorized by this*

subparagraph shall be, in all respects, subordinate to the claims of the Trustee and MMA Canada in the Great American Policy.

(f) **Releases by Other Released Parties.** *Subject in all respects to the provisions of Sections 9.1, 9.3, 10.5(b)(ii), 10.8 and 10.9 of the Plan and full performance under the Settlement Agreement(s) applicable to the particular Released Parties, on the Effective Date, each Other Released Party and all other Released Parties shall unconditionally release, and hereby are deemed to forever unconditionally release, each of the Debtor, the Estate, the Trustee, the Estate Representative(s), the Creditors' Committee, the Creditors' Committee members, the Affiliated Released Parties, each other Other Released Party, and the foregoing Persons' and entities' respective attorneys and advisors (solely in their respective capacities as such) from any and all Derailment Claims and all other Claims (including any Claims or Causes of Action for contribution, indemnity, warranty, forced intervention, or seeking the enforcement, attachment, collection, contribution, indemnity, reimbursement or recovery of or from any judgment, award, decree, or order against any one or more of the Other Released Parties or property of any one or more of the Other Released Parties, or otherwise), debts, obligations, demands, liabilities, suits, judgments, damages, rights, remedies and causes of action whatsoever, whether direct or indirect, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, whenever arising, in law, equity or otherwise, that are based upon, arise from and/or are related to events and/or circumstances that occurred or existed on or prior to the Effective Date, relating in any way to the Derailment, the Debtor, the Chapter 11 Case, the Plan, the Disclosure Statement, the Estate, and the Settlement Agreements, including, without limitation, the Trustee's or the Trustee's counsel's negotiation of the Settlement Agreements or the funding of the Settlement Agreements; provided, however, that this release shall not apply to any Claims of Canada against MMA Canada, nor shall it apply to any Claims assigned by the Other Released Parties to the Trustee, MMA Canada or their designee pursuant to a Settlement Agreement (other than any Claims against any Other Released Parties), nor shall it apply to the right to enforce the rights and obligations under the Plan, the Settlement Agreements, and the contracts, instruments, releases and other agreements and documents delivered thereunder in their favor nor shall it apply or be construed as applying to any Claims or claims or other rights to the extent preserved by any of the Other Released Parties in their respective Settlement Agreement(s) (other than any Claims against any Other Released Parties), provided further, however, that notwithstanding anything to the contrary in the Plan, this release shall not apply to any claims or Claims that the Irving Parties (as defined in their Settlement Agreement) have or may have against one or more of their insurers; provided, further, however, that this release shall not apply to any Claims arising in the ordinary course of business that are unrelated to the Derailment and that are held by Affiliates of any of the Contributing Parties. For the avoidance of doubt, the releases in this section do not extend to any breaches of the Settlement Agreement(s).*

(g) **Releases in Favor of Other Released Parties.** *Subject in all respects to the provisions of Sections 9.1, 9.3, 10.8 and 10.9 of the Plan and full performance under the Settlement Agreement(s) applicable to the particular Other Released Parties, on the Effective Date, all Persons and entities shall unconditionally release, and hereby are deemed to forever unconditionally release each of the Other Released Parties, including without limitation, the Other Released Parties' respective attorneys and advisors (solely in their respective capacities*

as such), from any and all Derailment Claims, Causes of Action, and all other Claims (including any claims or Causes of Action for contribution, indemnity, warranty, forced intervention, or seeking the enforcement, attachment, collection, contribution, reimbursement or recovery of or from any judgment, award, decree, or order against any one or more of the Other Released Parties or property of any one or more of the Other Released Parties, or otherwise), debts, obligations, demands, liabilities, suits, judgments, damages, rights (including any right of setoff, subrogation, contribution, indemnity, reimbursement or recoupment of any kind), remedies and causes of action whatsoever, whether direct or indirect, liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, whenever arising, in law, equity or otherwise that are based upon, arise from and /or are related to events and/or circumstances that occurred or existed on or prior to the Effective Date, relating in any way to the Derailment, the Debtor, the Chapter 11 Case, the Plan, the Disclosure Statement, the Estate, and the Settlement Agreements, including, without limitation, the Released Parties and the Released Parties' counsel's negotiation of the Settlement Agreements or the funding of the Settlement Agreements; provided, however, that this release shall not in any way limit the right of the Estate Representative to enforce the rights and obligations under the Plan, the Settlement Agreements, and the contracts, instruments, releases and other agreements and documents delivered thereunder in the Estate's favor nor shall it apply or be construed as applying to any Claims or other rights to the extent preserved by any of the Other Released Parties in their respective Settlement Agreement(s) (other than any Claims against any Other Released Parties, including, without limitation, Canada), provided further, however, that notwithstanding anything to the contrary in the Plan, this release shall not apply to any claims or Claims that the Irving Parties (as defined in their Settlement Agreement) have or may have against any one or more of their insurers. For the avoidance of doubt, and notwithstanding anything in the Plan to the contrary, the releases in this section do not extend to any breaches of the Settlement Agreement(s).

