

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

**DECLARATION OF WHITING PETROLEUM CORPORATION IN SUPPORT OF
CONFIRMATION OF TRUSTEE'S REVISED FIRST AMENDED
PLAN OF LIQUIDATION DATED JULY 15, 2015**

I, Rick A. Ross, 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 the Senior Vice President, Operations, of Released Party Whiting Petroleum Corporation, headquartered at 1700 Broadway, Suite 2300, Denver, Colorado 80290. I am authorized to make this declaration on Whiting Petroleum Corporation's behalf.

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

Relevant Background

4. On July 6, 2013, an unmanned eastbound train operated by Montréal Maine & Atlantic Railway Ltd., the above-captioned debtor ("MMA" or the "Debtor") and/or MMA

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").

Canada comprised of five locomotives and 72 railcars carrying crude oil derailed in Lac-Mégantic, Quebec, Canada (the “Derailement”). Whiting Petroleum Corporation may have produced some of the crude oil that was contained within some of the railcars.

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

The Plan Releases and Injunctions

A. MMA and Whiting Petroleum Corporation Share an Identity of Interest with Respect to the Claims Covered by the Releases and Injunctions

6. Whiting Petroleum Corporation is presently a defendant in various lawsuits originally filed in state court in Cook County, Illinois and later transferred to the District of Maine, as well as a class action pending in the Quebec Superior Court for the Judicial District of Mégantic (the “Québec Class Action”), each in connection with the Derailement. Whiting Petroleum Corporation is also potentially subject to cross-claims to be asserted by co-defendants for contribution and indemnity in all/many of the cases.

7. Whiting Petroleum Corporation has claims against MMA for, *inter alia*, contribution and indemnity. Absent confirmation of the Plan and the effectiveness of the Releases and Injunctions contained therein in favor of Whiting Petroleum Corporation and its affiliates, Whiting Petroleum Corporation intends to pursue such claims against the MMA estate.

8. In addition, Whiting Petroleum Corporation has significant claims against various other Contributing Parties for, *inter alia*, contribution and indemnity for any liability arising from the Derailement. 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 Derailement. Thus, any claim asserted by Whiting Petroleum Corporation against another

Contributing Party would serve to increase the size of such Contributing Parties' claims against the MMA estate.

B. Whiting Petroleum Corporation Has Contributed Substantial Assets to the MMA and MMA Canada Estates

9. In an effort to resolve Whiting Petroleum Corporation's contingent claims against the MMA estate and the alleged claims of Derailment victims against Whiting Petroleum Corporation, Whiting Petroleum Corporation, through its insurer(s), 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, Whiting Petroleum Corporation, by and through its insurer(s), agreed to contribute to the settlement fund formulated by the Trustee for satisfaction of Claims against the Debtor, subject to the terms and conditions of the Plan Support and Settlement Agreement (the "Settlement Agreement"), which terms and conditions include the requirement that the Releases and Injunctions become effective.

10. Whiting Petroleum Corporation, by and through its insurer, ultimately agreed to settle with the Trustee in part to avoid the expense and delay of protracted litigation relating to Whiting Petroleum Corporation's alleged liability for the Derailment. That being said, Whiting Petroleum Corporation has strong legal and factual defenses to all claims relating to the Derailment.

11. Whiting Petroleum Corporation 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 Whiting Petroleum Corporation to the MMA estate pursuant to the Settlement Agreement, and certainly would not be able to realize any recovery whatsoever from Whiting Petroleum Corporation without incurring the delay, expense and risks of litigation (including the risk that one significant judgment in favor of a tort claimant would

significantly deplete the amounts available to pay any others). Under these circumstances and by any measure, the total settlement contribution to the MMA estate by and on behalf of Whiting Petroleum Corporation is “substantial.”

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

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

13. Whiting Petroleum Corporation 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 Whiting Petroleum Corporation and its insurers, but also any potential liability of related parties, including Whiting Petroleum Corporation’s direct and indirect affiliates and their present and former officers, directors, agents, insurers and employees. It was with this understanding that Whiting Petroleum Corporation and the insurers agreed to make their significant contribution to the MMA estate.

14. Whiting Petroleum Corporation and its insurers would not have settled with the Trustee if Whiting Petroleum Corporation was 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 Whiting Petroleum Corporation, its insurers, as well as its corporate affiliates, officers, directors, agents and employees would leave Whiting Petroleum Corporation 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 Whiting Petroleum Corporation vulnerable to future claims for indemnity. There is no way that Whiting Petroleum Corporation 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.

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

16. For these reasons, I believe that the Releases and Injunctions in favor of Whiting Petroleum Corporation, 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.

17. Finally, I, on behalf of Whiting Petroleum Corporation, 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 18, 2015

A handwritten signature in blue ink, appearing to read "Rick Ross", is written over a horizontal line.

RICK A. ROSS
SENIOR VICE PRESIDENT
WHITING PETROLEUM CORPORATION