

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**STIPULATIONS WITH REGARD TO TRUSTEE'S OBJECTION TO PROOFS
OF CLAIM FILED BY NEW BRUNSWICK SOUTHERN RAILWAY COMPANY
LIMITED AND MAINE NORTHERN RAILWAY COMPANY LIMITED**

Robert J. Keach, the chapter 11 trustee (the "Trustee") of Montreal Maine & Atlantic Railway, Ltd. ("MMA" or the "Debtor"), and New Brunswick Southern Railway Company Limited ("NBSR") and Maine Northern Railway Company ("MNR," and together with NBSR, the "MN/NB Railways,") (the Trustee and the MN/NB Railways being referred to collectively as the "Parties"), hereby submit the following stipulations in connection with the *Trustee's Objection to Proofs of Claim Filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company Limited on the Basis that Certain of such Claims are Duplicative of Others, and Such Others are Improperly Asserted as Administrative and/or Priority Claims* [D.E. 1826] (the "Objection")¹:

Stipulations

1. **Duplicate Claims Disallowed.** The Parties agree that the MN/NB Railways shall withdraw the Duplicate Claims and such Duplicate Claims shall be expunged in their entirety from the Debtor's claim register.

2. **Nature of Claims.** Other than (i) \$1,952.27 claimed by NBSR for repair of cars owned or leased by MMA, and (ii) \$5,146.38 claimed by MNR for repair of cars owned or

¹ Capitalized terms not defined herein shall have the meanings ascribed to them in the Objection.

leased by MMA and inspection services provided by MNR, the claims of the MN/NB Railways, if any, arose out of the actions described in paragraph 4 below.

3. **Wheeling's Security Interests in Accounts Receivable and Proceeds Thereof.**

For the purposes of resolving the Asserted 1171(b) Claims and the Objection, the Parties agree that Wheeling & Lake Erie Railway Company ("Wheeling"), at all relevant times, held a valid security interest in the Debtor's accounts receivable and certain inventory, as well as the proceeds thereof, to secure the obligations arising under that certain Line of Credit Note and Security Agreement dated as of June 15, 2009 ("Wheeling LoC").

4. **Interline Settlement System.** The Parties stipulate as follows regarding the Interline Settlement System ("ISS"). MMA was a participating railroad in the ISS. The MN/NB Railways were not participating railroads in the ISS. The ISS provides a central clearing house for participating railroads involved in the interchange of freight traffic among multiple rail carriers to settle accounts receivable and accounts payable arising from the interchange of such traffic. Railroads participating in the ISS that originate traffic are known as "billing" railroads and invoice the customer for all freight charges from the point of origin to the point of destination, even if the shipment is interchanged with other railroads along the route. The customer is responsible for paying the billing railroad the entire invoice, and the billing railroad is responsible for paying the other railroads involved in the shipment their share of the proceeds representing the freight charges earned by them. Railroads that participate in the ISS calculate on a monthly basis the accounts receivable and accounts payable arising from the interchange of traffic that are due and owing to each participant, and payment of the net amount due and owing is made on the second business day of each month. By agreement with the MN/NB Railways, MMA acted as the billing railroad when either MNR or NBSR originated traffic and

interchanged with MMA, as well as when MMA originated traffic and interchanged with either of the MN/NB Railways, because neither of the MN/NB Railways participated in ISS. MMA also collected from the ISS freight revenue attributable to freight services provided by the MN/NB Railways in connection with shipments originated by other carriers that were interchanged by such carriers with MMA, and by MMA with the MN/NB Railways. Other than as set forth in paragraph 2 above, the claims of the MN/NB Railways, if any, result from the fact that MMA collected funds either directly from customers or via the ISS and did not pay amounts due to the MN/NB Railways.

5. Irving Pulp and Paper, Limited, Irving Paper Limited, and J.D. Irving, Limited (the “Irving Paper Companies”) are affiliates of both of the MN/NB Railways and customers of MMA. During the six-month period preceding the filing, the MN/NB Railways, and the Irving Paper Companies, on the one hand, and MMA on the other hand, would settle their respective accounts receivables and accounts payable by arranging for the concurrent exchange of wire transfers or checks.