61. **Injunctions.**

(a) **No Impact on the Rights of the Parties to the Settlement Agreements.** Nothing in Section 10.6 of the Plan or otherwise in the Plan or this Confirmation Order shall affect, release or otherwise limit the rights and duties of the parties to the Settlement Agreements to enforce or comply with the provisions of their respective Settlement Agreements. The rights and duties of the parties under the Settlement Agreements are set forth in and shall be governed by the Settlement Agreements; provided, however, that no Settlement Agreement may restrain or limit the effect or scope of the releases set forth in Section 10.5 of the Plan as to any Released Party without the express written consent of such Released Party.

(b) **Injunction in Favor of the Debtor and Estate Representative(s).** Except as to the rights, claims or Claims created or expressly preserved by the Plan, the CCAA Plan, the Settlement Agreements, and this Confirmation Order, upon the Effective Date, the Debtor, the Trustee, and the Estate Representative(s) shall have and be entitled to an injunction forever barring and enjoining all Persons and/or entities from asserting against the Debtor any past, present and future rights, interests, obligations, claims, causes of action, damages (including punitive damages), demands (including demands for

contribution, indemnity or otherwise), liabilities, expenses, fees (including, but not limited to, attorneys' fees, expert fees, consulting fees and other professional fees) and costs of any kind or any type whatsoever, whether known or unknown, whether foreseen or unforeseen, whether direct or indirect, contingent or actual, whether liquidated or unliquidated, whether statutory or common law, whether asserted or unasserted and whether based on contract, negligence, bad faith, willful, wanton or malicious conduct, or any other theory in law or equity concerning, arising from or relating to any actual or alleged past, present or future act, omission, defect, incident, event or circumstance from the beginning of the world to the Effective Date, in any way relating to or in connection with (A) the Debtor, (B) the Derailment or (C) the Estate, the Chapter 11 Case, the Plan, the Disclosure Statement, the Settlement Agreements and/or the XL Policies, except with regard to any claims and rights expressly reserved pursuant to Sections 10.3 and 10.5 of the Plan.

(c) **Injunction in Favor of Affiliated Released Parties.** Except as to the rights, claims or Claims created or expressly preserved by the Plan, the CCAA Plan, the Affiliated Parties Settlement Agreement, and this Confirmation Order, upon the Effective Date, all Persons and entities, including, without limitation, all Holders of Derailment Claims, Non-Settling Defendants, and other Persons, shall be, and are hereby deemed to be, permanently barred, enjoined, and restrained from commencing, prosecuting, continuing or asserting against the Affiliated Released Parties any and all Derailment Claims, Causes of Action and all other Claims, including, without limitation, any and all past, present and future rights, interests, obligations, damages (including punitive damages), demands (including demands for contribution, indemnity, reimbursement or otherwise), liabilities, expenses, fees (including, but not limited to, attorneys' fees, expert fees, consulting fees and other professional fees) and costs of any kind or any type whatsoever, whether known or unknown, whether foreseen or unforeseen, whether contingent or actual, whether direct or indirect, liquidated or unliquidated, whether statutory or common law, whether asserted or unasserted and whether based on tort, contract, negligence, bad faith, willful, wanton or malicious conduct, or any other theory in law or equity concerning, arising from or relating to any actual or alleged past, present or future act, omission, defect, incident, event or circumstance from the beginning of the world to the Effective Date, in any way relating to or in connection with (A) the Debtor; (B) the Derailment, (C) the Estate, (D) the Chapter 11 Case, (E) the Plan, (F) the Disclosure Statement, (G) the Settlement Agreements and/or (H) the XL Policies, provided, however, and without limiting any provision of the Affiliated Parties Settlement Agreement, including any provision that limits, conditions or affects any release or injunction in favor of the Affiliated Released Parties, this injunction shall not extend, and shall not be construed as extending to, any Claim brought or that could be brought in the future by the Trustee, the Estate Representative, MMA Canada or the Holders of Derailment Wrongful Death Claims (as applicable pursuant to the Affiliated Parties Settlement Agreement) against the Affiliated Released Parties (or certain of them, as applicable) to the extent there is, or may be, coverage for such claims under the Great American Policy, but only to the extent such coverage is actually provided and without any obligation on the part of the Rail World Parties or the D&O Parties to make any payment or contribution to supplement what is actually obtained from the Great American Policy, and the assignment of rights under such policy to the Estate, the Trustee or the Estate Representative shall not affect, reduce, discharge or diminish such coverage or provide a defense to any such insurer, or trigger any exclusion under any such policy, including,

