

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

**DECLARATION OF STACEY MCLEY IN SUPPORT OF
CONFIRMATION OF TRUSTEE'S REVISED FIRST AMENDED
PLAN OF LIQUIDATION DATED JULY 15, 2015**

I, Stacey McLey, pursuant to 28 U.S.C. § 1746, state as follows:

Introduction

1. This Declaration is submitted in support of confirmation of the *Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [Docket No. 1495] (the "Plan").¹

2. I am Assistant General Counsel of Arrow Midstream Holdings, LLC ("Arrow"), headquartered at 700 Louisiana St., Suite 2550, Houston, TX 77002. I am authorized to make this declaration on Arrow's behalf.

3. All facts set forth herein are based on my personal knowledge, on information supplied to me by others within the Arrow organization, upon my review of relevant documents, or on my opinion based upon my experience and knowledge of Arrow's operations. If I were called to testify, I could and would testify competently to the facts set forth herein.

Relevant Background

4. Arrow is a midstream gathering business that gathers crude oil, rich natural gas and produced water.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Plan and/or the Revised First Amended Disclosure Statement for the Trustee's Plan of Liquidations Dated July 15, 2015 [D.E. 1497] (the "Disclosure Statement").

5. On July 6, 2013, an unmanned eastbound train operated by Montréal Maine & Atlantic Railway Ltd., the above-captioned debtor (“MMA” or the “Debtor”) and/or MMA Canada comprised of five locomotives and 72 railcars carrying crude oil derailed in Lac-Mégantic, Quebec, Canada (the “Derailment”). Arrow has been named a defendant in several lawsuits relating to this Derailment.

6. In these lawsuits, plaintiffs allege that Arrow (1) allegedly owned and/or operated and/or had the drilling rights for oil wellheads in the Bakken region of North Dakota that produced crude oil that was shipped to the refinery in St. John, New Brunswick, and therefore Arrow is deemed to be an “offeror of hazardous material for transportation in commerce” within the meaning of section 171.1 of the Hazardous Material Regulation (“HMR”); (2) allegedly failed to properly determine the composition of and/or appropriate hazard classification of the crude oil; (3) allegedly failed to post accurate signage on post-production storage tanks containing the crude oil; (4) allegedly failed to take reasonable care regarding the safe transportation of the crude oil; and (5) thereby allegedly caused Derailment injuries.

7. Arrow adamantly denies any liability or other responsibility for the Derailment or any injuries or damage resulting from the same. The allegations against Arrow are false or inaccurate. Arrow does not operate, explore or produce any shale liquids and does not own any drilling rights for any oil wellheads in the Bakken region and therefore is not an offeror of hazardous material as defined by the HMR. Arrow did not improperly determine the hazard classification of the crude oil sold to and picked-up for shipment to the refinery. Arrow had no involvement in the placarding of any transportation equipment, whether truck or rail, nor was it involved in any way in decisions on the type of transportation vessel that should be used to transport the crude oil once it passed the last permanent delivery flange at its facility, which is before crude oil is transferred into trucks.

8. Arrow is included in the definition of “Released Parties” under the Plan and accordingly, will be the beneficiary of the Releases and Injunctions contained in the Plan if confirmed.

The Plan Releases and Injunctions

A. Identity of Interest

9. Arrow is presently a defendant in several lawsuits relating to the Derailment, including without limitation actions filed in the District of Maine, an action originally filed in state court in Dallas County, Texas and subsequently removed to the Northern District of Texas; and a class action filed in the Quebec Superior Court for the Judicial District of Mégantic (the “Québec Class Action”). Arrow is also subject to cross-claims which may be asserted by co-defendants for contribution and indemnity in some or all of these cases.

10. Arrow has significant claims against MMA for, *inter alia*, contribution and indemnity. On or about June 10, 2014, Arrow submitted a proof of claim against MMA on those grounds in the Canadian insolvency proceeding pertaining to Montreal, Maine & Atlantic Canada Co. This proof of claim was deemed to be filed concurrently in the United States bankruptcy proceedings with respect to MMA. Absent confirmation of the Plan and the effectiveness of the Releases and Injunctions contained therein in favor of Arrow, its affiliates and insurers, Arrow intends to pursue its claims against the MMA estate.

11. In addition, Arrow has significant claims against various other Contributing Parties for, *inter alia*, contribution and indemnity for any liability arising from the Derailment. In turn, such Contributing Parties have or may have claims against the MMA estate for, *inter alia*, contribution and indemnity for any liability arising from the Derailment. Thus, any claim asserted by Arrow against another Contributing Party would serve to increase the size of such Contributing Parties’ claims against the MMA estate.

