

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

_____)	
In re)	
)	
MONTREAL MAINE & ATLANTIC)	CHAPTER 11
RAILWAY, LTD.)	CASE NO. 13-10670-LHK
)	
Debtor)	
_____)	

**CHAPTER 11 PLAN DATED JANUARY 29, 2014 PROPOSED BY
THE UNOFFICIAL COMMITTEE OF
WRONGFUL DEATH CLAIMANTS**

The Unofficial Committee of Wrongful Death Claimants (the “Plan Proponent”), consisting of the 47 holders of wrongful death claims against the debtor in the above-captioned case,¹ hereby proposes the following plan pursuant to Section 1121 of the Bankruptcy Code (the “Plan”):

PREAMBLE

The Plan provides for wrapping up the Debtor’s chapter 11 case for the benefit of the Debtor’s stakeholders, including the victims of the derailment disaster, once sale of the railroad is closed in March. With the proceeds of the sale likely to be distributed largely if not entirely to secured creditors and other non-victims, the only material asset available to satisfy victims’ claims appears be the insurance policies of the U.S. and Canadian bankruptcy estates. The Debtor’s creditors, including the victims of the derailment, will best be served by an efficient, speedy and low-cost conclusion to the bankruptcy cases that will leave them free to pursue their claims against non-Debtors in the forum of their choice.

With these realities in mind, the Plan has three key features:

First, the Plan provides for former U.S. Senator George J. Mitchell to serve as Plan Fiduciary. Senator Mitchell has agreed that, even before the effective date of the plan, he will use his good offices to try to forge a consensus among U.S. and Canadian parties on issues relating to the wrap-up, and assist in negotiations to settle the insurance policies and such other

¹ The decedents and the representatives of their estates are listed in the Amended Verified Statement Concerning Representation of Unofficial Committee of Wrongful Death Claimants As Required by Fed. R. Bankr. P. 2019 filed in the Case on January 28, 2014 pursuant to Fed. R. Bankr. P. 2019 [Docket No. 599]. Solely for the avoidance of doubt as to standing, this motion is filed on behalf of the 47 holders of Derailment WD Claims as well as the Unofficial Committee of Wrongful Death Claimants itself.

matters that will serve to expedite the conclusion of this case.

Second, the Plan provides for a fair and logical allocation between the U.S. and Canadian estates of (a) the proceeds of any joint settlement of their insurance policies, and (b) responsibility for payment of victims' claims, for which both estates are liable.

- Proceeds of the insurance policy will either flow directly to victims of the derailment disaster as they obtain and collect judgments, or will flow to the victims through the U.S. and/or Canadian bankruptcy estates if the estates settle with the insurer. Each of the estates has \$25 million of liability insurance coverage for the disaster. The insurance policies are intertwined in that any indemnity payment under either policy reduces the available amount under the other such that a maximum of \$25 million in indemnity is available under the policies collectively. Accordingly, the Plan makes provision for proceeds of any two-policy settlement to be divided fairly between the U.S. and Canadian bankruptcy estates. The Plan also makes provision for the alternative of a settlement solely of the U.S. policy.
- The Plan allocates responsibility to the U.S. estate to pay wrongful death and personal injury claims and to the Canadian estate to pay other victims' claims such as property damage and business interruption. This allocation avoids the complexity and expense of a joint claims-resolution process between the two estates. A reasonable proportionality among the victims is achieved through a fair division of insurance proceeds between the two estates. Taking account of the horrific nature, monetary amount and priority of wrongful death and personal injury claims under the Bankruptcy Code, the Plan incorporates an allocation of 75% of insurance proceeds to the U.S. estate and 25% to the Canadian estate. However, the Plan provides that if the Canadian estate objects, the percentage allocation between the two estates will be determined by joint order of the U.S. and Canadian courts based on the relative aggregate amounts of the U.S.-estate claims and the Canadian-estate claims for disaster-related compensation. Alternatively, a mutually acceptable allocation would be negotiated with Senator Mitchell's help.
- Concerning legal claims that the Debtor might be able to assert against non-Debtors that share liability for the derailment disaster, the Plan provides for Senator Mitchell to evaluate the likely costs and benefits of pursuing such claims, including consideration of whether such pursuit would enhance victims' recoveries from the Debtor and other defendants in the aggregate. Among the factors to be considered are defenses that the defendants could assert against the Debtor's estate that they could not assert in a direct lawsuit by victims, such as the Debtor's own negligence, and the extent of the Debtor's damages.

Third, the Plan provides for all victims to be free to pursue claims against non-Debtor parties in whatever forum they choose. The Plan recognizes that these claims are not related to the bankruptcy case in the jurisdictional sense, and also that any attempt by the bankruptcy estate to enjoin, transfer or control such claims would serve no interest of the estate and would disserve victims by delaying their pursuit of rights that they expect will prove far more significant than their bankruptcy claims.

SECTION 1 DEFINITIONS

1.1 General. Any term that is not defined in the Plan but that is defined in the Bankruptcy Code or used in a specific sense therein shall have the same meaning when used in the Plan. Any term not defined in either the Plan or the Bankruptcy Code but that is defined in the Uniform Commercial Code shall have the meaning assigned to such term in the Uniform Commercial Code unless the context requires otherwise. Reference to a Docket No. shall, unless otherwise specified, mean the docket number in the Case.

1.2 Defined Terms. The following terms shall have the following meanings when used in initially capitalized form in the Plan:

1.3 503(b)(9) Claim means the portion of a Claim that is asserted to be, or in the case of an Allowed Claim, has been Allowed as being, entitled to priority pursuant to Code Section 502(b)(9).

1.4 1171(b) Claim means the portion of a Claim that is asserted to be or, in the case of an Allowed Claim, has been Allowed as a Claim entitled to priority under Code Section 1171(b).

1.5 Administrative Claim means the portion of a Claim that is asserted to be, or in the case of an Allowed Claim, has been Allowed as being, entitled to priority under Code Section 507(a)(2), other than 503(b)(9) Claims, 1171(b) Claims and Derailment Claims.

1.6 Allowed means:

- (a) with respect to a Claim other than an Administrative Claim, any Claim (i) either listed in the Schedules and not listed therein as contingent, unliquidated or disputed, (ii) as to which a proof of claim was filed on or before the Bar Date and either (A) was allowed by Final Order, but only in the amount so allowed or (B) to which no objection has been filed by the Objection Deadline, or (iii) allowed pursuant to the terms of the Plan;
- (b) with respect to an Administrative Claim, any Claim (i) consisting of an undisputed obligation incurred in the ordinary course as to which payment has been made, (ii) consisting of a Claim by a Professional Person for compensation or reimbursement of related expenses rendered or incurred before the Effective Date, to the extent applied for on or before the Postpetition Bar Date and allowed by Final Order, or (iii) consisting of any other Administrative Claim (A) as to which a proof of claim or request for payment is filed on or before the Postpetition Bar Date and (B) either (1) to which no objection has been filed by the Objection Deadline, or (2) allowed by Final Order, but only to the extent so allowed; and
- (c) with respect to a Derailment WD Claim, a Claim that is allowed pursuant to Section 4.5.

1.7 Allowed Amount means, subject to Section 7.7, the amount of any Allowed Claim.

1.8 Avoidance Action means any cause of action of the U.S. Debtor's bankruptcy estate arising under Code Sections 542, 543, 544, 545, 547, 548, 549, 550 or 553.

1.9 Bankruptcy Code means Title 11 of the United States Code, as in effect with respect to the Case.

1.10 Bar Date means, as to any particular Claim, the last date on which a proof of claim therefor may be submitted pursuant to Section 7.1.

1.11 Beneficiary has the meaning defined in Section 5.5.

1.12 Business Day means a day other than Saturday, Sunday or a legal holiday defined in Fed. R. Bankr. P. 9006(a) as applicable in Maine.

1.13 Canadian Case means the case under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended, a Canadian law, pending in the Canadian Court as to the Canadian Debtor.

1.14 Canadian Court means the Québec Superior Court of Justice (Commercial Division), or any other court with jurisdiction over the Canadian Case or any particular matter arising therein, but not a court exercising appellate jurisdiction.

1.15 Canadian Debtor means Montreal, Maine & Atlantic Canada Co., which is the subject of the Canadian Case.

1.16 Canadian Estate means, as the context requires, the Canadian Debtor and/or the Monitor, whichever (in the case of an action) is empowered under applicable law to take such action or (in the case of a benefit) is appropriate under applicable law to receive such benefit, on behalf of the Canadian Debtor and its estate in the Canadian Case.

1.17 Canadian Parties means (a) the Province, (b) the City of Lac Mégantic and the Government of Canada, including each and every official thereof (but only in such official capacity) and each and every agency, commission, department or other instrumentality thereof, (c) all employees, agents, attorneys, advisors, investment bankers, other professionals of any of the foregoing, (d) the Canadian Debtor, and (e) the Monitor, and all of its current and former directors, officers, employees, agents, attorneys, advisors, investment bankers, other professionals, lenders, investors, members, owners, shareholders, subsidiaries, other affiliates, successors and assigns.

1.18 Carve-Out means \$5 million from the proceeds of a sale of collateral securing certain obligations of the U.S. Debtor to the FRA as further described in the Carve-Out Motion.

1.19 Carve-Out Motion means the Motion to Approve, and Authorize the Trustee to Enter Into, Stipulation Concerning Carve-Out from Collateral of the Federal Railroad

Administration Pursuant to 11 U.S.C. §§ 105(a), 363(b), 506(c), 1163 and 1165 filed in the Case on September 16, 2013 [Docket No. 257].

1.20 Case or U.S. Case means the case under Subchapter IV of Chapter 11 the Bankruptcy Code pending in the Court as to the U.S. Debtor (*In re Montreal, Maine & Atlantic Railway, Ltd.*, Case No. 13-10670-LHK).

1.21 Case Closing Date means the date of entry of an Order consisting of a final decree closing the Case pursuant to Code Section 350.

1.22 Cash, in reference to a distribution under the Plan, means that the distribution will be made by check or wire transfer of the Plan Fiduciary in U.S. funds.

1.23 Claim means a claim, as defined in Code Section 101(5), against the U.S. Debtor or its property, whether or not asserted. For the avoidance of doubt, Claim refers solely to the liability of the U.S. Debtor or its property, and does not subsume the liability of any other entity or entity's property.

1.24 Closing means the closing of the Railroad Sale.

1.25 Code Section means, except where otherwise indicated, a section of the Bankruptcy Code.

1.26 Compensation Fund means the fund for the payment of Derailment Claims (or, if the Allocation Settlement is in effect, Derailment WD Claims) administered by the Plan Fiduciary pursuant to Section 5.5.