without limitation, any insured vs. insured exclusion; provided further, however, that any right or recovery by Holders of Derailment Wrongful Death Claims pursuant to the action authorized by this subparagraph shall be, in all respects, subordinate to the claims of the Trustee and MMA Canada in the Great American Policy.

(d) Injunction in Favor of the Other Released Parties. Except as to the rights and claims created or expressly preserved by the Plan, the CCAA Plan, the Settlement Agreements (provided that there are no preserved claims (or Claims) against Other Released Parties except as provided for in Exhibit 2 to the Plan), and this Confirmation Order, upon the Effective Date, all Persons and entities, including, without limitation, all Holders of Derailment Claims, Released Parties and Persons other than Released Parties shall be, and are hereby deemed to be, permanently barred, enjoined, and restrained from commencing, pursuing, prosecuting, continuing or asserting against the Other Released Parties any and all Derailment Claims, Causes of Action and all other Claims, including, without limitation, Claims or Causes of Action for any and all past, present and future rights (including any right of setoff, subrogation, contribution, indemnity, reimbursement or recoupment of any kind), interests (including creating, perfecting or enforcing any encumbrance of any kind against any one or more of the Other Released Parties), obligations, damages (including actual and/or punitive damages), demands (including any Claims or Causes of Action for contribution, indemnity, reimbursement, warranty, forced intervention, or seeking the enforcement, attachment, collection, contribution or recovery of or from any judgment, award, decree, or order against any one or more of the Other Released Parties or property of any one or more of the Other Released Parties, or otherwise), liabilities, expenses, fees (including, but not limited to, attorneys' fees, expert fees, consulting fees and other professional fees), and costs of any kind or any type whatsoever, whether known or unknown, whether foreseen or unforeseen, whether contingent or actual, whether direct or indirect, liquidated or unliquidated, whether statutory or common law, whether asserted or unasserted and whether based on tort, contract, negligence, warranty, bad faith, willful, wanton or malicious conduct, or any other theory in law or equity concerning, arising from or relating to any actual or alleged past, present or future act, omission, defect, incident, event or circumstance, including, without limitation, all Claims released pursuant to Section 10.5 of the Plan, whenever arising, that are based upon, arise from and/or are related to events and/or circumstances that occurred or existed on or prior to the Effective Date in any way relating to or in connection with (A) the Debtor; (B) the Derailment, (C) the Estate, (D) the Chapter 11 Case, (E) the Plan, (F) the Disclosure Statement, (G) the Settlement Agreements and/or (H) the XL Policies (as to which, in the event of an inconsistency with the Plan, the XL Settlement Agreement will govern).

62. Barred Persons and Barred Claims. Without limiting the Releases and Injunctions set forth above, all (i) Non-Settling Defendants; (ii) Released Parties; (iii) Persons who have voted for or against the Plan or who are presumed to have voted for or against the Plan under section 1126(f)-(g) of the Bankruptcy Code; and (iv) any other Persons that hold, have

held or may hold a Claim (including a Derailment Claim) or Cause of Action, including, without limitation, Canadian Pacific Railway Company and any parent, affiliate or subsidiary thereof (collectively, the “Barred Persons”), are hereby permanently barred, enjoined and restrained from commencing, continuing, prosecuting, or asserting in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or elsewhere (each such venue, a “Trial Court”), any Claim (including a Derailment Claim) or Cause of Action against any of the Released Parties, including, without limitation, any personal injury, property damage, wrongful death, indemnity, contribution, reimbursement or subrogation claim, whether based upon a contract or otherwise, against any Released Party (including, without limitation, any claim against the Released Parties, whether or not denominated as for indemnity, contribution, reimbursement, or subrogation, arising out of or related in any way to the Derailment or to the claims released pursuant to the Releases, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, or third-party claims (collectively, the “Barred Claims”). This Order is without prejudice to the position of any party as to the existence, in the absence of this Order, of any Barred Claim.⁴

