

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

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

I, Mary E. Henderson, 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 Vice President of Trinity Industries, Inc. ("Trinity"), headquartered at 2525 Stemmons Freeway, Dallas, Texas 75207. I am authorized to make this declaration on Trinity's behalf.

3. Trinity Industries, Inc., Trinity Industries Leasing Company and Trinity Tank Car, Inc. are collectively referred to herein as the "Trinity Entities."

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

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").

Relevant Background

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 “Deraiment”).

6. The Trinity Entities either manufactured, sold, leased and/or serviced the lease of certain rail cars that made up the Deraiment train operated by MMA and/or MMA Canada.

7. Trinity 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 Trinity Share an Identity of Interest with Respect to the Claims Covered by the Releases and Injunctions

8. The Trinity Entities are named as defendants in at least 28 lawsuits, consisting of those suits originally filed in state court in Cook County, Illinois and later transferred to the District of Maine and amended, those refiled in state court in Cook County, Illinois, those class actions pending in Houston, Texas and a class action pending in the Quebec Superior Court for the Judicial District of Mégantic (the “Québec Class Action”), each in connection with the Deraiment.

9. Trinity has significant claims against MMA for, *inter alia*, contribution and indemnity. On June 12, 2014, the Trinity Entities and certain related entities filed proofs of claim (Claims No. 122, 126, 127, 128, 129, 130, 131, and 132) against MMA on those grounds. Absent confirmation of the Plan and the effectiveness of the Releases and Injunctions contained therein in favor of Trinity and its affiliates and insurers, Trinity intends to pursue its claims against the MMA estate.

10. In addition, Trinity may 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 may have claims against the MMA estate for, *inter alia*, contribution and indemnity for any liability arising from the Derailment.

B. The Trinity Entities Will Contribute Substantial Assets to the MMA and MMA Canada Estates if the Plan is Confirmed

11. Trinity, collectively with the other Trinity Entities, 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, Trinity agreed, along with the other Trinity Entities, 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.

12. The Settlement Agreement will enable multiple parties to largely avoid the expense and delay of protracted litigation relating to alleged liability for the Derailment. That being said, Trinity believes that it has strong and complete legal and factual defenses to all claims relating to the Derailment.

13. 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 the Trinity Entities to the MMA estate pursuant to the Settlement Agreement, and certainly would not be able to realize any recovery whatsoever from the Trinity Entities without incurring the delay, expense and risks of litigation. Under these circumstances, I believe, to the best of knowledge, information, and belief, that the total settlement contribution to the MMA estate by and on behalf of the Trinity Entities is "substantial."

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

14. The Releases and Injunctions apply to Trinity, the other Trinity Entities, and certain related parties, including the Trinity Entities' direct and indirect affiliates and their present and former officers, directors, agents, insurers and employees. The Settlement Agreement requires Trinity, the other Trinity Entities, and other related 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.

15. Trinity negotiated and entered into the Settlement Agreement on the condition that any settlement was a final settlement of all MMA- and Derailment-related liability—not only that of Trinity, but also any potential liability of the other Trinity Entities and related parties, including the Trinity Entities' direct and indirect affiliates and their present and former officers, directors, agents, insurers and employees. The Trinity Entities thus agreed to make its significant contribution to the MMA estate.

16. Trinity would not have settled with the Trustee if it 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 all of the Trinity Entities and their insurers, corporate affiliates, officers, directors, agents and employees would leave Trinity, the other Trinity Entities, and their related entities and individuals at risk for future suits, in the event there is a subset of possible claims as to which the statute of limitations has not run. Trinity would not 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.

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

18. Finally, I, on behalf of Trinity, 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


Mary E. Henderson