1.27 Confirmation Order means the Order confirming the Plan pursuant to Code Section 1129.

1.28 Court or U.S. Court means the United States Bankruptcy Court for the District of Maine, or any other court with jurisdiction over the Case, any particular matter within the Case pursuant to 28 U.S.C. § 157(c)(1) or (d), or any particular Claim pursuant to 28 U.S.C. §§ 157(b)(5), 959(a) or 1334(c), but not a court exercising appellate jurisdiction.

1.29 Derailment means the derailment and explosion on July 6, 2013, of an unmanned eastbound U.S. Debtor train with 72 carloads of combustible petroleum products and five locomotive units, in the City of Lac Mégantic.

1.30 Derailment Claims means Derailment WD Claims, Derailment PI Claims and Other Derailment Claims.

1.31 Derailment PI Claim means a Claim that is asserted to be, or in the case of an Allowed Claim has been Allowed as being, a Claim for damages resulting from personal injury not resulting in death as a result of the Derailment.

1.32 Derailment PI Claimant means the holder of a Derailment PI Claim, solely in such capacity. For the avoidance of doubt, a person holding a Derailment PI Claim and any

other Claim is a “Derailment PI Claimant” only in respect of such person’s Derailment PI Claim.

1.33 Derailment WD Claim means a Claim that is asserted to be, or in the case of an Allowed Claim has been Allowed as being, a Claim for damages resulting from wrongful death as a result of the Derailment.

1.34 Derailment WD Claimant means the holder of a Derailment WD Claim, solely in such capacity. For the avoidance of doubt, a person holding a Derailment WD Claim and any other Claim is a “Derailment WD Claimant” only in respect of such person’s Derailment WD Claim.

1.35 Disallowed as to any Claim means either (a) disallowed by Final Order, but (in the case of a partially-Allowed Claim) only to the extent so disallowed, (b) not filed by the Bar Date applicable to such Claim, or (c) treated as disallowed pursuant to Section 7.8.

1.36 Effective Date means the Business Day following the date on which the conditions set forth in Section 10 have been satisfied.

1.37 Equipment Lenders means those who hold or assert liens against or leases to the U.S. Debtor of equipment (as that term is used in the Uniform Commercial Code), including but not limited to Bangor Savings Bank, Canadian Pacific Railway Co., The CIT Group / Equipment Financing, Inc., Flex Leasing Corporation, GATX Corporation and Rail World Locomotive Leasing, LLC.

1.38 Estate or U.S. Estate means the bankruptcy estate of the U.S. Debtor.

1.39 Final Order means an Order as to which (a) the time has expired within which a proceeding for judicial review (whether by way of rehearing, appeal, *certiorari* or otherwise, but not pursuant to Code Section 1144, Fed. R. Bankr. P. 9024, Fed. R. Civ. P. 60(b) or any similar rule) may be commenced, without any such proceeding having been commenced, or (b) if such a proceeding has been timely commenced, such Order has been affirmed by the highest tribunal in which review is sought or such proceeding for review has otherwise been terminated without modification of such Order, and the time has expired within which any further proceeding for judicial review may be commenced.

1.40 FRA means the (United States) Federal Railroad Administration.

1.41 FRA Settlement means the terms of settlement provided for in Section 4.1(a).

1.42 General Unsecured Claim means any Unsecured Claim, including without limitation any Unsecured Claim arising from the rejection or termination of an executory contract or unexpired lease, that is not a Priority Claim or a Derailment Claim.

1.43 Insurer means the issuer of the XL U.S. Insurance Policy, the issuer of the XL Canada Insurance Policy, and all of their affiliates or, in the context of an Insurer Settlement, any subset thereof in accordance with the terms of such Insurer Settlement.

1.44 Insurer Settlement means an Omnibus Insurer Settlement or a U.S.-Only Insurer Settlement.

1.45 Lender means Camden National Bank in its capacity as lender pursuant to the postpetition financing authorized by the Order Granting Chapter 11 Trustee's Motion for Order (A) Authorizing Debtor to Obtain Post-Petition Financing; and (B) Granting to Camden National Bank Post-Petition Liens [Docket No. 367].

1.46 Monitor means Richter Advisory Group, Inc. in its capacity as monitor of the Canadian Debtor in the Canadian Case, and shall include the Canadian Debtor as to any action that will be effective under applicable law only if taken by the Canadian Debtor itself.

1.47 Non-Debtor Entity means an entity (including, as set forth in Code Section 101(15), a natural person) other than the Debtor or the Estate.

1.48 Objection Deadline means, except as extended or shortened pursuant to Section 7.3(c), the first Business Day after the 30th day following the later of the Bar Date therefor, or the Effective Date, *provided, however*, that there shall be no Objection Deadline as to any Claim or interest on account of which there will be no distribution under the Plan.

1.49 Omnibus Insurer Settlement means a settlement among the Plan Fiduciary (or, prior to the Effective Date, the Plan Proponent), the Canadian Estate and the Insurer cancelling or otherwise disposing of the XL Insurance Policies.

1.50 Order means an order or judgment of the Court.

1.51 Other Derailment Claim means a Claim for damages as a result of the Derailment that is not a Derailment PI Claim or a Derailment WD Claim.

1.52 Petition Date means August 7, 2013.

1.53 Plan means this plan, as it may be amended or modified by the Plan Proponent from time to time as permitted in this plan or under the Bankruptcy Code.

1.54 Plan Deadline means the date set by Order as the last date on which ballots accepting or rejecting the Plan may be filed.

1.55 Plan Expense means an expense or other liability incurred by the Plan Fiduciary in performing the Plan Fiduciary's duties under the Plan, including but not limited to fees and expenses of the Plan Fiduciary and persons engaged by him pursuant to Section 6.7.

1.56 Plan Fiduciary means the person serving from time to time as Plan Fiduciary under the Plan in accordance with Sections 6.1 or 6.2.

1.57 Plan Notice Party means the Plan Proponent and any creditor having an Allowed or Unresolved Secured Claim, Priority Claim, Derailment WD Claim or Derailment PI Claim of more than \$100,000 who gives written notice to the Plan Fiduciary to be added as a Plan Notice Party.

1.58 Plan Proponent has the meaning set forth in the beginning paragraph of the Plan.

1.59 Postpetition Bar Date means the first Business Day following the 30th day after the Effective Date.

1.60 Priority Claim means Administrative Claims, 503(b)(9) Claims, 1171(b) Claims, Priority Tax Claims, and Priority Non-Tax Claims.

1.61 Priority Non-Tax Claim means that portion of a Claim which is filed, or in the case of an Allowed Claim, has been Allowed, as entitled to priority in accordance with Code Section 507(a)(3)-(7) and (9).

1.62 Priority Tax Claim means that portion of a Claim that is filed, or in the case of an Allowed Claim, has been Allowed, as entitled to priority under Code Section 507(a)(8).

1.63 Professional Person means a professional employed by the Trustee pursuant to Code Section 327.

1.64 Pro Rata Share means, in respect of any Allowed Class 5 Claim, the amount of the Compensation Fund multiplied by a fraction (which shall not be greater than 1/1), the numerator of which is the Allowed Amount of such Claim and the denominator of which is the aggregate amount of all Allowed and Unresolved Class 5 Claims.

1.65 Province means the government of the Province of Quebec (Canada), including each and every official thereof (but only in such official capacity) and each and every agency, commission, department or other instrumentality thereof, including the Ministry of Justice, the Ministry of Sustainable Development, Environment, Wildlife and Parks, and the Ministry of Public Security.

1.66 Railroad Assets means all assets of the Estate that are sold pursuant to the Railroad Sale.

1.67 Railroad Sale means the sale authorized by the Court pursuant to the Order (I) Approving (A) Sale of Assets Pursuant to Asset Purchase Agreement with Railroad Acquisition Holdings LLC, (B) Sale of Assets Free and Clear of Liens, Claims, and Interests, and (C) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Thereto and (II) Granting Related Relief entered January 24, 2014 [Docket No. 594].

1.68 Railroad Sale Proceeds means the proceeds resulting from the Railroad Sale.

1.69 Residual Assets means the assets of the Estate, if any, other than (a) Railroad Assets and (b) Railroad Sale Proceeds that are subject to Valid liens.

1.70 Schedules mean the schedules of assets and liabilities filed by the U.S. Debtor in the Case, as amended through and including the Effective Date.

1.71 Secured means, as to any Claim secured by a Valid lien on property of the Estate, the portion of such Claim equal to the lesser of (a) the full amount thereof or (b) the value of

such property, less the amount of any prior Valid liens thereon, determined pursuant to Section 7.1.

1.72 Troester Claim means the wrongful death claim asserted by Sarah Troester, as Administratrix of the Estate of Jefferson Troester in the Court of Common Pleas of Philadelphia County, Pennsylvania, having a Docket No. 1722.

1.73 Trustee means, at any given time, the person serving as trustee of the U.S. Debtor pursuant to Code Section 1163.

1.74 Unresolved means any Claim that has not been Allowed or Disallowed. The amount of any Unresolved Claim shall be the amount (a) asserted by the holder thereof through the filing of a proof of claim on or before the Bar Date or, as applicable, the Postpetition Bar Date or (b) if no proof of claim was timely filed, the amount listed in the Schedules and not listed therein as contingent, unliquidated or disputed.

1.75 Unsecured means, as to any Claim, the amount thereof other than the amount (if any) constituting a Secured Claim.

1.76 U.S. Debtor means the debtor in the Case, Montreal, Maine & Atlantic Railway, Ltd., a corporation organized under the laws of the State of Delaware.

1.77 U.S.-Only Insurer Settlement means a settlement between the Plan Fiduciary (or, prior to the Effective Date, the Plan Proponent) and the Insurer cancelling or otherwise disposing of the XL U.S. Policy.

1.78 Valid or Validity, as to any lien, refers to whether such lien is valid, binding, enforceable, perfected and not subject to avoidance under Code Sections 544 through 553.

1.79 Wheeling means Wheeling & Lake Erie Railway Company.

1.80 XL Insurance Policies means the XL Canada Policy and the XL U.S. Policy.

1.81 XL Canada Policy means Railroad Liability Insurance Policy issued by XL Insurance Company Limited in favor of the Canadian Debtor having a Policy No. RRL003723801.

1.82 XL U.S. Policy means Railroad Liability Insurance Policy issued by XL America, Inc. in favor of the U.S. Debtor having a Policy No. RLC003808301.

SECTION 2 TREATMENT OF NON-CLASSIFIED CLAIMS

2.1 Administrative Claims. Subject to Sections 2.2, 2.3 and 2.4, each Allowed Administrative Claim shall be paid in full in Cash on the Effective Date, except to the extent that the holder thereof and the Plan Fiduciary agree on less favorable treatment of such Claim.