63. In the event that any Person asserts any Claim (including any Derailment Claim), Cause of Action, or any other claim, obligation, suit, judgment, damage, debt, right, remedy, cause of action, avoidance power or right, liability of any nature whatsoever, or legal or equitable remedy against any Person arising from or related to the Derailment, regardless of whether such claim, cause of action, right, or legal or equitable remedy may be asserted pursuant to the Bankruptcy Code or any other applicable law or contract, including, without limitation, any claim for personal injury, property damage, wrongful death, indemnity, contribution,

⁴ Notwithstanding anything to the contrary in this paragraph or this Order, neither this paragraph nor this Order shall not apply to any claims or Claims that the Irving Parties (as defined in their Settlement Agreement) have or may have against any one or more of their insurers.

reimbursement or subrogation relating in any way to the Derailment (collectively, the “Derailment-Related Causes of Action”) and which arises or becomes liquidated and noncontingent as a consequence of a judgment entered by a Trial Court as against a Barred Person who is a Non-Settling Defendant and in favor of a Person, including, without limitation, a Holder of a Derailment Claim, asserting a Derailment-Related Cause of Action against such Non-Settling Defendant (a “Plaintiff”), then, prior to entry of any judgment or arbitration award (a “Judgment”) in such Derailment-Related Cause of Action, the Plaintiff shall provide notice and a copy of this Order to the Trial Court. In the case of actions transferred to Illinois state court pursuant to section 10.7 of the Plan or originally filed in Illinois state court, and subsequently tried in an Illinois state court as the Trial Court or pursuant to Illinois law as the governing law, the judgment reduction and all other related provisions of 740 ILCS 100/2(c) shall apply to any Judgment against, *inter alia*, any Non-Settling Defendant. In the case of Claims adjudicated and/or tried in Canada or pursuant to Canadian or Quebec law, to the extent that applicable federal or provincial law provides for judgment reduction, as recognized in the CCAA Approval Order, such law shall apply to any Judgment on such Claims. In all other cases, such Trial Court shall determine whether the Derailment-Related Cause of Action gives rise to Barred Claims on which any Released Party would have been liable to the Barred Persons in the absence of this Order. If the Trial Court so determines, it shall reduce any Judgment against such Barred Person in an amount equal to the “Judgment Reduction Amount,” which shall equal the greatest of:

- (a) The “Settlement Credit,” which shall mean the Distribution received by such Plaintiff from the WD Trust (the “Trust Distribution”), unless the Trial Court shall determine when assessing liability against the Barred Person that some portion of the damage claims settled in the Settlement Agreements are different from or unrelated to those for which the Barred Person is liable, in which case the Settlement Credit will be the Trust

Distribution minus the portion of the Settlement Payments determined by the Trial Court to have been paid with respect to such unrelated or different damage claims;

- (b) The “Insurance Credit,” which shall mean the amount of coverage, if any, the Trial Court determines would have been available to such Barred Person under any insurance policies owned by the Debtor or MMA Canada on account of such Plaintiff’s Claim or Cause of Action but for the operation of the Order;
- (c) The “Contribution Credit,” which shall mean an amount equal to the value of the contribution or equitable indemnification claim, if any, that the Trial Court determines such Barred Person would be entitled to assert against one or more Released Parties but for operation of the Order, which shall be equal to the aggregate proportionate shares of liability, if any, of the Released Parties as determined by the Trial Court at the time of entry of any judgment against any Barred Person, adjusted to reflect any limitation on the financial capability of the Released Parties to pay their respective proportionate shares of liability to the Barred Person had the Barred Person obtained a contribution or equitable indemnification judgment against them in such amount; *provided* that the Contribution Credit with respect to the Debtor and/or MMA Canada as a Released Party shall be reallocated among the Barred Person and the other Released Parties (other than the Debtor and/or MMA Canada) determined to be liable, in whole or in part, by the Trial Court, in accordance with the holding in, and methodology adopted by, Austin v. Raymark Indus., 841 F.2d 1184 (1st Cir. 1988); or
- (d) The “Indemnity Credit” which shall mean an amount equal to the value of the contractual indemnity claim, if any, that the Trial Court determines such Barred Person would be entitled to assert against one or more Released Parties but for operation of the Order, adjusted to reflect any limitation on the financial capability of the Released Parties to pay the Barred Person any indemnity judgment against them; *provided* that the Indemnity Credit with respect to the Debtor and/or MMA Canada as a Released Party shall be reallocated among the Barred Person and the other Released Parties (other than the Debtor and/or MMA Canada) determined to be liable, in whole or in part, by the Trial Court, in accordance with the holding in, and methodology adopted by, Austin v. Raymark Indus., 841 F.2d 1184 (1st Cir. 1988).

