

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

**DECLARATION OF THE UTCC PARTIES IN SUPPORT OF
CONFIRMATION OF TRUSTEE'S REVISED FIRST AMENDED
PLAN OF LIQUIDATION DATED JULY 15, 2015**

I, Daniel I. Hanrahan, 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 General Counsel of the Marmon Group LLC. Union Tank Car Company, the UTLX International Division of UTCC, The Marmon Group LLC, and Procot Limited are affiliated entities and are sometimes referred to collectively herein as "the UTCC Parties".² I am authorized to make this declaration on behalf of the UTCC Parties.

3. All facts set forth herein are based on my personal knowledge, on information supplied to me by others familiar with or authorized to speak on behalf of the UTCC Parties, upon my review of relevant documents, or on my opinion based upon my experience and

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").

²The Disclosure Statement includes and incorporates "Schedule A List of Released Parties". Schedule A provides that the Released Parties include the UTCC Parties "and each of their respective predecessors, servants, employees, owners, members (strictly with respect to The Marmon Group LLC), shareholders, officers, directors, partners, associates, attorneys, representatives, successors, assigns, subsidiaries, Affiliates, and parent companies, insurers, and reinsurers listed in schedule 15 attached hereto, but strictly to the extent of coverage afforded to the UTCC Parties by said insurers and reinsurers, regardless of whether such entities are or were in the business of leasing, manufacturing, servicing, or administering rail car leases or otherwise."

knowledge of the operations of the UTCC Parties. 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 Canada comprised of five locomotives and 72 railcars carrying crude oil derailed in Lac-Mégantic, Quebec, Canada (the "Derailment").

5. The UTCC Parties are included in the definition of "Released Parties" under the Plan and accordingly, will be among the beneficiaries of the Releases and Injunctions contained in the Plan if confirmed.

The Plan Releases and Injunctions

A. MMA and the UTCC Parties Share an Identity of Interest with Respect to the Claims Covered by the Releases and Injunctions

6. One or more of the UTCC Parties was named in several of the actions originally filed in state court in Cook County, Illinois and later transferred to the District of Maine, in the actions recently filed in Cook County, Illinois, in the actions recently filed in Texas, and/or in the class action pending in the Quebec Superior Court for the Judicial District of Mégantic (the "Québec Class Action"),] each in connection with the Derailment.

7. The UTCC Parties have significant claims against MMA for, *inter alia*, contribution and indemnity. On June 12, 2014, Union Tank Car Company, the UTLX International Division of UTCC, and Procor Limited filed proofs of claim (Claim Nos. 120, 121 and 123) against MMA on those grounds. Absent confirmation of the Plan and the effectiveness of the Releases and Injunctions contained therein in favor of the UTCC Parties, the UTCC Parties intend to pursue their claims against the MMA estate.

8. In addition, the UTCC Parties have 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 the UTCC Parties against another Contributing Party would serve to increase the size of such Contributing Parties' claims against the MMA estate.

9. Given that any liability of the UTCC Parties related to the Derailment would cause a like increase in the amount of claims assertable against the MMA estate, there is plainly an identity of interests between MMA and the UTCC Parties with respect to the claims covered by the releases.

B. The UTCC Parties have Contributed Substantial Assets to the MMA and MMA Canada Estates

10. In an effort to resolve the UTCC Parties' contingent claims against the MMA estate and the alleged claims of Derailment victims against the UTCC Parties, the UTCC Parties 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, the UTCC Parties 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.

11. The UTCC Parties ultimately agreed to settle with the Trustee in part to avoid the expense and delay of protracted litigation relating to the UTCC Parties' alleged liability for the Derailment. That being said, the UTCC Parties have strong legal and factual defenses to all claims relating to the Derailment.

12. The UTCC Parties believe that it is unlikely that MMA's Derailment creditors would be able to realize through litigation the significant value that will be contributed by and on behalf of the UTCC Parties to the MMA estate pursuant to the Settlement Agreement, and certainly would not be able to realize any recovery whatsoever from the UTCC Parties without incurring the delay, expense and risks of litigation. Under these circumstances and by any measure, the total settlement contribution to the MMA estate by and on behalf of the UTCC Parties is "substantial."

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

13. The Releases and Injunctions apply to the UTCC Parties. The Settlement Agreement requires that the UTCC Parties receive global releases and an injunction 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 Settlement Agreement are to be achieved through confirmation of a plan in MMA's bankruptcy case.

14. The UTCC Parties 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 the UTCC Parties, but also any potential liability of each of the UTCC's Parties' respective predecessors, servants, employees, owners, members (strictly with respect to The Marmon Group LLC), shareholders, officers, directors, partners, associates, attorneys, representatives, successors, assigns, subsidiaries, affiliates, and parent companies, insurers, and reinsurers listed in schedule 15 attached to the Disclosure, but strictly to the extent of coverage afforded to the UTCC Parties by said insurers and reinsurers, regardless of whether such entities are or were in the business of leasing, manufacturing, servicing, or administering rail car leases or otherwise. It was with this understanding that the UTCC Parties agreed to make their significant contribution to the MMA estate.

15. The UTCC Parties would not have settled with the Trustee if they 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 the UTCC Parties and the related entities identified in the preceding paragraph would leave these entities 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 the UTCC Parties vulnerable to future claims for indemnity. There is no way that the UTCC Parties 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.

16. In light of the UTCC Parties' strong defenses to liability, it is unlikely that MMA's Derailment creditors would be able to recover any amounts whatsoever from the UTCC Parties if the Plan were not confirmed and the Releases and Injunctions contained therein were not made effective. For these reasons, I believe that the Releases and Injunctions in favor of the UTCC Parties and their related entities as set forth in paragraph 14 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 the UTCC Parties, 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 21, 2015


Daniel I. Hanrahan
General Counsel
The Marmon Group LLC