2.2 Lender. All amounts due to the Lender (including interest and fees) shall, to the extent not previously paid, be paid in full on the Effective Date from Railroad Sale Proceeds as provided in Section 5.1(b)(i).

2.3 U.S. Trustee Fees. Any Administrative Claim for fees under 28 U.S.C. § 1930 due and payable prior to entry of the Confirmation Order shall be paid in full in Cash on the Effective Date or, in the case of amounts not yet billed by the United States Trustee as of the Effective Date, within ten Business Days after receipt of an invoice therefor. All such fees for all periods through the Case Closing Date shall be paid from the Carve-Out regardless of whether the FRA Settlement is in effect. Transfers of funds from the Trustee to the Plan Fiduciary or vice versa shall not constitute disbursements for purposes of computing fees payable under 28 U.S.C. § 1930.

2.4 Professional Persons. Except to the extent that a Professional Person and the Plan Fiduciary agree on less favorable treatment of the Claim of such Professional Person for compensation and reimbursement of expenses through the Effective Date, such Claim shall be paid in Cash within ten Business Days following a Final Order allowing an application therefor, *provided, however*, that any retainer held by a Professional Person shall be applied as directed in an Order or, if none, as directed by the Plan Fiduciary. The unused portion of any such retainer shall be turned over to the Plan Fiduciary.

2.5 Priority Tax Claims. Each Allowed Priority Tax Claim shall be paid in full in Cash on the Effective Date, except to the extent that the holder thereof and the Plan Fiduciary agree on less favorable treatment of such Claim.

SECTION 3 DESIGNATION OF CLASSES OF CLAIMS AND INTERESTS

3.1 Claims that are required to be classified under Code Section 1123(a)(1) and interests are hereby classified into the following classes:

- (a) **Class 1**, consisting of all Secured Claims of the FRA;
- (b) **Class 2A**, consisting of all Secured Claims of Bangor Savings Bank;
- (c) **Class 2B**, consisting of all Secured Claims of Canadian Pacific Railway Co. and affiliates;
- (d) **Class 2C**, consisting of all Secured Claims of The CIT Group / Equipment Financing, Inc. and affiliates;
- (e) **Class 2D**, consisting of all Secured Claims of Flex Leasing Corporation and affiliates;
- (f) **Class 2E**, consisting of all Secured Claims of GATX Corporation and affiliates;

- (g) **Class 2F**, consisting of all Secured Claims of Rail World Locomotive Leasing, LLC and affiliates;
- (h) **Class 2G**, consisting of all Secured Claims of any Equipment Lender not specified in Sections 3.1(b) through (g);
- (i) **Class 3**, consisting of the Secured Claim of Wheeling;
- (j) **Class 4**, consisting of all Priority Non-Tax Claims;
- (k) **Class 5**, consisting of all Derailment WD Claims and Derailment PI Claims;
- (l) **Class 6**, consisting of all Other Derailment Claims;
- (m) **Class 7**, consisting of the Troester Claim;
- (n) **Class 8**, consisting of all General Unsecured Claims other than Claims specifically included in other classes;
- (o) **Class 9**, consisting of all Claims of the Canadian Debtor; and
- (p) **Class 10**, consisting of all equity interests in the U.S. Debtor, including any options, warrants or other agreements for the acquisition of such interests.

SECTION 4 TREATMENT OF CLASSIFIED CLAIMS AND INTERESTS

4.1 Class 1 (FRA). Class 1 is impaired. In full settlement and satisfaction of the Class 1 Claim, the holder thereof may on its ballot accepting or rejecting the Plan elect either the FRA Settlement, as provided in Section 4.1(a), or the alternative treatment provided in Section 4.1(b). If a ballot electing Section 4.1(b) is not properly submitted on or before the Plan Deadline, the FRA shall be deemed to have elected Section 4.1(a) and accepted the FRA Settlement. Depending on such election, either:

- (a) **FRA Settlement.** If the FRA accepts or is deemed to accept the FRA Settlement, then, as of the Effective Date:
 - (i) **Allowance of Claim.** The FRA Claim shall be Allowed in the full amount of the proof of claim therefor, (A) as a Secured Claim in the amount of the Railroad Sale Proceeds allocable to the FRA under Section 5.1(b)(v) plus the amount of the Carve-Out plus the value of the FRA's lien, if any, on Residual Assets, and (B) as a General Unsecured Claim for the balance. Other than the FRA Claim, the FRA shall not file with the Court or otherwise assert any Claim.

- (ii) **Payment of Claim.** In full settlement and satisfaction of its Secured Claim, the FRA shall be paid on the Effective Date, to the extent not previously paid, the full amount of Railroad Sale Proceeds allocable to the FRA under Section 5.1(b)(v), less \$5,000,000 to fund the Carve-Out. To the extent that the collateral securing such Claim includes any Residual Assets, such assets shall be disposed of in accordance with Section 6.3(b)(i), *provided, however,* that all proceeds from disposition of such assets, net of any amounts payable to any holder of a lien on such assets senior to the FRA's, shall be paid to the FRA on account of the FRA Claim without offset under Code Section 506(c) or otherwise.
 - (iii) **Carve-Out.** The Carve-Out shall be turned over to the Plan Fiduciary on the Effective Date, and disbursed as follows: First, to pay amounts due pursuant to Section 2.3, and amounts Allowed pursuant to Section 2.4 to the Trustee and Professional Persons engaged by the Trustee (including amounts for services provided after the Effective Date) pursuant to Section 5.1; second, to pay other Allowed Priority Claims, including amounts Allowed to counsel to any official committee, and any substantial contribution Claim for bankruptcy counsel to the Plan Proponent, for services through the Effective Date of counsel to any official committee and, as a substantial contribution Claim, bankruptcy counsel to the Plan Proponent, and reimbursement of expenses in connection therewith; third, to pay or reserve for Plan Expenses; and fourth, to the Compensation Fund for distribution pursuant to Section 5.5. The Plan Proponent shall withdraw its objection to the Carve-Out Motion, including withdrawal of its pending appeal from the Order allowing the Carve-Out Motion.
 - (iv) **Release.** Section 8.1 of the Plan shall become operative. Notwithstanding anything to the contrary contained in the Plan, Section 8.1 shall not become operative unless the FRA elects or is deemed to elect the FRA Settlement.
- (b) **Alternative Treatment.** If the FRA does not accept and is not deemed to accept the FRA Settlement, then as of the Effective Date:
- (i) **Allowance.** Absent timely objection by the Plan Fiduciary pursuant to Section 7.3, the Class 1 Claim shall be Allowed in the amount of the Railroad Sale Proceeds allocable to the FRA under Section 5.1(b)(iv) plus the amount of the Carve-Out plus the value of the FRA's lien, if any, on Residual Assets, and (B) as a General Unsecured Claim for the balance.
 - (ii) **Payment.** In full settlement and satisfaction of its Secured Claim, the FRA shall be paid, subject to Section 7.3, (A) on the Effective

Date, to the extent not previously paid, the full amount of Railroad Sale Proceeds allocable to the FRA under Section 5.1(b)(iv), less \$5,000,000 (the Carve-Out), (B) on the Case Closing Date, the unused balance of the Carve-Out, and (C) to the extent that the collateral securing such Claim includes any Residual Assets, such assets shall, as of the Effective Date, be deemed abandoned to the FRA except as otherwise provided in the Plan or otherwise agreed between the FRA and the Plan Fiduciary.

- (iii) **Carve-Out.** The Carve-Out shall be turned over to the Plan Fiduciary on the Effective Date, and administered by the Plan Fiduciary as a separate account from other estate funds. The FRA shall have a lien on such account, which shall be deemed released from any funds properly disbursed from such account. The Plan Fiduciary shall administer the Carve-Out in accordance with the terms thereof, *provided, however*, that notwithstanding any other provision of the Plan (except Section 2.3), no portion of the Carve-Out shall be disbursed unless and until the Order approving the Carve-Out Motion becomes a Final Order.
- (iv) **Preservation of Claims.** All rights of the U.S. Debtor and its bankruptcy estate in relation to the FRA and the FRA Claim shall be preserved. Pursuant to Code Section 1123(b)(3), the Plan Fiduciary shall be the representative of the U.S. Debtor's bankruptcy estate for the purpose of asserting all such rights.

4.2 Classes 2A through 2G (Equipment Lenders). Each of Classes 2A, 2B, 2C, 2D, 2E, 2F and 2G is impaired. Absent timely objection by the Plan Fiduciary pursuant to Section 7.3 or the Trustee pursuant to Section 5.1(b), each Claim of each such class shall be Allowed in the amount of the lesser of (i) the full amount due on account of such Claim, including any amounts allowable under Code Section 506(b), and (ii) the sum of the Railroad Sale Proceeds allocable to such Claim under Section 5.1(b)(ii), plus the value of such Equipment Lender's lien on any Residual Assets securing such Claim. In full settlement and satisfaction of each Claim of each such class,

- (a) the holder of such Claim shall (to the extent not previously paid) be paid its share of the Railroad Sale Proceeds in accordance with Section 5.1(b)(ii); and
- (b) to the extent that the collateral securing such Claim includes any Residual Assets, such assets shall be disposed of in accordance with Section 6.3(b)(i) or abandoned by the Plan Fiduciary on ten days' notice to the Equipment Lender.

4.3 Class 3 (Wheeling). Class 3 is impaired. Absent timely objection by the Plan Fiduciary pursuant to Section 7.3 or the Trustee pursuant to Section 5.1, the Class 3 Claim shall be Allowed in the amount of the lesser of (i) the full amount due on account of such Claim,

including any amounts allowable under Code Section 506(b), and (ii) the sum of the Railroad Sale Proceeds allocable to such Claim under Section 5.1(b)(iii), plus the value of Wheeling's lien on any Residual Assets securing such Claim. In full settlement and satisfaction of the Class 3 Claim,

- (a) Wheeling shall (to the extent not previously paid) be paid its share of the Railroad Sale Proceeds in accordance with Section 5.1(b)(iii); and
- (b) to the extent that the collateral securing such Claim includes any Residual Assets, such assets shall be disposed of in accordance with Section 6.3(b)(i).

4.4 Class 4 (Priority Non-Tax Claims). Class 4 is unimpaired. In full settlement and satisfaction of each Allowed Class 4 Claim, the Allowed Amount thereof shall be paid in full in Cash on the Effective Date, except as otherwise agreed by the holder of any such Claim.