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

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

13. In an effort to resolve Arrow's contingent claims against the MMA estate and the alleged claims of Derailment victims against MMA and MMA Canada, Arrow and its outside counsel engaged in substantial settlement negotiations with Robert J. Keach, trustee for the Debtor's Chapter 11 Case (the "Trustee"). After several months of good faith, arm's-length negotiation, Arrow and its insurers agreed to contribute to the settlement fund formulated by the Trustee for satisfaction of Claims against the Debtor ("Derailment Settlement Fund"), subject to the terms and conditions of the Plan Support and Settlement Agreement (the "Settlement Agreement"), which terms and conditions include the requirement that the Releases and Injunctions become effective.

14. Arrow ultimately agreed to settle with the Trustee in part to avoid the expense and delay of protracted litigation relating to Arrow's alleged liability for the Derailment. However, Arrow has strong legal and factual defenses to all claims relating to the Derailment, and has adamantly maintained that it has no liability or other responsibility for the Derailment claims asserted against it. Arrow does not operate, explore or produce any shale liquids and does not own any drilling rights for any oil wellheads in the Bakken region and therefore is not an offeror of hazardous material as defined by the HMR. Arrow did not improperly determine the hazard classification of the crude oil sold to and picked-up by World Fuel Services Inc. Arrow had no involvement in the placarding of any transportation equipment, whether truck or rail, nor was it involved in any way in decisions on the type of transportation vessel that should

be used to transport the crude oil once it passed the last permanent delivery flange at its facility, which is before crude oil is transferred into trucks.

15. Arrow believes that it is thus by no means certain that MMA's Derailment creditors would be able to realize through litigation the significant value that will be contributed by and on behalf of Arrow to the MMA estate pursuant to the Settlement Agreement, and certainly would not be able to realize any recovery whatsoever from Arrow without incurring the delay, expense and risks of litigation. Under these circumstances and by any measure, the settlement contribution to the MMA estate by and on behalf of Arrow is "substantial."

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

16. The Releases and Injunctions apply to Arrow. The Settlement Agreement requires Arrow to receive global releases and injunctions protecting them from any and all claims by anyone that was related in any way to MMA or the Derailment. The global releases and injunctions required under the Arrow Settlement Agreement are to be achieved through confirmation of a plan in MMA's bankruptcy case.

17. Arrow and its insurers were only willing to negotiate and enter into a settlement on the condition that any settlement was a final settlement of all MMA and Derailment-related liability—not only that of Arrow and its insurers, but also any potential liability of related parties, including Arrow's direct and indirect affiliates and their present and former officers, directors, agents, insurers and employees. It was with this understanding that Arrow and its insurers agreed to make their significant contribution to the MMA estate.

18. Arrow and its insurers would not have agreed to contribute funds to the Derailment Settlement Fund if Arrow were not protected from (a) further third party claims brought by the Derailment victims and (b) any and all contribution, indemnity and other claims relating in any way to the Derailment. A settlement that did not include Arrow's insurers, as

well as corporate affiliates, officers, directors, agents and employees would leave Arrow-related entities and individuals at risk for future suits, because there is a subset of possible claims as to which the statute of limitations has not run. This would make Arrow vulnerable to future claims for indemnity. There is no way that Arrow would settle under such circumstances. Thus, the third party releases and injunction were critical to achieving the proposed settlement, which will not be effective if the Plan is not confirmed with the Releases and Injunctions.

19. In light of Arrow's strong defenses to liability, it is by no means certain that MMA's Derailment creditors would be able to recover any amounts whatsoever from Arrow if the Plan were not confirmed and the Releases and Injunctions contained therein were not made effective.

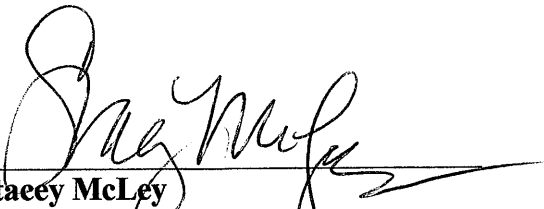
20. For these reasons, I believe that the Releases and Injunctions in favor of Arrow, its insurers, and agents and affiliates of each are not only appropriate but are in the best interests of MMA's creditors and are essential to consummation of the proposed Plan.

21. Finally, I, on behalf of Arrow, fully support confirmation of the Plan.

[signature page follows]

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: September 20, 2015



Stacey McLey
Assistant General Counsel
Arrow Midstream Holdings, LLC