64. For the avoidance of doubt, and notwithstanding anything to the contrary, nothing in paragraphs 62 and 63 shall in any way modify or affect the Releases and/or Injunctions in favor of the Released Parties as set forth in paragraphs 58 through 61, inclusive, of this Order,

and nothing set forth herein shall be interpreted as providing that any Released Parties have any liability to any Person for any Claims (including Derailment Claims) or Causes of Action. Furthermore, after this Order becomes a Final Order, the Trustee is ordered to use his best efforts to ensure that any Claims (including Derailment Claims) or Causes of Action against any Released Parties are promptly dismissed with prejudice.

65. Nothing herein shall prejudice or operate to preclude the right of any Non-Settling Defendant to (a) provide notice of this Order to any Trial Court hearing a Derailment-Related Cause of Action at any point or (b) raise any issues, claims or defenses regarding the Judgment Reduction Amount in any court or tribunal hearing any Derailment-Related Cause of Action in accordance with applicable law or procedure; *provided, however*, that nothing herein shall in any way modify or affect the Releases or Injunctions in favor of the Released Parties as set forth in paragraphs 58 through 61, inclusive, of this Order. For the avoidance of doubt, nothing herein shall (x) be deemed to entitle a Plaintiff to more than a single satisfaction with respect to any Derailment-Related Cause of Action or (y) prejudice or operate to preclude the rights of any Barred Person to assert any claims or causes of action against any Released Party as set forth above, *provided* that such claims or causes of are unrelated to the Derailment and do not constitute Claims (including Derailment Claims) or Causes of Action.

66. If any Plaintiff enters into a settlement with any Person with respect to one or more causes of action based upon, arising from, or related to the Barred Claims or any transaction underlying any Barred Claim, then such Plaintiff shall cause to be included, and in all events, the settlement shall be deemed to include, a dismissal, release and waiver of any Barred Claims with respect to such settlement.

67. Each Plaintiff is hereby enjoined and restrained from seeking relief or collecting judgments against any Non-Settling Defendant in any manner that fails to conform to the terms of this Order, including, without limitation, the Judgment Reduction Amount provision set forth at paragraph 63 herein.

68. This Court shall retain jurisdiction with respect to all matters concerning this Order, including, without limitation, hearing a petition for relief by a Barred Person or any other party in interest in the event that a court or tribunal hearing the Derailment-Related Cause of Action fails to apply the judgment reduction provisions of this Order. However, to the extent that any of the Released Parties make any oral or written submissions in support of this Order, those Released Parties shall not be considered to have submitted to personal jurisdiction in this Court.

69. Terms of Pre-Plan Injunction and Stays. Unless otherwise provided in the Plan, this Confirmation Order or a separate order of the Bankruptcy Court, all injunctions or stays arising under or entered during the Chapter 11 Case under section 105 or 362 of the Bankruptcy Code, entered in the Transferred WD Cases, or otherwise arising under applicable law in any court order and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in such applicable order, *provided, however*, that to the extent against any remaining defendant that is not a Released Party as of the Effective Date, the Trustee will cooperate with the plaintiffs in the Transferred WD Cases in seeking a transfer of such cases to the forum selected by such plaintiffs, and will cooperate in seeking from the District Court, in the order transferring such cases, a finding that the Settlement Agreements and transactions with the Released Parties approved and implemented pursuant to the Plan were entered into in good faith pursuant to and in accordance with 740 ILCS 100/2(c).

70. Canadian Criminal Charges and Related Claims of Canada. Notwithstanding anything to the contrary in the Plan, this Confirmation Order or in any Settlement Agreement:

- (a) Nothing in the Plan shall release or provide an injunction to the benefit of any Person for fraud or criminal and quasi-criminal charges filed or that may be filed by Canada and, for greater certainty, for any fine or penalty arising from any such charges;
- (b) Nothing in the Plan shall bind or in any way limit the Director of Public Prosecutions of Canada acting pursuant to the Act respecting the Office of the Director of Public Prosecutions, S.C. 2006, c.9 § 121, as has been or may be amended or superseded;
- (c) Except for the terms and conditions of the Settlement Agreement entered into by Canada, no Settlement Agreement shall be binding upon Canada; and
- (d) Except with respect to entry of this Confirmation Order as may be entered with the assent of Canada, nothing in the Plan shall be construed as a waiver by Canada of sovereign immunity or as an attornment by Canada to any court of any jurisdiction outside Canada.