4.5 Class 5 (Wrongful Death and Personal Injury Claims from the Derailment). Class 5 is impaired. By voting to accept the Plan, Class 5 will accept the allocation provisions set forth in Sections 5.3 and 5.4. Each holder of an Unresolved Class 5 Claim shall negotiate in good faith with the Plan Fiduciary on an agreed amount for such Claim to be Allowed based on an estimate of the jury verdict likely to be returned in respect of such Claim if not for the Case, *provided, however*, that this sentence shall not be construed as a waiver of any Derailment WD Claimant's or Derailment PI Claimant's right to trial by jury if no agreement is reached. Each holder of an Allowed Class 5 Claim shall receive on account thereof a Pro Rata Share of the Compensation Fund, and Section 5.6 shall be enforceable by Derailment WD Claimants and Derailment PI Claimants as a bargained-for benefit of the Plan. The Plan Proponent shall continue in existence through the Case Closing Date as representative of the collective interests of Derailment WD Claimants; the Plan Proponent's bankruptcy counsel (but not personal injury or any other counsel) shall be paid for their services and reimbursed for their expenses in connection therewith from and after the Effective Date as a Plan Expense. The Plan Proponent shall be a party in interest with respect to each and every legal matter or proceeding in the Case.

4.6 Class 6 (Other Derailment Claims). Class 6 is impaired. Holders of Class 6 Claims shall not receive or retain any property on account thereof under the Plan. No funds will be available in the U.S. Case to pay Class 6 Claims because Code Section 1171(a) requires payment in full of wrongful death and personal injury claims before payment of Class 6 Claims. However, by providing for waiver by Derailment WD Claimants and Derailment PI Claimants of their right to assert these claims in the Canadian Case, the Plan confers a valuable benefit on holders of Other Derailment Claims by enhancing their potential recoveries in the Canadian Case.

4.7 Class 7 (Troester Claim). Class 7 is impaired. As of the Effective Date, the automatic stay of Code Section 362(a) shall be lifted for the purpose of permitting the holder of the Troester Claim to recover solely from any insurance policies of the U.S. Debtor that cover such Claim and do not cover Derailment Claims. Such holder may commence or continue litigation against the U.S. Debtor in name only and/or bring a direct action against the issuer of any such insurance policy, including obtaining and enforcing judgment, *provided, however*, that

except as provided in the preceding sentence, such holder is deemed to waive recovery against any asset of the Estate or under the Plan. No funds of the Estate nor any efforts of the Trustee or the Plan Fiduciary will be expended to defend such litigation, and if any discovery is sought from the Estate, the Court may upon motion of the Plan Fiduciary establish reasonable limits and protections in order to balance any need for discovery against the interest of conserving the Estate for the benefit of other parties in interest.

4.8 Class 8 (General Unsecured Claims). Class 8 is impaired. Holders of Class 8 Claims shall not receive or retain any property on account thereof under the Plan.

4.9 Class 9 (Inter-Company Claim). Class 9 is impaired. Holders of Class 9 Claims shall not receive or retain any property on account thereof under the Plan.

4.10 Class 10 (Equity Interests). Class 10 is impaired. Holders of Class 10 interests shall not receive or retain any property on account thereof under the Plan. All Class 10 interests shall be deemed cancelled on the Effective Date.

SECTION 5 MEANS OF IMPLEMENTATION

5.1 Post-Closing Wrap-Up of Railroad Sale. The Trustee shall continue in office after the Effective Date, with the following duties:

- (a) **Railroad Sale.** The Trustee shall perform on behalf of the Estate any post-Closing obligations of the Estate to the buyer of the Railroad Assets in connection with the Railroad Sale, who plans to continue the Debtor's rail service as contemplated by the Railroad Sale. Accordingly, pursuant to Code Section 1172(a), all rail service of the Debtor is proposed to be continued, and none is proposed to be terminated.
- (b) **Railroad Sale Proceeds.** To the extent that Railroad Sale Proceeds remain undistributed, the Trustee shall (subject to Section 5.1(c)) distribute such proceeds in accordance with any agreement among parties with a lien thereon, or any Order entered upon notice to all such parties. If no such agreement has been reached or any such Order entered, the Railroad Sale Proceeds shall be distributed as follows:
 - (i) **Lender.** Any remaining balance of the Postpetition Loan shall be paid in full.
 - (ii) **Equipment Lenders.** To the extent that any Equipment Lender has a first priority lien (disregarding the Postpetition Loan) on any Railroad Assets, the value of such assets shall be paid to such Equipment Lender or, if less, the full Allowed Amount of the Claim of such Equipment Lender secured thereby.
 - (iii) **Wheeling.** To the extent that Wheeling has a first priority lien (disregarding the Postpetition Loan) on any Railroad Assets, the

value of such assets shall be paid to Wheeling or, if less, the full Allowed Amount of the Claim of Wheeling secured thereby.

- (iv) **Operating Expenses.** To the extent that any Administrative Claims arising from the Debtor's business operations from the Petition Date through the Effective Date remain unpaid, such Claims shall be paid to the holder(s) thereof, excluding, however, any Claims of Professional Persons, which shall be paid solely from the Carve-Out.
- (v) **FRA.** The balance of the Railroad Sale Proceeds remaining after the foregoing distributions shall be paid to the FRA, less \$5,000,000 to fund the Carve-Out.
- (c) **Conditions to Distributions.** Section 7.3 shall apply to distributions under Section 5.1(b), except that if the FRA Settlement is in effect, Section 4.1(a) rather than Section 7.3 shall govern allowance and distributions on account of the FRA Claim. To the extent that disputes concerning allowance of Claims or valuation of liens prevent complete distribution of funds under Section 5.1(b), the Trustee shall make the maximum distributions he can while reserving funds to cover all possible outcomes of such disputes. However, regardless of any disputes as to the Carve-Out, the Trustee shall turn over the full amount thereof to the Plan Fiduciary on the Effective Date, with the Carve-Out thereupon to be governed by Section 4.1(a)(iii) or (b)(iii), as applicable. From and after entry of the Confirmation Order, the Trustee shall promptly advise the Plan Fiduciary by email upon making any disbursement of Railroad Sale Proceeds.
- (d) **Residual Assets.** The Trustee shall turn over to the Plan Fiduciary on the Effective Date all Residual Assets except that, if the FRA Settlement is not in effect, the Trustee shall turn over to the FRA, and the Estate shall be deemed to have abandoned, any equipment or other goods on which the FRA has a lien and as to which the Plan Fiduciary determines, in his sole discretion, the Estate's interest is of no or nominal value.
- (e) **Cooperation.** The Trustee shall render to the Plan Fiduciary such cooperation as the Plan Fiduciary requests.
- (f) **Professionals/Compensation.** In performing the foregoing duties, the Trustee may utilize professionals in accordance with Orders previously entered. The Trustee and such professionals may receive compensation and reimbursement of expenses on account of their services from and after the Effective Date by filing applications with the Court therefor, and any amounts awarded by the Court shall be paid from the Carve-Out, *provided, however,* that if the FRA Settlement is in effect, the Trustee and his professionals shall instead be paid by the Plan Fiduciary as a Plan

Expense. Ongoing service by a professional to the Trustee shall not preclude the Plan Fiduciary from engaging such professional pursuant to Section 6.7.

- (g) **Accounting.** On the Business Day following entry of the Confirmation Order, the Trustee shall provide to the Plan Fiduciary an interim accounting containing (i) an itemization of Railroad Sale Proceeds distributed and remaining in the hands of the Trustee, and (ii) an itemization of Carve-Out funds disbursed and an itemized estimate of amounts chargeable to the Carve-Out that are accrued and unpaid. On the Effective Date, the Trustee shall provide the Plan Fiduciary an updated version of such accounting, through the Effective Date. Within ten Business Days after making his final distribution of Railroad Sale Proceeds, the Trustee shall provide the Plan Fiduciary and file with the Court a final accounting, under oath, setting forth the distribution of Railroad Sale Proceeds.
- (h) **Discharge.** From and after the Effective Date, the Trustee's only duties shall be as set forth in this Section 5.1. Upon completion of such duties, and receiving the Plan Fiduciary's concurrence that no further services of the Trustee are likely to be needed under Section 5.1(e) above, the Trustee may seek discharge from the Court and may, along with his professionals, seek final compensation and reimbursement of expenses from the Court (which, if the FRA Settlement is in effect, shall not be required for services from and after the Effective Date).

5.2 Case Administration after Effective Date. Upon receipt of the Residual Assets turned over by the Trustee on the Effective Date pursuant to Section 5.1(d), the Plan Fiduciary shall assume responsibility for the administration of such assets. Notwithstanding Code Section 1141(b), confirmation of the Plan shall not terminate the Estate; rather, all assets of the Estate (including those in the hands of the Trustee) shall be deemed to remain a bankruptcy estate for purposes of the Bankruptcy Code and other applicable law. From and after the Effective Date, the Plan Fiduciary shall have full responsibility for administering the Estate, performing the duties assigned to the Plan Fiduciary under the Plan, and concluding the Case in all respects, except for the Trustee's continuing responsibilities under Section 5.1. The Plan shall not be deemed to constitute a transfer or create a trust or any other legal entity for tax or any other purposes. The U.S. Debtor's legal existence shall continue until the Case Closing Date. Until closed, the Case shall continue to be a case under Subchapter IV of Chapter 11 of the Bankruptcy Code.

5.3 Allocation of Derailment Claims. Subject to acceptance of the Plan by Class 5,

- (a) **Wrongful Death and Personal Injury Claims.** Derailment WD Claims and Derailment PI Claims may be asserted in the U.S. Case, and such Claims shall be Allowed and paid pursuant to Sections 4.5 and 5.5 of the Plan. Such recoveries in the U.S. Case shall be the only recovery on account of Derailment WD Claims or Derailment PI Claims in either the

U.S. Case or the Canadian Case. Derailment WD Claimants and Derailment PI Claimants waive the right to file, otherwise assert, or recover on account of such claims in the Canadian Case. Acceptance of the Plan by Class 5 shall constitute authorization by all Derailment WD Claimants and Derailment PI Claimants for the Canadian Estate to obtain disallowance of any wrongful death claim arising from the Derailment that is or has been filed in the Canadian Case; however, no existing or future order in the Canadian Case shall affect the rights of such holders in the U.S. Case or in any other legal proceeding outside Canada.

- (b) **Other Derailment Claims.** Other Derailment Claims may be asserted in the Canadian Case and, to the extent allowed, may receive such recovery as may be available in the Canadian Case, which may include a *pro rata* share of any assignment by the Province of its right to insurance proceeds of the Canadian Debtor. Such recoveries in the Canadian Case shall be the only recovery on account of such Claims in either the U.S. Case or the Canadian Case. Any Other Derailment Claim that is or has been filed in the U.S. Case shall be deemed Disallowed without need for an Order so providing; however, no order in the U.S. Case shall affect the rights of holders of Other Derailment Claims in the Canadian Case or in any other legal proceeding outside the United States.

