

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

**DECLARATION OF EDWARD A. BURKHARDT ON BEHALF OF THE RAIL
WORLD PARTIES IN SUPPORT OF CONFIRMATION OF TRUSTEE'S REVISED
FIRST AMENDED
PLAN OF LIQUIDATION DATED JULY 15, 2015**

I, Edward A. Burkhardt, 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 authorized to make this Declaration on behalf of (i) Rail World Holdings LLC; (ii) Rail World, Inc.; (iii) Rail World Locomotive Leasing LLC; (iv) The San Luis Central R.R. Co.; (v) Pea Vine Corporation; (vi) LMS; (vii) MMA Corporation; (viii) Earlston Associates L.P.; and (ix) each of the shareholders, directors, officers or members or partners of the foregoing (collectively, the "Rail World Parties"), each of which is subject to that certain Plan Support & Settlement Agreement executed as of March 30, 2015 (the "Settlement Agreement").

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

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").

4. All facts set forth herein are based on my personal knowledge, upon information provided to me, upon my review of relevant documents, or on my opinion based upon my experience and knowledge of the Debtor and the Rail World Parties. If I were called to testify, I could and would testify competently to the facts set forth herein.

The Plan Releases and Injunctions

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

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").

6. Certain of the Rail World Parties are presently defendants in lawsuits (i) originally filed in state court in Cook County, Illinois and later transferred to the District of Maine (the "Transferred Cases"), (ii) filed in various state courts but not yet transferred to the District of Maine due to orders staying all proceedings in such lawsuits (the "Non-Transferred Cases"), and (iii) a class action pending in the Quebec Superior Court for the Judicial District of Mégantic (the "Québec Class Action" and together with the "Transferred Cases" and "Non-Transferred Cases," the "Pending Cases"). Each of the Pending Cases relates to the Derailment. The Rail World Parties that have not been named in the Pending Cases are also subject to potential future claims in the Pending Cases and/or, together with the Rail World Parties named in the Pending Cases, are subject to other potential lawsuits related to the Derailment and/or are subject to potential cross-claims asserted by co-defendants for contribution and indemnity in the Pending Cases or other lawsuits related to the Derailment.

7. Many of the Rail World Parties have filed proofs of claim against MMA for, *inter alia*, contractual damages and/or indemnification under various agreements and contracts

with the Debtors or otherwise. Absent confirmation of the Plan and the effectiveness of the Releases and Injunctions contained therein in favor of the Rail World Parties, the Rail World Parties intend to pursue their claims against the MMA estate, as applicable.

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

9. Moreover, certain of the Rail World Parties share insurance protection with the Debtor under various insurance policies, including the XL Policies and the Great American Policy. Absent confirmation of the Plan and the effectiveness of the Releases and Injunctions, the Rail World Parties intend to pursue all rights to coverage under the XL Policies and Great American Policies, thus potentially preventing access or diluting the policy proceeds available to victims of the Derailment.

B. The Rail World Parties Have Contributed Substantial Assets to the MMA and MMA Canada Estates

10. The Rail World Parties and Hartford, as insurer to certain of the Rail World Parties, engaged in substantial settlement negotiations with Robert J. Keach, trustee for the Debtor's Chapter 11 Case (the "Trustee"), and the Monitor appointed in the CCAA Case for MMA Canada (the "Monitor") to resolve various claims arising out of the Derailment. After many months of good faith, arm's-length negotiation, the Rail World Parties, the Trustee, the Monitor, Hartford and the XL Companies (under a separate agreement) agreed to a comprehensive settlement under which the Rail World Parties and their insurers would

contribute to the settlement fund formulated by the Trustee and the Monitor for satisfaction of Claims against the Debtor and MMA Canada, subject to the terms and conditions of the Settlement Agreement, which terms and conditions include the requirement that the Releases and Injunctions become effective.

11. The Rail World Parties ultimately agreed to the Settlement Agreement to avoid the expense and delay of protracted litigation relating to the Rail World Parties' alleged liability for the Derailment and any related rights to insurance coverage for such claims. In the Absence of the Settlement Agreement, the Rail World Parties would vigorously defend any claim asserted against them relating the Derailment and would assert coverage for any such claims under applicable insurance policies, including the XL Policies, the Great American Policy, the Hartford Policy and the Chubb Policy.

C. The Releases and Injunction are Essential to the Effectiveness of the Settlement Agreement

12. The Settlement Agreement requires the Rail World Parties to receive global releases and injunctions protecting them from any and all claims, by anyone, that are 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.

13. The Rail World 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 of the Rail World Parties, including each of the shareholders, directors, officers or members or partners of the Rail World Parties. It was with this understanding that the Rail World Parties agreed to make their significant contribution to the MMA estate.

14. The Rail World Parties and their insurers would not have settled with the Trustee if they were not protected from (a) further third party claims brought by the Derailment victims

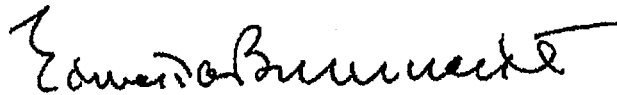
and (b) any and all contribution, indemnity and other claims relating in any way to the Derailment..

15. Finally, I, on behalf of the Rail World 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 26, 2015

A handwritten signature in black ink, appearing to read "Edward Burkhardt". The signature is written in a cursive style with a prominent initial "E" and a long horizontal stroke at the end.

Edward A Burkhardt

1

[signature page for [] declaration]