71. Claims of the United States of America.

- (a) Notwithstanding any provision in the Plan or this Confirmation Order, as to the United States of America, its agencies, departments or agents (collectively, the “United States”), nothing in the Plan or this Confirmation Order shall discharge, release, or otherwise preclude: (1) any liability of the Debtor to the United States arising on or after the Effective Date; (2) any liability of the Debtor to the United States that is not a “claim” within the meaning of section 101(5) of the Bankruptcy Code; (3) any valid defense of setoff against the Debtor or right of recoupment from the Debtor held by the United States with respect to a Claim; or (4) the United States from, subsequent to the Confirmation Date, pursuing any police or regulatory action against the Debtor. As to the United States, nothing in the Plan or this Confirmation Order shall limit or expand the scope of the discharge granted to the Debtor pursuant to section 1141(d) of the Bankruptcy Code.
- (b) Further, as for Derailment Claims, if any, held by the United States, nothing in either this Confirmation Order or the Plan shall exculpate or release any Person for criminal charges brought by the United States, nor shall anything in this Confirmation Order or Plan enjoin the United States from bringing any claim, suit, action or other proceeding against any such Person for such charges under such criminal laws. Moreover, nothing in either this Confirmation Order or the Plan shall exculpate or release any

Person from liability to the United States unrelated to the Derailment, nor shall anything in this Confirmation Order or Plan enjoin the United States from bringing any claim, suit, action or other proceeding against any Person for such liability unrelated to the Derailment.

C. Matters Relating to Implementation of the Plan

72. Release of Liens. Except as otherwise expressly provided in Bankruptcy Code section 1141, the Plan, or this Confirmation Order, all Claims of creditors against the Debtor whose Claims have attached to, or are secured by, property in which the Debtor has an interest are hereby discharged, and such claims are satisfied in full and forever released and discharged.

73. Vesting of Assets. Except as otherwise expressly provided in the Plan or this Confirmation Order, all property of the Debtor's Estate shall, as of the Effective Date, revert in the Post-Effective Date Estate free and clear of all interests, liens, claims and encumbrances of any kind and nature whatsoever.

74. Exhaustion of Insurance Policies.

- (a) On the Effective Date, and upon full payment and performance under the XL Settlement Agreement, the XL Policies shall be deemed completely exhausted and any and all of the XL Companies' obligations under the XL Policies shall be, and are deemed to be, extinguished.
- (b) On the Effective Date, and upon full performance under the relevant Settlement Agreements (and subject to any exceptions contained in such Settlement Agreements), the policy of any Insurance Company that is a Contributing Party shall be deemed completely exhausted, and any and all of the Insurance Company's obligations under such policy shall be, and are deemed to be, extinguished.

75. The WD Trust. As of the Effective Date, the WD Trust shall be established pursuant to Article 5 of the Plan for the primary purpose of implementing the Plan on behalf of, and for the benefit of, the WD Trust Beneficiaries, and to serve as a mechanism for liquidating the WD Trust Assets in an expeditious but orderly manner for the benefit of WD Trust Beneficiaries and holders of Allowed Class 12 Claims, with no objective to continue or engage

in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purposes of the WD Trust. The WD Trust is organized and established as a trust pursuant to which the WD Trustee, subject to the terms and conditions contained herein and in the Plan, is to hold the WD Trust Assets and dispose of the same in accordance with the WD Trust Agreement and the Plan in accordance with Treasury Regulation section 301.7701-4(d). The WD Trust Agreement attached hereto is approved in its entirety. In accordance with the Plan, the Trustee, in consultation with U.S. counsel to Holders of Derailment Wrongful Death Claims, has chosen Joe R. Whatley, Jr. to serve as the WD Trustee. The WD Trustee shall be bonded in such amount as the Trustee or the U.S. Trustee shall reasonably request or, in the event of a dispute, as set by the Court. The Trustee, with the consent of MMA Canada and the Monitor, shall designate the WD Trust to be the assignee of claims arising under the Carmack Amendment and assigned to the designee of the Trustee, MMA Canada and the Monitor under the Settlement Agreements (the “Assigned Carmack Claims”) upon the following conditions: (a) the WD Trustee shall retain Trustee’s counsel to prosecute the Assigned Carmack Claims on terms and conditions reasonably satisfactory to the WD Trustee, given such counsel’s knowledge of, and existing due diligence with respect to, such Assigned Carmack Claims; (b) settlement of the Assigned Carmack Claims shall require the consent of the Trustee and/or Estate Representative, the Monitor and MMA Canada, which consent shall not be unreasonably withheld; and (c) after full payment of any then-unpaid (i) Allowed Secured Claims, if any, where the Lien attaches to the proceeds of Assigned Carmack Claims; (ii) fees incurred in the prosecution or administration of the Assigned Carmack Claims; (iii) Administrative Expense Claims or claims for professional fees in the CCAA Case, and (iv) Allowed Priority Claims, including, without limitation, 1171(b) Claims (other than Derailment Claims), the remaining

proceeds of the Assigned Carmack Claims shall be distributed to Holders of Derailment Claims in Classes 8-12 in the manner, and subject to the allocation and distribution procedures, provided in the Plan and the CCAA Plan.