5.4 Insurance Policies.

- (a) **Authorization to Settle.** Acceptance of the Plan by Class 5 shall constitute the authorization by all holders of Derailment WD Claims and Derailment PI Claims for the Plan Fiduciary, on behalf of the Estate, and the Canadian Estate to enter into and perform an Omnibus Insurer Settlement (the preferred alternative) or a U.S.-Only Insurer Settlement, *provided, however*, that if an Insurer Settlement has been reached by the Plan Proponent prior to the Effective Date, the Plan Fiduciary shall execute and perform such settlement, and *further provided* that the Plan Fiduciary shall not negotiate any Insurer Settlement without participation by the Plan Proponent nor enter into any Insurer Settlement without the Plan Proponent's consent.
- (b) **Coordination with Canadian Estate.** If the Canadian Estate does not object to the Plan:
 - (i) **Allocation of Insurance Proceeds.** Proceeds from any Omnibus Insurer Settlement shall be paid 75% to the Plan Fiduciary for distribution pursuant to Section 5.5, and 25% to the Canadian Estate for distribution in the Canadian Case on account of claims arising from the Derailment.
 - (ii) **Settlement Parameters.** Any agreement of the Plan Proponent with the Province and/or the Canadian Estate specifying the

parameters of a mutually acceptable Omnibus Insurer Settlement shall (i) remain privileged, confidential and not subject to discovery in the Case or any legal proceeding, and (ii) shall be enforceable in the Case (in any enforcement proceeding, such agreement shall be submitted to the Court under seal).

- (iii) **Inter-Company Claims.** The Canadian Estate shall not assert any Claims in the U.S. Case. The U.S. Estate shall not assert any claims in the Canadian Case.
 - (iv) **Release.** Section 8.2 of the Plan shall become operative. Notwithstanding anything to the contrary contained in the Plan, Section 8.2 shall not become operative if any of the Canadian Parties objects to the Plan.
- (c) **Canadian Estate Objection.** If the Canadian Estate objects to the Plan, then allocation of proceeds from any Omnibus Insurer Settlement shall be determined by written agreement between the Canadian Estate and the Plan Proponent (before the Effective Date) or the Plan Fiduciary (thereafter), or, if none, then by joint order of the U.S. Court and the Canadian Court allocating such proceeds proportionally between the U.S. Estate and the Canadian Estate based on the ratio of (i) the aggregate Allowed Amount of Derailment WD Claims and Derailment PI Claims (allocated to the U.S. Estate), to (ii) the Monitor's good faith estimate of the aggregate amount for which Other Derailment Claims (other than any Claim of the Province, which has committed to assign to victims of the Derailment any insurance proceeds to which the Province might become entitled) will be allowed in the Canadian Case.
- (d) **U.S.-Only Insurance Settlement.** All proceeds from any U.S.-Only Insurer Settlement shall be paid to the Plan Fiduciary for distribution pursuant to Section 5.5.
- (e) **Policy Cancellation.** Any Omnibus Insurer Settlement may include cancellation of both XL Insurance Policies and a release of all claims of the U.S. Estate and the Canadian Estate against the Insurer, in which event all holders of Derailment Claims shall be bound by such cancellation and release. Any U.S.-Only Insurer Settlement may include cancellation of the XL U.S. Policy and a release of all claims of the U.S. Estate against the Insurer, in which event all Derailment WD Claimants and Derailment PI Claimants shall be bound by such cancellation and release.
- (f) **Non-Settlement.** If neither an Omnibus Insurer Settlement nor a U.S.-Only Insurance Settlement has reached before the Effective Date, then on the Effective Date (i) in recognition that valid Derailment Claims under the XL U.S. Policy will substantially exceed \$18,750,000, the Insurer shall pay \$18,750,000 to the Plan Fiduciary for deposit into the Compensation

Fund, in payment of obligations of the Insurer under the XL U.S. Policy, (ii) the XL U.S. Policy shall thereupon be cancelled, (iii) the Plan Fiduciary shall deliver to the Insurer a consent to such cancellation and a release of obligations of the Insurer under the XL U.S. Policy, and (iv) all Derailment WD Claimants and Derailment PI Claimants shall be bound by such cancellation and release.

5.5 Derailment Victims' Compensation Fund. The Plan Fiduciary shall administer the Compensation Fund for the benefit of holders of Allowed Derailment WD Claims and Allowed Derailment PI Claims (each, a "Beneficiary"). The Compensation Fund shall consist of (a) proceeds of any Insurer Settlements payable to the Plan Fiduciary, (b) subject to Section 6.3(b)(i), proceeds of Residual Assets, *if any*, (c) subject to Section 6.3(b)(ii), proceeds of any recoveries on account of claims, *if any*, of the U.S. Debtor or the Estate arising from the Derailment, and (d) if the FRA Settlement is in effect, the residual amount of the Carve-Out after Priority Claims are paid. Each Beneficiary shall be entitled to a Pro Rata Share of the Compensation Fund, *provided, however*, that if funding for Plan Expenses is not available from any other source, the Plan Fiduciary may use the Compensation Fund to pay Plan Expenses, but shall restore amounts so utilized if other funding becomes available. At such times (if any) as the Plan Fiduciary determines that the net amount of the Compensation Fund is sufficient to fund a material distribution to Beneficiaries, and in any event prior to the Case Closing Date if any amount is available for distribution (subject to Section 6.12), the Plan Fiduciary shall distribute in Cash to each Beneficiary its Pro Rata Share of the total distributed amount of the Compensation Fund.

5.6 Claims against Non-Debtor Entities. Notwithstanding pendency of the Case or any court order or other event therein or as a result thereof:

- (a) **Pursuit of Litigation.** Holders of Claims shall have the right to commence or continue litigation in any forum against any Non-Debtor Entity on account of any claim, including claims for which the U.S. Debtor or the Canadian Debtor may share liability or that may on any other basis be, or asserted to be, related to the Case. Without limiting the generality of the foregoing, (a) holders of Derailment Claims may commence or continue litigation in any forum against any Non-Debtor Entity alleged to have caused or contributed to causation of the Derailment, or injury or death or other damages resulting from the Derailment, (b) holders of General Unsecured Claims may commence or continue litigation in any forum against any Non-Debtor Entity alleged to have guaranteed, or otherwise assumed liability for, any Claim, (c) no injunction or other Order shall be entered or remain in effect barring, restricting or delaying the commencement or continuation of any such litigation by holders of Derailment Claims or General Unsecured Claims, and (d) the Plan Fiduciary's powers under Section 6.3(b) to pursue and settle claims constituting assets of the Estate shall not include the power to pursue or settle claims of any non-Estate party, whether or not arising from the Derailment.

- (b) **Canadian Court Orders.** Section 5.6(a) shall not be construed (i) to permit litigation in any jurisdiction against the Canadian Debtor or the Canadian Estate during any period when an order barring such litigation is in effect in the Canadian Case, or (ii) to permit litigation in Canada against any defendant during any period when an order barring such litigation is in effect in the Canadian Case.
- (c) **Settlement of Litigation.** The Plan shall be deemed a good-faith settlement of the Debtor's liability for Derailment WD Claims and Derailment PI Claims. Accordingly, in any action brought against a Non-Debtor Entity for its own liability for the same wrongful death or injury that is brought in any jurisdiction with a statute modeled on the Uniform Joint Tortfeasor Contribution Act (in Illinois, the Illinois Joint Tortfeasor Contribution Act, 735 ILL. COMP. STAT. 5/2-1117), such Non-Debtor Entity shall receive a full dollar-for-dollar offset against any judgment rendered in such action, in the amount of any and all payments received by the plaintiff from the Compensation Fund.
- (d) **Transfer.** The rights conferred or confirmed by Section 5.6(a) are a bargained-for benefit of the Plan for holders of Class 5 Claims. Accordingly, the Plan Fiduciary shall, on behalf of the Estate at the request of any such holder, (i) oppose any pending or future motion based in whole or in part upon the pendency of the Case, to remove, transfer, dismiss or otherwise interfere with such holder's exercise of the rights conferred by Section 5.6(a), and (ii) seek to restore to its original forum any litigation commenced by any such holder that was removed and/or transferred prior to the Effective Date based in whole or in part on the pendency of the Case.
- (e) **Related-to Jurisdiction.** From and after the Effective Date, no action prosecuted by the holder of any Derailment Claim against any Non-Debtor Entity shall be, or shall be deemed to be, "related to" the Case as those words are used in 28 U.S.C. § 1334.
- (f) **Insurance Neutrality.** Nothing in the Plan shall be deemed to relinquish, expand or otherwise affect the coverage of Claims under any liability insurance policy, including the XL Insurance Policies. No insurer (including the Insurer) nor any other Non-Debtor Entity shall be bound by the allowance or Allowed Amount of any Claim. Each insurer and other Non-Debtor Entity shall have the benefit of this Section 5.6(f) without regard to whether such entity files an objection, reservation of rights or other pleading concerning the Plan.

SECTION 6 PLAN FIDUCIARY

6.1 Appointment of Plan Fiduciary. George J. Mitchell, former U.S. Senator from the State of Maine, is appointed Plan Fiduciary as of the Effective Date. The Plan Fiduciary shall have the rights, powers and responsibilities set forth in the Plan. The Plan Fiduciary shall act as an independent fiduciary in the interests of all entities having an interest in the Estate under the terms of the Plan. No bond or other security shall be required of the Plan Fiduciary except as may be expressly ordered by the Court. Subject to Section 6.10, but notwithstanding any other provision of the Plan, each and every obligation or liability of the Plan Fiduciary shall solely be chargeable to and collectible from assets of the Estate, and the Plan Fiduciary shall have no personal liability therefor.

6.2 Successor Plan Fiduciary. If the Plan Fiduciary at any time resigns, dies, becomes incapable of performing the duties of the Plan Fiduciary, or is removed by the Court for just cause after notice and hearing, a successor Plan Fiduciary designated by the Plan Proponent shall be appointed, subject to approval by the Court after notice and a hearing.

