

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670  
Chapter 11

**DECLARATION OF QEP RESOURCES, INC. IN SUPPORT OF  
CONFIRMATION OF TRUSTEE'S REVISED FIRST AMENDED  
PLAN OF LIQUIDATION DATED JULY 15, 2015**

I, Rodney W. Penner, 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").<sup>1</sup>

2. I am the Senior Oil Sales Representative of QEP Marketing Company, a wholly-owned subsidiary of QEP Resources, Inc. ("QEP"), headquartered at 1050 17<sup>th</sup> Street, Suite 800, Denver, CO 80265. I am authorized to make this declaration on QEP's behalf.

3. All facts set forth herein are based on my personal knowledge, on information supplied to me by others within the QEP organization, upon my review of relevant documents, or on my opinion based upon my experience and knowledge of QEP'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

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<sup>1</sup> 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”).

5. QEP 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 QEP Share an Identity of Interest with Respect to the Claims Covered by the Releases and Injunctions**

6. QEP is presently a defendant in two lawsuits filed in state court in Dallas County, Texas, two lawsuits filed in federal court in the District of Maine, thirty-five lawsuits filed in state court in Cook County, Illinois, 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.

7. In addition, QEP 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 QEP against another Contributing Party would serve to increase the size of such Contributing Parties’ claims against the MMA estate.

8. Given that any liability of QEP related to the Derailement 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 QEP.

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

9. In an effort to resolve QEP's contingent claims against the MMA estate and the alleged claims of Derailment victims against QEP, QEP 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, QEP and its insurers 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. QEP ultimately agreed to settle with the Trustee in part to avoid the expense and delay of protracted litigation relating to QEP's alleged liability for the Derailment. That being said, QEP has strong legal and factual defenses to all claims relating to the Derailment.

11. QEP 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 QEP to the MMA estate pursuant to the Settlement Agreement, and certainly would not be able to realize any recovery whatsoever from QEP 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 QEP is "substantial."

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

12. The Releases and Injunctions apply to QEP. The Settlement Agreement requires QEP to receive global releases and an 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 QEP's Settlement Agreement are to be achieved through confirmation of a plan in MMA's bankruptcy case.

13. QEP 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 QEP and its insurers, but also any potential liability of related parties, including QEP's direct and indirect affiliates and their present and former officers, directors, agents, insurers, employees and non-operating working interest owners. It was with this understanding that QEP and its insurers agreed to make their significant contribution to the MMA estate.

14. QEP and its insurers would not have settled with the Trustee if QEP 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 QEP's insurers, as well as corporate affiliates, officers, directors, agents and employees, would leave QEP-related entities and individuals at risk for future suits, because there is a subset of possible claims as to which the statute of limitations may not have run. This would make QEP vulnerable to future claims for indemnity. QEP would not have settled 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.

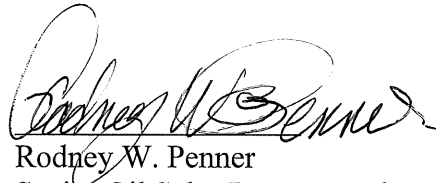
15. In light of QEP's strong defenses to liability, it is by no means certain that MMA's Derailment creditors would be able to recover any amounts whatsoever from QEP if the Plan were not confirmed and the Releases and Injunctions contained therein were not made effective.

16. For these reasons, I believe that the Releases and Injunctions in favor of QEP, 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 QEP, fully support confirmation of the Plan.

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



Rodney W. Penner  
Senior Oil Sales Representative  
QEP Marketing Company, on behalf of  
QEP Resources, Inc.