76. Quasi-Judicial Immunity. The Estate Representative and the WD Trustee are entitled to quasi-judicial immunity to the fullest extent allowed by law in connection with their implementation of this Confirmation Order, the Plan, the WD Trust Agreement, and the Wrongful Death Claims Resolution Procedures.

77. Section 1146 Exemption from Certain Taxes and Fees. Pursuant to Bankruptcy Code section 1146(a), the issuance, transfer or exchange of a security, or the execution, delivery or recording of an instrument of transfer under the Plan, or authorized thereby, may not be taxed under any law imposing deed stamps, a stamp tax, a recording tax, a transfer tax, an intangible tax or similar tax. To effectuate Bankruptcy Code section 1146(a), each recorder of deeds or similar official for any county, city or governmental unit in which instruments of transfer of the property are to be recorded shall, pursuant to this Confirmation Order, be ordered and directed to accept such instruments for recording and promptly to record such instruments or deeds without payment of any documentary stamp tax, deed stamps, stamp tax, recording tax, transfer tax, intangible tax or similar tax.

78. Preservation of Causes of Action. Except as may be otherwise provided in the Plan, the Post-Effective Date Debtor shall retain all Causes of Action, which shall vest in the Post-Effective Date Debtor on the Effective Date.

D. Matters Related to Executory Contracts and Unexpired Leases

79. Rejection of Executory Contracts. All executory contracts and unexpired leases that exist between the Debtor and any Person, *except for the WD Trust Agreement, the Settlement Agreements (including the insurance policy rights and contractual rights, if any,*

assigned to the Trustee, MMA Canada and/or their designee pursuant thereto) and insurance policies related to, or insurance agreements entered into by the Debtor prior to the Petition Date (including, without limitation, any D&O Insurance Policies), shall be deemed rejected by the Debtor as of immediately prior to the Effective Date, except for any executory contract or unexpired lease (i) that has been assumed and assigned or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (ii) as to which a motion for approval of the assumption or assignment of such executory contract or unexpired lease has been filed and served prior to the Confirmation Date, or (iii) is otherwise provided for under Sections 8.2 or 8.3 of the Plan.

- (a) Such rejection shall be deemed to constitute a breach of such contract or lease as of the date immediately before the Petition Date.
- (b) If an executory contract or unexpired lease is rejected pursuant to this Confirmation Order, then any Claim arising from or as a result of such rejection must be filed with the Bankruptcy Court within thirty (30) days after notice of the Effective Date. Nothing contained in this Confirmation Order shall constitute a determination that any such rejection gives rise to, or results in, a Claim or constitutes a waiver of any objections to such Claim by the Debtor or any party in interest.

80. Insurance Policies and Agreements. Except as set forth in the Settlement Agreements, Section 5.2 of the Plan, or this Confirmation Order, insurance policies issued to, or insurance agreements entered into by, the Debtor prior to the Petition Date (including, without limitation, any D&O Insurance Policies covering directors' or officers' conduct) shall continue in effect after the Effective Date. To the extent that such insurance policies or agreements (including, without limitation, any policies covering directors' or officers' conduct) are considered to be executory contracts, then, notwithstanding anything to the contrary in the Plan, the Plan shall constitute a motion to assume or ratify such insurance policies and agreements, and, subject to the occurrence of the Effective Date, entry of this Confirmation Order constitutes

(a) approval of the Debtor's assumption of such insurance policies and agreements pursuant to section 365(a) of the Bankruptcy Code as of the Effective Date and (b) a finding that each such assumption is in the best interests of the Debtor and its Estate. Unless otherwise determined by this Court pursuant to a Final Order or agreed to by the parties thereto prior to the Effective Date, no payments shall be required to cure any defaults of the Debtor existing as of the Confirmation Date with respect to each such insurance policy or agreement. To the extent that this Court determines otherwise as to any such insurance policy or agreement, the Trustee reserves the right to seek the rejection of such insurance policy or agreement or other available relief.