6.3 Plan Fiduciary's Powers. The Plan Fiduciary shall have the following powers:

- (a) **Claims.** The Plan Fiduciary shall have authority to file objections to Claims and to litigate to final judgment, settle or withdraw objections to Claims, including objections filed by the Trustee and not resolved prior to the Effective Date, *provided, however*, that any settlement resulting in allowance of a Secured Claim, Priority Claim or Derailment Claim in an amount greater than \$50,000 shall require approval of the Court after notice to the Plan Notice Parties. If the FRA Settlement is not in effect, the Plan Fiduciary shall make an independent investigation of the FRA Claim, including the Validity of the liens asserted by the FRA. As to any other Claim, the Plan Fiduciary may, in his discretion, rely on any determination made by the Trustee.
- (b) **Assets.** The Plan Fiduciary may liquidate, collect and otherwise dispose of Residual Assets, enter into compromises of causes of action of the Estate (including Avoidance Actions), and take other actions that, if done by the U.S. Debtor before the Effective Date, would have required Court approval under Code Section 363, Fed. R. Bankr. P. 9019, or otherwise, without the need for Court approval, *provided, however*, that
 - (i) in the case of any asset subject to a lien, the Plan Fiduciary shall determine whether, in his business judgment, sale of such asset is likely to yield a benefit to the Estate; if not, he shall abandon such asset, and if so, he may sell property free and clear of liens with the consent of all entities having Valid liens thereon or pursuant to an Order obtained after notice and hearing, and

- (ii) in the case of any potential cause of action by the Estate arising from the Derailment, the Plan Fiduciary shall not prosecute such action unless he first determines, in his business judgment exercised in consultation with the Plan Proponent, that prosecution of such action is likely to yield a benefit to the Estate, net of the expense of such prosecution, and to enhance recoveries by Beneficiaries from the Compensation Fund and from non-Estate sources, in the aggregate.

Pursuant to Code Section 1123(b)(3), the Plan Fiduciary shall be the representative of the Estate for purposes of pursuing litigation, including Avoidance Actions, from and after the Effective Date, and shall step into the shoes of the Trustee as to any pending litigation, except as otherwise specified in Section 5.1.

- (c) **Other Powers.** The Plan Fiduciary shall have full power and authority to take all actions and execute all documents on behalf and in the name of the U.S. Debtor necessary or appropriate to administer the Estate and otherwise to implement the Plan without the need for approval by the Court or any party in interest except as specifically required by the Plan. Without limiting the generality of the foregoing, except as specifically provided elsewhere in the Plan, the Plan Fiduciary shall have all powers that were vested in the shareholders and board of directors of the U.S. Debtor prior to the Petition Date and, notwithstanding any provision of applicable non-bankruptcy law, shall not be required to seek any vote or assent of any entity, or to seek an Order, for any action taken in administering the U.S. Debtor consistently with the Plan, except where specifically required by the Plan.

6.4 Funds. All funds in the hands of the Plan Fiduciary for more than one day shall be invested in accordance with Code Section 345, except as otherwise ordered by the Court. Because such funds are *in custodia legis*, no entity may acquire any interest in such funds except by Order.

6.5 Records. Until the Case Closing Date, (a) the Plan Fiduciary or his agent shall maintain books and records containing a description of all property of the Estate as well as an accounting of receipts and disbursements, (b) the Plan Fiduciary shall preserve such records of the U.S. Debtor or the Trustee as are required by applicable law, or are necessary or useful to the Plan Fiduciary's administration or to creditors, and (c) the Plan Fiduciary may destroy or otherwise dispose of such records before the Case Closing Date with the consent of the Plan Notice Parties or with approval of the Court after notice to the Plan Notice Parties.

6.6 Compensation. Subject to Section 6.8, the Plan Fiduciary shall be entitled to receive, as a Plan Expense, reasonable compensation for services (including services prior to the Effective Date in preparing to serve as Plan Fiduciary or otherwise assisting parties in interest to resolve or avoid disputes in the Case) at the Plan Fiduciary's customary hourly rates in effect

when such services are rendered, and reimbursement of customary actual and necessary expenses.

6.7 Retention of Professionals. From and after the Effective Date, the Plan Fiduciary may without need for an Order employ counsel and such other professionals and consultants as he may reasonably determine to be necessary to advise and assist him in the performance of his duties as Plan Fiduciary. Subject to Section 6.8, each such professional shall be entitled to receive, as a Plan Expense, reasonable compensation for services at such professional's customary hourly rates in effect when such services are rendered and reimbursement of customary actual and necessary expenses. No professional or employee of the U.S. Debtor shall be barred from providing services to the Plan Fiduciary and receiving compensation therefor by reason of having served as a professional or employee of the U.S. Debtor or the Trustee, *provided, however*, that any such retention shall require consent of the Plan Proponent.

6.8 Compensation Procedure. For services performed from and after the Effective Date, the Plan Fiduciary, any professional employed by him, and the Plan Proponent's bankruptcy counsel (each, a "Provider") shall receive compensation and reimbursement of expenses pursuant to reasonably detailed invoices of time spent and expenses incurred. The Provider shall send to the Plan Notice Parties a copy of each invoice rendered to the Plan Fiduciary. A Plan Notice Party (and, in the case of a Provider other than the Plan Fiduciary, the Plan Fiduciary) may, within ten Business Days after having been served with a copy of the invoice, serve on the Provider and (if different) the Plan Fiduciary a written objection specifically identifying the basis for the objection and the particular time entries involved. If the Plan Fiduciary makes or receives a timely objection to a particular invoice, he shall withhold payment of the portion objected to and promptly pay the remainder of the invoice. Upon lapse of ten Business Days after service of an invoice without making or receiving an objection thereto, the Plan Fiduciary shall pay such invoice. If an objection is timely made and the parties are unable to resolve the objection by agreement, then the Provider may seek determination of the objection by filing with the Court a motion to compel payment of the disputed amount. Except as provided by the preceding sentence, Court approval for professional fees constituting Plan Expenses shall not be required, and requirements of the Bankruptcy Code and any national or local rules promulgated in connection therewith shall not apply.

6.9 Limitation on Plan Expenses. Notwithstanding anything to the contrary contained in the Plan, except as otherwise agreed by the Plan Fiduciary in writing, the Plan Fiduciary shall not be liable for, nor shall assets held by the Plan Fiduciary be subject to, (a) any liability arising after the Effective Date other than a Plan Expense, or (b) any Plan Expense for which the Plan Fiduciary does not receive an invoice or other form of written notice within 60 days after the incurrence of such alleged Plan Expense.

6.10 Limitation of Liability. The Plan Fiduciary shall have no liability for any act or omission other than gross negligence or willful misconduct. Without limiting the generality of the foregoing, the Plan Fiduciary may rely and shall be fully protected in acting upon any (or a copy of any) resolution, statement, certificate, instrument, report, notice, request, consent, order or other document which, in the absence of gross negligence or willful misconduct, the Plan

Fiduciary believes to be genuine and to have been signed or (in the case of cables, faxes, electronic mail transmittals, and the like) to have been sent by the proper party.

6.11 Disputes. The Court shall have exclusive jurisdiction over any dispute arising from any act or omission of the Plan Fiduciary, and 28 U.S.C. § 959(a) shall not apply because the Plan Fiduciary's activities consist solely of liquidation and do not entail the operation of any business. Whether or not a dispute has arisen, the Plan Fiduciary shall have the right at any time to seek instructions from the Court concerning any question arising in connection with the performance of the Plan Fiduciary's duties under the Plan, upon notice to the Plan Notice Parties.

6.12 Closing of Case/Interim Reports. Upon the disposition by Final Order of all objections to Claims, liquidation of all Estate assets and the completion of all distributions on account of Claims, the Plan Fiduciary shall promptly prepare and file with the Court all documents, and shall take all other steps, necessary to close the Case. Before filing such documents, the Plan Fiduciary and any professional persons engaged by him shall be paid their final invoices, which may include (subject to the compensation procedures set forth in Section 6.8) advance payment of fees and costs projected to be incurred to obtain a final decree and to take the actions permitted or required by Section 6.13. Thereupon, the Trustee shall pay or reserve for any unpaid Plan Expenses, donate to the American Bankruptcy Institute Foundation any remaining Estate funds that the Plan Fiduciary concludes are too small to be economically distributed or to provide a meaningful benefit to creditors, and shall file such reports as may be required by the Federal Rules of Bankruptcy Procedure in order to close the case.

6.13 Final Decree. Following (and notwithstanding) entry of a final decree closing the Case:

- (a) **Dissolution.** The Plan Fiduciary shall file a certified copy of the final decree with the Delaware secretary of state, whereupon the U.S. Debtor shall, notwithstanding requirements of applicable law, be deemed legally dissolved, and the Delaware secretary of state shall accept such final decree for filing and as conclusive evidence of the dissolution of the U.S. Debtor;
- (b) **Final Tax Returns.** The Plan Fiduciary shall be authorized to, and shall, prepare and file final state and federal income tax returns for the U.S. Debtor, and the final report required by Section 6.12; and
- (c) **Disposition of Records.** The Plan Fiduciary may at any time, notwithstanding any requirements of applicable law or court order concerning preservation of records, destroy or otherwise dispose of all remaining records of the U.S. Debtor and its bankruptcy estate, *provided, however,* that the Plan Fiduciary shall first turn over to plaintiffs' counsel any documents that are subject to a preservation order in any pending lawsuit, whereupon such counsel shall be subject to, and the Plan Fiduciary shall be relieved of, the obligations of the Debtor or the Estate under any such order.

SECTION 7 CLAIMS AND DISTRIBUTIONS

7.1 Bar Date. The Bar Date for all Claims shall be the earlier of the Plan Deadline, or such date as the Court establishes by Order as the deadline by which proofs of claim must be filed, except as follows:

- (a) **Postpetition Claims.** Any Administrative Claim still outstanding as of the Postpetition Bar Date shall be forever barred except to the extent that it is the subject of a proof of claim (or, as provided in Section 2.4, an application) filed with the Court on or before the Postpetition Bar Date.
- (b) **Rejection Damage Claims.** As to any Claim for damages from rejection of an executory contract or unexpired lease, (i) if rejection was approved by Order, the Bar Date shall be the first Business Day following the 30th day after entry of such Order, and (ii) if rejection took place pursuant to Section 9.1, the Bar Date shall be as set forth in Section 9.2.
- (c) **Amendment to Schedules.** If within 30 days before the date that would otherwise be the Bar Date for a particular Claim theretofore listed in the Schedules as a Claim that is not contingent, unliquidated or disputed (the “Original Bar Date”), the Schedules are amended so as to characterize such Claim as contingent, unliquidated or disputed or to decrease the scheduled amount thereof, the holder of such Claim shall have an automatic extension of the Bar Date therefor through and including the 30th day after such amendment is filed, *provided, however*, that no proof of claim filed after the Original Bar Date may state a greater amount for such Claim than was listed in the Schedules prior to such amendment, and no amendment of the Schedules shall be permitted or required after the Effective Date.
- (d) **Newly Discovered Claims.** If Plan Proponent (on or before the Effective Date) or the Plan Fiduciary (after the Effective Date) becomes aware of the name and address of any additional entity entitled to notice of the Bar Date, or that the Plan Proponent or Plan Fiduciary determine as a matter of prudence should receive notice of the Bar Date, the Plan Proponent or Plan Fiduciary may serve a supplemental Bar Date Notice (the “Supplemental Bar Date Notice”) on such entity. The Supplemental Bar Date Notice shall be identical in substance and form to the Bar Date Notice but shall refer to a “Bar Date” not less than 30 days after service of the Supplemental Bar Date Notice on such entity, whereupon such date shall be the “Bar Date” applicable to such entity for purposes of this Order except to the extent that such entity received or had actual notice of the Bar Date otherwise applicable to its Claim.
- (e) **Waiver or Extension.** The Plan Proponent, on or before the Effective Date, and the Plan Fiduciary thereafter may waive the Bar Date for any

particular filed Claim or extend the Bar Date for any Claim not yet filed, *provided, however*, that any waiver or extension of the Bar Date by the Plan Proponent as to a Derailment WD Claim shall be subject to Court approval.