6. **Issue to be Determined.** The Parties agree, in accordance with Fed. R. Bankr. P. 7042(b), made applicable to this matter by Fed. R. Bankr. P. 9014(c), that the hearing on November 20, 2015 will address solely whether the claims asserted by the MN/NB Railways in Proofs of Claim 257 and 259 qualify as “six-month” claims entitled to priority under Section 1171(b) of the Bankruptcy Code. The amount of such claims shall be determined at a subsequent hearing, if required.

7. **Trustee’s Exhibits.** The Parties stipulate to the authenticity and admissibility of the following exhibits identified by the Trustee:

- (a) Wheeling payment Tracker for Wheeling LoC;

- (b) Statement of payments made on Wheeling line of credit for period from June 15, 2011 to August 6, 2013;
- (c) Borrowing Base Certificate. Figures determined as of June 30, 2009;
- (d) Borrowing Base Certificate. Figures determined as of August 31, 2009;
- (e) Borrowing Base Certificate. Figures determined as of October 31, 2009;
- (f) Borrowing Base Certificate. Figures determined as of April 30, 2010;
- (g) Borrowing Base Certificate. Figures determined as of May 31, 2010;
- (h) Borrowing Base Certificate. Figures determined as of June 30, 2010;
- (i) Borrowing Base Certificate. Figures determined as of ay June 30, 2011;
- (j) Borrowing Base Certificate. Figures determined as of July 31, 2011;
- (k) Borrowing Base Certificate. Figures determined as of January 31, 2012;
- (l) Borrowing Base Certificate. Figures determined as of February 29, 2012;
- (m) Borrowing Base Certificate. Figures determined as of June 30, 2012;
- (n) Borrowing Base Certificate. Figures determined as of June 30, 2013;
- (o) Connection Agreement dated January 29, 2013 between MMA and Eastern Maine Railway Co. and Maine Northern Railway Co.;
- (p) Dispatching Agreement dated June 15, 2011 between MMA and Maine Northern Railway Co.;
- (q) Blocking Agreement dated January 9, 2003 between New Brunswick Southern Railway Company Ltd., Eastern Maine Railway Company and MMA;
- (r) Commercial Agreement dated January 9, 2003 between MMA, Eastern Maine Railway Company and New Brunswick Southern Railway Company Limited (the "Commercial Agreement");
- (s) Interchange Agreement at Brownville Junction Yard dated January 9, 2003 between MMA and Eastern Maine Railway Company;
- (t) Letter from Ian Simpson, General Manager of Eastern Maine Railway Company, dated August 2, 2013 to MMA regarding overdue payments under the Commercial Agreement; and

- (u) Letter from Ian Simpson, General Manager of New Brunswick Southern Railway Company Limited, dated August 2, 2013 to MMA regarding overdue payments under the Commercial Agreement.

8. **MN/NB Railways' Exhibits.** The Parties stipulate to the authenticity and admissibility of the following exhibits identified by the MN/NB Railways:

