

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

DECLARATION OF CHAPTER 11 TRUSTEE CONCERNING AUCTION

I, ROBERT J. KEACH, ESQ., being duly sworn, depose and say:

1. I am the chapter 11 trustee (the "Trustee") in the above-captioned chapter 11 case (the "Case") of Montreal Maine & Atlantic Railway, Ltd. ("MMA").

2. All facts set forth herein are based on my personal knowledge, on information supplied to me by the professionals I have retained in this Case, including, but not limited to, information supplied to me by my counsel, Bernstein, Shur, Sawyer & Nelson, P.A. ("BSSN"), on my review of relevant documents, or on my opinion based upon my experience and knowledge of MMA's operations and assets. If I were called to testify, I could and would testify competently to the facts set forth herein.

3. This Declaration is submitted in connection with the auction held on January 21, 2014 at 10:00 a.m. (the "Auction"), as described more fully below, and in support of the *Motion for Authority to Sell Substantially All of the Debtor's Assets and to Assume and Assign Certain Executory Contracts and Unexpired Leases* [D.E. 490] (the "Sale Motion").

4. On December 12, 2013, BSSN filed, on my behalf, the Sale Motion. The Sale Motion seeks, among other things, authority to sell substantially all of the assets (the "Assets") of MMA and MMA's wholly-owned subsidiary, Montreal Maine & Atlantic Canada Co.

(“MMA Canada”), or certain “Lots” thereof, to Railroad Acquisition Holdings LLC (“RAH”), or to any successful bidder should competing bids be submitted. Attached to the Sale Motion as Exhibit A is that certain Asset Purchase Agreement, dated December 12, 2013 (the “RAH APA”), which sets forth RAH’s offer to purchase the Assets. The RAH APA contemplates purchase of all of the Assets, other than “Excluded Assets,” for a purchase price of \$14,250,000. Upon information and belief, RAH is an affiliate of Fortress Worldwide Transportation and Infrastructure General Partnership and Fortress Investment Group, LLC.

5. On December 12, 2013, BSSN filed, on my behalf, the *Motion for Order: (A) Approving Bid Procedures for the Sale of the Debtor’s Assets; (B) Scheduling an Auction; (C) Approving Assumption and Assignment Procedures for Certain Executory Contracts and Leases; (D) Approving a Break-Up Fee, Expense Reimbursement and Overbid Protections; and (E) Approving a Form of Notice of Sale* [D.E. 488] (the “Bid Procedures Motion”), seeking approval of, among other things, certain proposed bid procedures (the “Bid Procedures”) and assumption and assignment procedures (the “Assumption and Assignment Procedures”).¹ The Bid Procedures contemplated that, in the event competing bids were obtained, substantially all of the Assets, or certain “Lots” thereof, would be sold at an auction or, failing the receipt of competing bids, to RAH (the “Sale”).

6. The Court issued an order on December 19, 2013 approving the Bid Procedures (the “Bid Procedures Order”), including the scheduling of the Auction and the scheduling of a sale hearing on January 23, 2014 (the “Sale Hearing”), as well as approving the form of that certain publication notice (the “Publication Notice”) and the form of that certain notice of sale (the “Sale Notice”). *See* D.E. 535.

¹ Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Bid Procedures.

7. Proper, timely, adequate and sufficient notice of the Sale Motion, the Bid Procedures, the Sale, the Auction, the Assumption and Assignment Procedures, the proposed cure amounts and the Sale Hearing, and all deadlines related thereto, were provided under the circumstances in accordance with sections 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002(a), 6004(a), 6006(c), 9007, 9008 and 9014 and in compliance with the Bid Procedures Order. Actual written notice of the Sale Motion, the Bid Procedures, the Sale, the Auction, the Assumption and Assignment Procedures, the proposed cure amounts, the Sale Hearing, and all deadlines related thereto, was provided to all interested persons and entities, including: (i) the United States Trustee; (ii) all known creditors, including, without limitation, all plaintiffs and counsel in any and all lawsuits and other actions arising out of or related to the July 6, 2013 train derailment in Lac Megantic, Québec; (iii) local, state and federal taxing authorities for each jurisdiction in which the Assets are located; (iv) counsel to RAH; (v) counsel to MMA Canada; (vi) the Monitor; (v) counsel to the Monitor; (vi) all prospective bidders (or their counsel) that are known to the Trustee and his advisors; (vii) all counterparties to the executory contracts and unexpired leases; (viii) counsel to the Official Committee of Derailment Claimants; (ix) counsel to the Maine Department of Transportation; (x) counsel to the Federal Railroad Administration; (xi) the United States Environmental Protection Agency; (xii) the Town of Lac Mégantic; (xiii) the Ministry of Sustainable Development, Environment, Wildlife and Parks; (xiv) Transport Canada; (xv) the Ministry of Oceans and Fisheries; (xvi) the Ministère des Affaires municipales, des Régions et de l'Occupation du territoire; (xvii) Environment Canada; (xviii) the Vermont Agency of Transportation; (xix) the Maine Department of Labor; (xx) the Maine Department of Environmental Protection; (xxi) the Maine Land Use Regulatory Commission; (xxii) the Surface Transportation Board; (xxiii) all parties known to the Trustee to

have or assert any Liens, Claims, and Interests in or against any of the Assets; (xxiv) Bangor Savings Bank; (xxv) Camden National Bank; (xxvi) Wheeling & Lake Erie Railway; (xxvii) LMS Acquisition Corporation; and (xxviii) all other parties who have, as of the date of the Sale Motion, entered an appearance and requested service of papers in this chapter 11 case. *See* D.E. 549, 555, 572, and 575.

