

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

**DECLARATION OF OLIVER W.R. CHAMPAGNE ON BEHALF OF
GENERAL ELECTRIC RAILCAR SERVICES LLC IN SUPPORT OF
CONFIRMATION OF TRUSTEE'S REVISED FIRST AMENDED
PLAN OF LIQUIDATION DATED JULY 15, 2015**

I, Oliver W.R. Champagne, pursuant to 28 U.S.C. § 1746, state as follows:

INTRODUCTION

1. This Declaration is submitted in connection with and 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 General Electric Railcar Services LLC (f/k/a General Electric Railcar Services Corporation) ("GERSCO") (GERSCO, together with General Electric Company and the other related parties specified on Exhibit 2 to the Plan, are collectively referred to herein as the "GERSCO Parties"). I am authorized to make this declaration on behalf of GERSCO.

3. All facts set forth herein are based on my personal knowledge, on information supplied to me by other GERSCO employees, upon my review of relevant documents, or on my

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan or the Trustee's *Motion for an Order (I) Approving Proposed Disclosure Statement; (II) Establishing Notice, Solicitation and Voting Procedures; (III) Scheduling Confirmation Hearing; and (IV) Establishing Notice and Objection Procedures for Confirmation of the Plan* [Docket No. 1432], as applicable.

opinion based upon my experience and knowledge of GERSCO's operations. If I were called to testify, I could and would testify competently to the facts set forth herein.

RELEVANT BACKGROUND

4. GERSCO leased twenty-five (25) of the seventy-two (72) tank cars involved in the Derailment to Western Petroleum Company ("Western Petroleum") under that certain Car Leasing Agreement 0704-97 between GERSCO and Western Petroleum, dated as of June 21, 2000, and certain related Riders.

5. Seventeen (17) of the twenty-five (25) tank cars leased by GERSCO to Western Petroleum were severely damaged or destroyed in the Derailment.

6. GERSCO has been named as a respondent in putative class action proceedings alleging personal injury, wrongful death, property damage, and additional damages arising from the Derailment filed in the Superior Court for the Province of Québec, District of Mégantic (Case No. 480-06-000001-132, *Gagné, et al. v. Rail World Inc. et al.*) (the "Québec Action"). GERSCO has also been named as a defendant in various actions alleging wrongful death, personal injury and other damages arising from the Derailment filed in Illinois, Maine and Texas (collectively, the "U.S. Actions").

7. To the extent GERSCO is or becomes liable to any Derailment victim, GERSCO has significant claims against Montréal Maine & Atlantic Railway Ltd., the above-captioned debtor ("MMA" or the "Debtor"), for, *inter alia*, contribution and indemnity. On June 11, 2014, GERSCO filed a proof of claim on those grounds against MMA by virtue of filing a claim against Montreal, Maine & Atlantic Canada Co. ("MMAC") in the CCAA Case.²

² Pursuant to the *Order Pursuant to 11 U.S.C. 105(a) and 502(b)(9), Fed. R. Bankr. P. 3002 and 3003(c)(3), and D. Me. LBR 3003-1 Establishing Deadline for Filing Proofs of Claim and Procedures Relating Thereto and Approving Form and Manner of Notice Thereof* [Docket No. 783], Holders of Derailment Claims that filed a proof of claim in the CCAA Case were deemed to have filed a proof of claim in the Chapter 11 Case.

GERSCO SETTLEMENT AGREEMENT

8. In an effort to fully and finally resolve GERSCO's claims against the MMA and MMAC estates and the alleged claims and potential future claims of Derailment victims and other parties against GERSCO arising out of or related to the Derailment, GERSCO engaged in extensive settlement negotiations with Robert J. Keach, trustee for the Debtor's Chapter 11 Case (the "Trustee"), and MMAC. After several months of good faith, arm's-length negotiations, GERSCO, the Trustee and MMAC entered into a Plan Support and Settlement Agreement dated as of March 6, 2015 (the "GERSCO Settlement Agreement"), pursuant to which GERSCO agreed to contribute a settlement amount to the settlement fund formulated by the Trustee for the satisfaction of Derailment Claims against the Debtor and MMAC in accordance with the Plan.

9. GERSCO ultimately agreed to settle with the Trustee and MMAC in part to avoid the expense and delay of protracted litigation relating to the Derailment.

10. To be clear, GERSCO has substantial legal and factual defenses to any alleged claims arising from or relating to the Derailment, and expressly denies (i) that any GERSCO Party caused or contributed in any way to the Derailment or to any of the losses or damages of any type whatsoever resulting therefrom and (ii) that any GERSCO Party is or may be liable for such losses or damages or for any claims arising from or relating to the Derailment. Moreover, the GERSCO Settlement Agreement shall not constitute or be construed as an admission of liability, a course of performance, or wrongdoing on the part of any GERSCO Party.

11. As a result of GERSCO's execution of the GERSCO Settlement Agreement with the Trustee and MMAC, GERSCO and the other GERSCO Parties are included in the definition of "Released Parties" under the Plan.

THE PLAN RELEASES AND INJUNCTIONS

12. The Releases and Injunctions under the Plan inure to the benefit of GERSCO and the other GERSCO Parties. For example, pursuant to the GERSCO Settlement Agreement, GERSCO and the other GERSCO Parties shall receive global releases and benefit from injunctions barring any and all claims by any person or entity arising from or related in any way to MMA or the Derailment. The GERSCO Settlement Agreement further contemplates and provides that the global releases and injunctions required under the GERSCO Settlement Agreement shall be achieved through confirmation of the Plan in MMA's Chapter 11 Case.

13. Throughout its negotiations with the Trustee and MMAC, GERSCO consistently conditioned any willingness on its part to contribute any settlement consideration to the MMA or MMAC estates upon the achievement of a full and final release from and settlement of any and all existing, future or potential liability arising from or relating to MMA or the Derailment asserted against not only GERSCO, but also any of the other GERSCO Parties (including, without limitation, any of their respective parents, affiliates, subsidiaries, officers, directors, employees, agents and other related parties as specifically set forth on Exhibit 2 to the Plan) and injunctions against the pursuit of any such claims against the GERSCO Parties as provided for in the Plan. GERSCO would not have settled with the Trustee and MMAC and agreed to pay the settlement amount provided for in the GERSCO Settlement Agreement if GERSCO and the other GERSCO Parties were not released and protected from all (a) third-party claims brought by the Derailment victims and other parties and (b) contribution, indemnity and other claims arising from or relating to the Derailment. Any settlement that did not include such protection for all of the GERSCO Parties would leave such parties at risk for future suits, which was not acceptable to GERSCO. Therefore, without the Releases and Injunctions set forth in the Plan, GERSCO would not have agreed to enter into the GERSCO Settlement Agreement or to

contribute the Settlement Payment to the MMA estate thereunder. Moreover, GERSCO has the right to terminate the GERSCO Settlement Agreement if the Plan is not confirmed with the Releases and Injunctions or otherwise does not go effective.

14. For the reasons set forth above, I, on behalf of GERSCO, 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 22, 2015



Oliver W.R. Champagne
General Counsel
General Electric Railcar Services LLC