- (a) E-mail, dated June 4, 2012 at 11:37 am, from Robert C. Grinrod to Ian Simpson regarding "Revision of Settlement Terms Between NBSR and MMA" with two page attachment titled "Revision of Payment Terms with NBSR Needed."
- (b) E-mail, dated July 26, 2012 at 1:03 pm from Donald Gardner to Ryan Ellis regarding "Oil Movement Invoices," and E-mail, dated July 26, 2012 at 2:49 pm from Ryan Ellis to Donald Gardner regarding "Oil Movement Invoices."
- (c) E-mail, dated July 26, 2012 at 1:03 pm from Donald Gardner to Ryan Ellis regarding "Oil Movement Invoices," and E-mail, dated July 26, 2012 at 2:50 pm from Ryan Ellis to Joanne Kelter regarding "Oil Movement Invoices."
- (d) E-mail, dated July 26, 2012 at 1:03 pm from Donald Gardner to Ryan Ellis regarding "Oil Movement Invoices," and E-mail, dated July 26, 2012 at 3:53 pm from Joanne Kelter to Donald Gardner, regarding "Oil Movement Invoices."
- (e) (i) E-mail, dated August 30, 2012 at 7:27 am from Joanne Kelter to Brenda Tarr regarding "Swap;" (ii) E-mail from Brenda Tarr, dated August 30, 2012 at 9:53 am regarding "Swap;" (iii) E-mail, dated August 30, 2012 at 9:13 am from Joanne Kelter; (iv) E-mail from Donald Gardner, dated August 30, 2012 at 11:04 am to Joanne Kelter regarding "Swap;" and (v) E-mail from Ryan Ellis, dated August 30, 2012 at 1:15 pm to Donald Gardner and Joanne Kelter regarding "Swap."
- (f) E-mail from Ian Simpson, dated January 3, 2013 at 3:02 pm to Donald Gardner regarding "ISS Crude Payments," and E-mail from Donald Gardner, dated January 3, 2013 at 4:18 pm to Ian Simpson regarding "ISS Crude Payments."
- (g) (i) E-mail from Ryan Ellis, dated January 4, 2013 at 1:04 pm to Donald Gardner regarding "November Oil Payments;" (ii) E-mail from Donald Gardner, dated January 4, 2013 at 5:55 pm to Ryan Ellis regarding "November Oil Payments;" (iii) E-mail from Ian Simpson, dated January 7, 2013 at 10:05 am to Donald Gardner and Ryan Ellis regarding "November Oil Payments;" (iv) E-mail from Donald Gardner, dated

January 7, 2013 at 11:25 am to Ian Simpson and Ryan Ellis regarding “November Oil Payments.”

- (h) E-mail from Donald Gardner, dated February 5, 2013 at 4:31 pm to Ryan Ellis regarding “Cash Settlement,” and E-mail from Ryan Ellis, dated February 7, 2013 at 10:30 am to Donald Gardner regarding “Cash Settlement.”
- (i) E-mail from Donald Gardner, dated April 4, 2013 at 3:51 pm to Ryan Ellis regarding “Cash,” and E-mail from Ryan Ellis, dated April 4, 2013 to Donald Gardner, dated April 4, 2013 at 3:54 pm regarding “Cash.”
- (j) E-mail from Joanne Kelter, dated February 15, 2012 at 3:04 pm regarding “Swap Details,” and E-mail from Brenda Tarr, dated February 16, 201 at 8:49 am regarding “Swap Details.”
- (k) E-mail from Joanne Kelter, dated October 26, 2011 at 2:24 pm to Brenda Tarr, Jocelyne Baranek and Torrie Potter regarding “Swap Details,” and E-mail from Brenda Tarr, dated October 27, 2011 at 9:19 am regarding “Swap Details.”
- (l) E-mail from Joanne Kelter, dated August 10, 2011 at 1:03 pm to Brenda Tarr, Jocelyne Baranek and Torrie Potter regarding “Swap Details,” and E-mail from Brenda Tarr to Joanne Kelter, Jocelyne Baranek and Torrie Potter, dated August 10, 2011 at 4:01 pm regarding “Swap Details.”

9. **Additional Exhibits.** The Parties agree that the foregoing stipulation regarding the authenticity and admissibility of the exhibits identified in paragraphs 7 and 8 above is without prejudice to the right of either Party to seek to introduce additional exhibits at the hearing on the Objection, and without prejudice to the right of either party to object to the admission of any such exhibits; *provided, however*, that the Parties shall provide each other no later than noon on Thursday, November 19, 2015 copies of all exhibits they intend to introduce at the hearing, other than exhibits to be used solely for impeachment.

Dated: November 19, 2015

/s/ Alan R. Lepene

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Dated: November 19, 2015

/s/ Lindsay K. Zahradka

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*Counsel for Robert J. Keach, Chapter 11 Trustee of
Montreal Maine & Atlantic Railroad Ltd.*

Dated: _____, 2015

So ORDERED.

**Honorable Peter G. Cary
Chief Judge, United States Bankruptcy Court
District of Maine**