7.2 Effect of Claim Filing. Neither the filing of a proof of claim nor any other action in or in connection with the Case shall constitute assent to determination by the Court of any claim against any entity other than the U.S. Debtor.

7.3 Disputed Claims.

- (a) **No Payment before Allowance.** Notwithstanding anything to the contrary contained in the Plan, no payment shall be made on account of any Claim until it is Allowed, which in the case of a Secured or Priority Claim, shall include determination of the Allowed Amount as such and Allowed Amount of any portion of the Claim that is Allowed as a General Unsecured Claim. If a Claim is Allowed after the date when a distribution under the Plan on account of such Claim would have been payable but for this Section 7.3(a), such distribution shall be made not later than ten Business Days after such Claim is Allowed.
- (b) **Standing to Object.** After the Effective Date, the Plan Fiduciary shall be the sole party in interest with standing to object to Claims, *provided, however*, that the Secured Claimants and the Trustee shall have standing on all matters related to disposition of Railroad Sale Proceeds.
- (c) **Objection Deadline.** The Plan Fiduciary (or other party with standing under Section 7.3(b)) shall file objections to Claims not later than the Objection Deadline therefor.
 - (i) **Shortening of Objection Deadline.** Upon determining in his sole discretion that no grounds exist to object to a particular Claim, the Plan Fiduciary may make payment on account of a Claim prior to the Objection Deadline, and upon making such payment the Objection Deadline as to such Claim shall be deemed shortened to the date such payment is made.
 - (ii) **Extension of Objection Deadline.** Upon motion of the Plan Fiduciary seeking an extension of the Objection Deadline as to any Claim or group of Claims, such deadline shall (a) automatically be extended through and including the fifth Business Day after the Court enters an Order on such motion, and (b) be further extended as may be provided in such Order.
- (d) **Reserve for Disputed Claims.** The Plan Fiduciary shall hold in reserve the amount of any distribution that would be required under the Plan on account of a Claim but for the fact that such Claim is not an Allowed

Claim, *provided, however*, that Railroad Sale Proceeds shall be held and disposed of by the Trustee as provided in Section 5.1(b) and (c) except as otherwise provided therein.

- (e) **Representatives.** No Claim shall be Allowed except in favor of the holder of such Claim. Claims asserted by non-holders, such as class action representatives, shall not be Allowed on behalf of the non-holder or the holder, regardless of the jurisdiction in which such action is pending and regardless of whether such action has been certified or its equivalent.

7.4 No Interest. Except as expressly provided in the Plan or in Code Section 506(b), no holder of a Claim or interest shall be entitled to any interest, penalty, late charge or costs of collection on account thereof after the Petition Date.

7.5 Preservation of Recoupment and Setoff. No provision of the Plan shall be deemed to waive the U.S. Debtor's rights of recoupment and setoff in respect of each and every Claim, *provided, however*, that such rights shall under no circumstances reduce the amount of the Secured Creditor Fund or the General Unsecured Fund.

7.6 Delivery of Distributions. All dollar figures in the Plan represent, and all distributions under the Plan shall be made in, United States Dollars. Except as otherwise agreed by the Plan Fiduciary or as set forth in the Plan, distributions to holders of Allowed Claims shall be made by wire transfer (if agreed by the holder of the Claim and the Plan Fiduciary) or by check sent by first class mail with postage prepaid to each such holder at the address set forth in the proof of claim for such Allowed Claim or, if none, the address set forth in the Schedules, *provided* that if the Plan Fiduciary receives notice in writing of a change of address for any such holder or a transfer of a Claim by a holder, the Plan Fiduciary shall thereafter remit distributions to the new address or transferee set forth on such notice, as the case may be. All checks shall be deposited in the mail not later than five Business Days after the date of the check.

7.7 Time Bar to Cash Payments. If any distribution on account of a Claim is returned to the Plan Fiduciary as undeliverable, or if a check in payment of the distribution on account of a Claim remains uncashed 90 days after the date of such check, then the check will be voided, *provided, however*, that the Plan Fiduciary shall reissue such distribution if he receives, prior to the date the Claim is Disallowed under the following sentence, written notice from the holder of such Claim of a different address to which distributions should be sent. If the Plan Fiduciary does not receive such notice earlier than 20 Business Days before the date on which the Plan Fiduciary plans to make a final distribution on Claims of the same type, such Claim shall be Disallowed and the Plan Fiduciary shall file with the Court a notice so stating.

7.8 Certainty of Estate Obligations. In order to provide certainty as to the obligations of the Plan Fiduciary:

- (a) **Late-Filed or Informal Claims.** Each Claim as to which a proof of claim was required to be filed on or before the Bar Date and as to which a proof of claim was not filed on or before the Bar Date shall not become an Allowed Claim absent a Final Order. A proof of claim that has not been

timely filed shall be of no force or effect whatsoever, including for purposes of any distribution made by the Plan Fiduciary; nor shall any action (including giving notice to the U.S. Debtor or otherwise making an “informal” proof of claim) serve for purposes of the Plan and distributions required of the Plan Fiduciary as a substitute for timely filing a proof of claim.

- (b) **Amendment of Claims.** In no event shall the Allowed Amount of any Claim exceed the amount set forth in a proof of claim therefor filed on or before the Bar Date or, if none, the amount listed in the Schedules as the amount of such Claim (provided that such Claim is not listed therein as contingent, disputed or unliquidated) as amended through the Business Day preceding the Bar Date, except to the extent that (i) the holder of such Claim, not later than one Business Day before the Effective Date, files with the Court and serves on the Plan Proponent so as to be received by the Plan Proponent’s counsel on the same day, an amended proof of claim, and (ii) such amendment is not otherwise barred as untimely by law or by Order.
- (c) **Reconsideration.** No Order allowing or disallowing a Claim may be reconsidered, pursuant to Code Section 502(j) or otherwise, so as to increase the Allowed Amount thereof after the later of (i) one Business Day before the Effective Date, or (ii) 14 days after the date an Order allowing such Claim is first entered.
- (d) **Mishandled Claims.** Notwithstanding anything to the contrary contained in the Plan, if a Claim is filed with the Court on or before the Bar Date therefor, but the proof of claim is not correctly maintained in the Court’s records or otherwise does not come to the attention of the Plan Fiduciary, acting in good faith, in reviewing or making payment on account of Claims, or if the Court by Final Order determines, notwithstanding the provisions of Section 7.8(a), (b) and (c), that a Claim shall be Allowed in an amount greater than is permitted by such provisions, payment on account of such Claim shall be made as required by the Plan only to the extent possible without (a) impairing payment of then-existing or later incurred Plan Expenses, or (b) requiring disgorgement of any payment or distribution previously made by the Plan Fiduciary.

SECTION 8 RELEASES AND EXCULPATION

8.1 Release of FRA. Effective upon the occurrence of the Effective Date and provided that the FRA Settlement is in effect,

- (a) The U.S. Debtor, the Estate, the Trustee and the Plan Fiduciary shall be deemed to forever release and discharge the FRA, and all officials, agents, counsel and other professional persons thereof, of and from any and all

claims, demands, causes of action and the like, whether direct or derivative, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, known or unknown, foreseen or unforeseen, at law, in equity or otherwise, arising from any act, omission, event, or other occurrence on or before the Effective Date, in connection with the U.S. Debtor, the U.S. Case, the Canadian Debtor or the Canadian Case, *provided, however*, that such release excludes unperformed obligations of the FRA under the FRA Settlement; and

- (b) The FRA shall be deemed to forever release and discharge the U.S. Debtor, the Estate, the Trustee and the Plan Fiduciary, and all current or former directors, officers, employees, agents, attorneys, advisors, investment bankers, other professionals, lenders, investors, members, owners, shareholders, subsidiaries and other affiliates (but excluding the Canadian Debtor and the Canadian Estate), heirs, successors and assigns thereof, of and from any and all claims, demands, causes of action and the like, whether direct or derivative, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, known or unknown, foreseen or unforeseen, at law, in equity or otherwise, arising from any act, omission, event, or other occurrence on or before the Effective Date, in connection with the U.S. Debtor, the U.S. Case, the Canadian Debtor or the Canadian Case, *provided, however*, that such release excludes unperformed obligations of the Estate under the FRA Settlement.

8.2 Release of Canadian Parties. Effective upon the occurrence of the Effective Date,

- (a) The U.S. Debtor, the Estate, the Trustee and the Plan Fiduciary shall be deemed to forever release and discharge the Canadian Parties of and from any and all claims, demands, causes of action and the like, whether direct or derivative, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, known or unknown, foreseen or unforeseen, at law, in equity or otherwise, arising from any act, omission, event, or other occurrence on or prior to the Effective Date, in connection with the U.S. Debtor, the U.S. Case, the Canadian Debtor or the Canadian Case, *provided, however*, that such release excludes unperformed obligations of any Canadian Party under any written agreement of any Canadian Party with the Plan Fiduciary or the Plan Proponent; and
- (b) The Canadian Parties shall be deemed to forever release and discharge the U.S. Debtor, the Estate, the Trustee and the Plan Fiduciary, and all current or former directors, officers, employees, agents, attorneys, advisors, investment bankers, other professionals, lenders, investors, members, owners, shareholders, subsidiaries and other affiliates (but excluding the Canadian Debtor and the Canadian Estate), heirs, successors and assigns thereof, of and from any and all claims, demands, causes of action and the

like, whether direct or derivative, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, known or unknown, foreseen or unforeseen, at law, in equity or otherwise, arising from any act, omission, event, or other occurrence on or prior to the Effective Date, in connection with the U.S. Debtor, the U.S. Case, the Canadian Debtor or the Canadian Case, *provided, however*, that such release excludes unperformed obligations of the Plan Fiduciary and/or the Plan Proponent under any written agreement of any Canadian Party with the Plan Fiduciary or the Plan Proponent.