8. The Publication Notice was published in (a) the national edition of *The Wall Street Journal*, (b) the *Journal of Commerce*, (c) the *Portland Press Herald*, (d) the *Globe & Mail*, and (e) the *Montreal Gazette* in accordance with the Bid Procedures Order. Proof of publication is attached hereto as **Exhibit A**. BSSN provided notice of the potential assumption and assignment of the Assigned Contracts and Leases and any Cure Amounts related thereto to all counterparties to the Assigned Contracts and Leases in accordance with the Bid Procedures Order and the Assumption and Assignment Procedures.

A. Qualified Bids

9. On or before the Bid Deadline, I received a total of three (3) bids for the Assets or a certain Lot thereof.

10. Specifically, Washington County Railroad Company (“Washington County”) submitted a Qualified Bid (the “Washington County Bid”) for the Newport Subdivision Lot in the amount of \$750,000.00.

11. Additionally, Springfield Railway Terminal Company and Eastern Maine Railway Company (the “Irving/PanAm Companies”) submitted a joint Qualified Bid comprised of two asset purchase agreements (the “Irving/PanAm Bid”) for the Modified MMA Lot in the amount of \$8,000,000. The Irving/PanAm Bid was subsequently amended as follows:

- a. Section 8.2(i) of the asset purchase agreements submitted by the Irving/PanAm Companies (jointly, the “Irving/PanAm APA”) was

amended to limit required environmental due diligence to a condition that the purchasers obtain V-WRAP or similar agreements with the Maine DEP as to the Brownville Junction, Millinocket, and Northern Maine Junction Yards, and with respect to the Frankfort, Maine Bridge;

- b. Section 8.2(k) of the Irving/PanAm APA was deleted to remove the condition that the purchaser has determined that there are no governmental restrictions that would prohibit, restrict or hinder use of assets by the purchaser;
- c. Section 8.2(l) of the Irving/PanAm APA was deleted to remove the condition that the purchaser shall have been able to obtain satisfactory insurance coverage; and
- d. Section 8.2(m) of the Irving/PanAm APA was modified to limit the provision to material adverse changes occurring after the date of the Irving/PanAm APA, as opposed to after the Petition Date.

12. Although the Irving/PanAm Bid was less than the minimum initial bid for the Modified MMA Lot as set forth in the Bid Procedures, following the amendments to the bid, the Monitor and I, in our discretion, permitted the Irving/PanAm Bid to constitute a Qualified Bid.

13. Only RAH had submitted a Qualified Bid on the All Asset Lot, in the amount of \$14,250,000.00 (the "RAH Bid"). Prior to the Auction, RAH notified me that it intended to amend the RAH Bid as follows:

- a. Twenty-five (25) locomotives were removed from the Assets to be acquired and were instead listed as "Excluded Assets;"
- b. Sections 8.2(k) (regarding governmental restrictions), 8.2(m) (no material adverse change provision), and 8.2(o) (acquisition of LMS Corp. assets) were deleted from the RAH APA;
- c. The period of time for the purchaser to conduct due diligence regarding the Assets was extended to 10:00 a.m. on January 20, 2014; and
- d. The requirement that, in order to qualify for the Break-Up Fee and Expense Reimbursement, RAH was required to waive the conditions set forth in sections 8.2(i) (environmental review), 8.2(k) (regarding

governmental restrictions), and 8.2(m) (no material adverse change provision) of the RAH APA prior to the Auction, was deleted.

14. Prior to the deadline set forth in the Bid Procedures, I notified the qualified bidders that their bids, as modified, constituted “Qualified Bids” for purposes of the Bid Procedures, and that they were all invited to participate in the Auction.

B. Auction Results

15. All three of the qualified bidders appeared for the Auction, as did the Federal Railroad Administration (the “FRA”) and the Province of Québec (the “Province”), both of whom had preserved credit bidding rights. Certain interested parties, including Bangor Savings Bank, LMS Acquisition Corp., the Maine Department of Transportation, Wheeling & Lake Erie Railway Company, and the proposed counsel to the Official Victims Committee, were also in attendance at the Auction (either in person or via telephone). Both the FRA and the Province, upon request, declined to exercise any rights to credit bid.

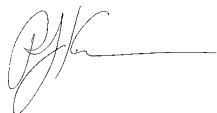
16. Following a disclosure of all of the bids, and the amendments to the bids as described above, I opened the Auction by inviting Washington County and Irving/PanAm to amend their respective bids to include additional assets and/or to raise their respective bids. After a brief adjournment of the Auction, both Washington County and Irving/PanAm declined to amend or raise their respective bids. Neither bidder proposed a bid for the All Asset Lot. Accordingly, after consultation with the Monitor, the Monitor and I determined that the RAH Bid, as amended, was the highest and best bid for the Assets. I also determined that acceptance of the RAH Bid was in the Public Interest.

17. Accordingly, the RAH Bid, as amended, was determined to be the Successful Bid and RAH was designated the Successful Bidder. A true and correct copy of the RAH Bid, as amended, is attached hereto as **Exhibit B**. The Monitor and I valued the RAH Bid, as amended,

at \$15,850,000.00 in light of the asset exclusions provided by the amendments and the removal or modification of conditions. The Washington County Bid and the Irving/PanAm Bid were each determined to be Back-Up Bids. The Auction was then adjourned.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: January 22, 2014



ROBERT J. KEACH, ESQ.
Chapter 11 Trustee of Montreal Maine & Atlantic
Railway, Ltd.