E. Sale of XL Policy Interests to XL Companies Protected Under 11 U.S.C. §363(m)

81. The sale of the XL Policy Interests contemplated by the XL Settlement Agreement to the XL Companies free and clear of all interests, is undertaken by the XL Companies in good faith, as that term is used in section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization to consummate the sale of the XL Policy Interests contemplated by the XL Settlement Agreement shall not affect the validity of the sale of the XL Policy Interests to the XL Companies, unless such authorization is duly stayed pending such appeal. The XL Companies are purchasers in good faith of the Policy Interests and shall be entitled to all of the protections afforded by section 363(m) of the Bankruptcy Code.

F. Retention of Jurisdiction and Miscellaneous Matters

82. Professional Compensation. All Persons seeking an award of compensation for services rendered or reimbursement of expenses incurred through and including the Effective Date under sections 326, 328, 330, and 331 of the Bankruptcy Code or filing applications for allowance of Administrative Expense Claims arising under section 503(b)(2), 503(b)(3),

503(b)(4), or 503(b)(5) of the Bankruptcy Code (collectively, “Professional Compensation”) shall (a) file their respective final applications for allowance of compensation for services rendered and reimbursement of expenses incurred by the date that is ninety (90) days after the Effective Date, and (b) be paid in full, in Cash, by the Trustee or Disbursing Agent, as applicable, such amounts as are allowed by the Bankruptcy Court (i) within thirty (30) days after the date on which the order relating to any such Administrative Expense Claim is entered or (ii) upon such other terms as may be mutually agreed upon between the Holder of such Administrative Expense Claim and the Trustee or Disbursing Agent, as applicable.

83. Retention of Jurisdiction. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code and notwithstanding entry of this Confirmation Order and the occurrence of the Effective Date, this Court shall and shall be deemed to retain exclusive jurisdiction over all matters arising out of, and related to, the Chapter 11 Case and this Confirmation Order after the Effective Date, including, without limitation, for all of the purposes set forth in Article 11 of the Plan; *provided, however,* that the Court’s retention of jurisdiction as set forth herein and in Article 11 of the Plan shall be subject to the limitation that such jurisdiction shall not exceed the lawful jurisdiction of the Court pursuant to 28 U.S.C. § 1334 and 28 U.S.C. § 157.

84. Creditor’s Committee. The Creditors’ Committee shall continue in existence following entry of this Order until the Effective Date. Upon the Effective Date, the Creditors’ Committee shall be terminated and shall cease to exist, except with respect to any appeals pending on the Effective Date and all issue related to Professional Compensation. Nothing herein shall limit the right of professionals retained by the Creditors’ Committee or members of the Creditors’ Committee to seek compensation or reimbursement for services rendered or expenses incurred prior to the Effective Date.

85. Order Governs. In the event of any conflict between the provisions of this Order and the provisions of the Plan, the provisions of this Order shall prevail and take precedence over the provisions of the Plan.

86. References to Plan Provisions. The failure specifically to include or to refer to any particular article, section or provision of the Plan, Plan Supplement or any related document in this Confirmation Order shall not diminish or impair the effectiveness of such article, section or provision, it being the intent of the Bankruptcy Court that the Plan and any related documents be confirmed and approved in their entirety.

87. Nonseverability of Plan Provisions Upon Confirmation. Each term and provision of the Plan, and the transactions related thereto as it heretofore may have been altered or interpreted by the Bankruptcy Court is: (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and the transactions related thereto and may not be deleted or modified except by the Trustee, who reserves the right to modify the Plan pursuant to Article 12 of the Plan; and (c) nonseverable and mutually dependent.

88. Final Order and Appeals. This Confirmation Order is a final order, and the time period by which any party in interest wishing to appeal entry of this Confirmation Order shall run from the date of the entry of this Confirmation Order.

89. Authorization to Consummate. The Trustee and the Estate Representative are authorized to consummate the Plan at any time after the entry of this Confirmation Order subject to satisfaction of the conditions precedent to the Effective Date set forth in Article 9 of the Plan.

90. Preservation of Claims Against Non-Settling Defendants. Nothing in this Order or in the Plan, or in the payment or receipt of Distributions under or pursuant to this Plan or the CCAA Plan, shall operate as or be deemed to be a determination that any Derailment Claim or

other cause of action that may be asserted against any Non-Settling Defendant by any Person or Entity has been released, paid or satisfied in full.

Dated: _____

The Honorable Peter G. Cary
Chief Judge, United States Bankruptcy Court

DRAFT