SECTION 9 EXECUTORY CONTRACTS AND UNEXPIRED LEASES

9.1 Rejection of Remaining Contracts. All executory contracts and unexpired leases of the U.S. Debtor as of the Petition Date not rejected prior to the Effective Date or transferred pursuant to the Railroad Sale shall be deemed rejected on the Effective Date.

9.2 Rejection Damage Claims. If the rejection of an executory contract or unexpired lease by the U.S. Debtor pursuant to Section 9.1 results in damages to the other party or parties to such contract or lease, a Claim for such damages shall be Disallowed except to the extent set forth in a proof of claim therefor filed with the Court on or before the Postpetition Bar Date.

SECTION 10 CONDITIONS TO EFFECTIVE DATE

10.1 The following are conditions to the Effective Date of the Plan:

- (a) The Confirmation Order shall have been entered in the form proposed by or otherwise acceptable to the Plan Proponent, and shall be in full and effect, not having been stayed; and
- (b) The Closing shall have occurred.

SECTION 11 MISCELLANEOUS PROVISIONS

11.1 Effect of Plan. The provisions of the Plan shall bind all holders of Claims and Interests, whether or not they accept the Plan, and any successors and assigns to such holders of Claims and Interests. Entry of the Confirmation Order shall be deemed to be a determination by the Court only as to the matters expressly set forth therein and not as to any other matter involving the U.S. Debtor, the Estate and any party in interest in the Case. All causes of action of the Estate are preserved except as expressly provided in the Plan. No act or omission in relation to the Plan (including but not limited to solicitation of acceptances of the Plan, statements contained in or omitted from the disclosure statement therefor, entry of the Confirmation Order or occurrence of the Effective Date) shall serve to bar, whether by *res judicata*, collateral estoppel, judicial estoppel or otherwise, the prosecution of any action or objection by or on behalf of the Plan Fiduciary.

11.2 Cramdown. If no ballot is timely received for a particular class either accepting or rejecting the Plan, such class shall be deemed to have accepted the Plan. As for any class that votes pursuant to Code Section 1126(c) not to accept the Plan or is deemed pursuant to Code Section 1126(g) not to accept the Plan, the Plan shall be deemed to have met the requirements for confirmation of the Plan, including the requirements of Code Section 1129(b), except to the extent stated with specificity in an objection to the Plan timely filed by a member of such class. The Plan Proponent is deemed to have reserved the right to seek confirmation of the Plan under Code Section 1129(b) as to any class that votes pursuant to Code Section 1126(c) not to accept the Plan or is deemed pursuant to Code Section 1126(g) not to accept the Plan.

11.3 Discharge; Dissolution. The Plan is a plan of the type described in Code Section 1141(d)(3) and, accordingly, the U.S. Debtor shall not receive a discharge. Disallowed Claims, although not discharged, shall not be entitled to any distribution under the Plan or to receive or retain any assets of or owed to the Estate, whether by way of setoff, recoupment, attachment, levy or otherwise. As provided in Code Section 362(c)(2)(A), the automatic stay shall remain in effect as to the U.S. Debtor and all assets of the Estate, including all assets in the hands of the Plan Fiduciary or the Trustee, until the Case Closing Date.

11.4 Withdrawal, Amendment or Modification of Plan. Without limiting the rights of the Plan Proponent under the Bankruptcy Code or applicable rules, the Plan Proponent may (i) revoke and withdraw the Plan, or propose amendments to or modifications of the Plan under Code Section 1127, at any time prior to entry of the Confirmation Order; and (ii) after entry of the Confirmation Order, obtain from the Court upon proper notice to any affected party any Order necessary or appropriate to remedy any defects or omissions, or reconcile any inconsistencies, in the Plan or the Confirmation Order in such manner as will carry out the purposes and intent of the Plan, provided that no objecting creditor demonstrates that its interests are materially and adversely affected.

11.5 Effect of Non-Consummation. If the Plan is withdrawn, or if for any other reason the Effective Date does not occur, the Plan (except for this Section and Section 11.14) shall be null and void. In such event, the provisions of the Plan may not be used against the Plan Proponent, the Derailment WD Claimants, any creditor that accepted the Plan or any other party in interest, for any purpose whatsoever. Without limiting the generality of the foregoing, the Plan shall be deemed an offer of settlement to all parties in interest, and acceptance of the Plan shall be deemed acceptance of such offer, such that Rule 408 of the Federal Rules of Evidence and any similar provisions of state or foreign law shall apply.

11.6 Deadlines. Prior to the Effective Date, the Plan Proponent may waive or extend any deadline applicable to parties in interest other than the Plan Proponent or the Derailment WD Claimants. From and after the Effective Date, waivers and extensions shall be granted solely as provided in the Plan, *provided, however*, that if the Plan Fiduciary seeks from the Court, with the assent of the Plan Proponent, an extension or waiver not provided for in the Plan, the Court shall grant such extension if not inconsistent with the purposes of the Plan.

11.7 Official Committees. The existence of any and all official committees shall terminate upon entry of the Confirmation Order.

11.8 Severability. To the extent that any provision of the Plan would, by its inclusion in the Plan, preclude the Court from entering the Confirmation Order, the Plan Proponent may modify or remove such provision without further notice, provided that such removal would not have a material adverse effect on the distribution to any party in interest. Except as set forth in the preceding sentence, the Plan shall be construed as a single integrated agreement, and the Trustee, the Plan Fiduciary, all creditors of the U.S. Debtor, and any other parties in interest in the Case shall be conclusively presumed to have relied on all provisions of the Plan and the Confirmation Order for purposes of any future determination of the enforceability thereof.

11.9 Effective Date; Substantial Consummation. The Effective Date shall occur whether or not the Confirmation Order has become a Final Order. For purposes of Code Section 1101(2), the Plan shall be deemed to have been substantially consummated once the turnover of assets required by Section 5.1(d) has been made.

11.10 Post-Confirmation Fees and Reports. The Plan Fiduciary will be responsible for timely payment of fees incurred pursuant to 28 U.S.C. § 1930(a)(6) through the Case Closing Date, *provided, however,* that regardless of whether the FRA Settlement is in effect, such fees shall be paid from the Carve-Out. After entry of the Confirmation Order, the Plan Fiduciary will serve the United States Trustee (Region 1) with a quarterly report for each fiscal quarter (or portion thereof) that the Case remains open. The quarterly financial report shall include the following:

- (a) a statement of all disbursements made during the course of the fiscal quarter, whether or not pursuant to the Plan;
- (b) a summary, by class, of amounts distributed or property transferred to each recipient under the Plan, and an explanation of the failure to make any distributions or transfers of property under the Plan;
- (c) the Plan Fiduciary's projections as to its continuing ability to comply with the terms of the Plan;
- (d) a description of any other factors that may materially affect the Plan Fiduciary's ability to comply with the terms of the Plan; and
- (e) an estimated date when the Plan Fiduciary will seek a final decree, unless already done.

11.11 Dates. Whenever the Plan specifies a date for the Plan Fiduciary or the Trustee to make any disbursement or take any other action, such action shall be taken on such date or as soon as practicable thereafter.

11.12 Headings. Headings are utilized in the Plan for convenience only and shall not constitute a part of the Plan for any other purpose.

11.13 Construction. The rules of construction set forth in Code Section 102 shall apply to construction of the Plan. In the event of any inconsistency between the Plan and the

Confirmation Order, the Confirmation Order shall prevail, but any inconsistency between the Plan and any other outstanding Order shall be resolved in favor of the Plan.

11.14 Jurisdiction/Protections. Notwithstanding any statute or principle of judge-made law:

- (a) **Canadian Parties.** To the extent that any order is necessary or appropriate to implement or enforce the provisions of Sections 5.3, 5.4(a) or 5.4(b), such order shall be sought as a joint order of the Court and the Canadian Court. Any party seeking to obtain or oppose entry of such order may file pleadings in either the Court or the Canadian Court without submitting to the jurisdiction of the other court, nor shall participation in any joint hearing or any other activity be deemed a submission to the jurisdiction of either court.
- (b) **Canadian Court.** Neither the filing of any pleading with the Canadian Court nor any other action in connection with the Canadian Case shall be construed as or constitute a submission to the jurisdiction of the U.S. Court for any purpose, nor be construed as having any effect on applicable choice of law for any issue or claim, whether in the Canadian Case, the U.S. Case, or otherwise.
- (c) **U.S. Court.** Neither the filing of any pleading with the U.S. Court nor any other action in connection with the U.S. Case shall be construed as or constitute a submission to the jurisdiction of the Canadian Court for any purpose, nor be construed as having any effect on applicable choice of law for any issue or claim, whether in the U.S. Case, the Canadian Case, or otherwise.
- (d) **Claimants.** Neither the filing of a proof of claim nor any other action in or in connection with the Case shall be construed as or constitute assent by any Derailment WD Claimant, Derailment PI Claimant or the Plan Proponent to determination by the Court of (i) any claim by any Derailment WD Claimant or Derailment PI Claimant against Non-Debtor Entities, or (ii) any motion to transfer or otherwise change the venue of any action against Non-Debtor Entities.

11.15 Retained Jurisdiction. The Court shall retain jurisdiction over the Case after the entry of the Confirmation Order for the following purposes:

- (a) to consider and approve any modification or revision of the Plan or the Confirmation Order, pursuant to Section 11.4;
- (b) to hear and determine Unresolved Claims and all applications filed by Professional Persons seeking compensation and reimbursement of expenses from the Estate for services rendered prior to the Effective Date;

(c) to hear and determine any and all other adversary proceedings, contested matters, or other actions pending in this Court or commenced thereafter by the Plan Fiduciary, or, pursuant to Section 5.1, by the Trustee;

(d) to hear and determine any disputes arising under the Plan, the Confirmation Order or under any agreements or instruments regarding implementation of the Plan;

(e) to grant extensions of any deadlines set forth in the Plan or the Confirmation Order as may be appropriate; and

(f) to make such Orders as are necessary and appropriate to carry out and implement the provisions and intent of the Plan.

Dated this 29th day of January, 2014.

UNOFFICIAL COMMITTEE OF WRONGFUL
DEATH CLAIMANTS,

By its attorneys,

/s/ George W. Kurr, Jr.
George W. Kurr, Jr.
GROSS, MINSKY & MOGUL, P.A.
23 Water Street, Suite 400
P. O. Box 917
Bangor, ME 04402-0917
Phone: (207) 942-4644 ext. 206
gwkurr@grossminsky.com

Daniel C. Cohn, *pro hac vice*
Taruna Garg, *pro hac vice*
MURTHA CULLINA LLP
99 High Street, 20th Floor
Boston, Massachusetts 02110
Phone: (617) 457-4000
Fax: (617) 482-3868