

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**AMENDED OBJECTION OF ESTATE REPRESENTATIVE TO PROOFS OF CLAIM
FILED BY NEW BRUNSWICK SOUTHERN RAILWAY COMPANY LIMITED AND
MAINE NORTHERN RAILWAY COMPANY ON THE BASIS THAT CERTAIN OF
SUCH CLAIMS ARE DUPLICATIVE OF OTHERS, AND SUCH OTHERS ARE
IMPROPERLY ASSERTED AS ADMINISTRATIVE AND/OR PRIORITY
CLAIMS, IN AN INACCURATE AMOUNT, AND SUBJECT TO
DISALLOWANCE UNDER BANKRUPTCY CODE SECTION 502(d)**

Robert J. Keach, the estate representative (the “Trustee”) of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (“MMA” or the “Debtor”), hereby submits this amended objection (the “Amended Objection”) related to his objection [D.E. 1826] (the “Original Objection”)¹ to (a) Proofs of Claim No. 242-1 (the “MN Duplicate Claim”) and 257-1 (“Claim 257”) filed by Maine Northern Railway Company (“MN Railway”) and (b) Proofs of Claim No. 243-1 (“NB Duplicate Claim,” and together with the MN Duplicate Claim, the “Duplicate Claims”) and 259-1 (“Claim 259,” and together with Claim 257, the “Asserted 1171(b) Claims”) filed by New Brunswick Southern Railway Company Limited (“NB Railway,” and together with MN Railway, the “MN/NB Railways”). As set forth below, the Trustee objects to (x) the Duplicate Claims on the basis that they are duplicative of their

¹ For the reference of parties in interest and the Court, a redline of this Amended Objection as against the Original Objection is attached hereto as Exhibit A. The Original Objection was sustained in part and overruled in part pursuant to D.E. 2034 (the “Initial Order”), though certain issues raised in the Original Objection were not resolved by the Initial Order. Pursuant to D.E. 2311 (the “Amended JPO”), the Estate Representative was permitted to file this Amended Objection raising certain additional issues related to the Original Objection. The Amended Objection is therefore designed to solicit a final order on all issues raised in this Amended Objection (without re-litigating any issues resolved by the Initial Order). For the avoidance of doubt, by this Amended Objection, the Trustee does not seek to re-litigate any issues resolved by the Initial Order.

respective Asserted 1171(b) Claims and (y) the Asserted 1171(b) Claims on the basis that they are improperly asserted as administrative and/or priority claims against the Debtor, do not correspond with the Debtor's books and records, and are subject to disallowance pursuant to section 502(d) of title 11 of the United States Code (the "Bankruptcy Code"). In support of this Amended Objection, the Trustee states as follows:

JURISDICTION, VENUE AND BASES FOR RELIEF

1. The United States District Court for the District of Maine (the "District Court") has original, but not exclusive, jurisdiction over this chapter 11 case pursuant to 28 U.S.C. § 1334(a) and over this Amended Objection pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(a) and Rule 83.6 of the District Court's local rules, the District Court has authority to refer and has referred this chapter 11 case, and, accordingly, this Amended Objection, to this Court.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has constitutional authority to enter judgment in this action.

3. Venue over this chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue over this proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

4. The relief sought in this Amended Objection is predicated upon Bankruptcy Code sections 502(b)(1), (d) and 1171(b) , Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 3007-1 of the Local Rules for the United States Bankruptcy Court for the District of Maine (the "Local Rules").

5. The *Declaration of Fred C. Caruso in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1688] (the "Caruso Decl.") provides further support for the facts alleged in the Original Objection.

BACKGROUND

A. Relevant Operational Background and the Interline Settlement System

6. From January 2003 until May 2014, the Debtor operated an integrated, international shortline freight railroad system (the “System”) with its wholly owned Canadian subsidiary, Montréal Maine & Atlantic Canada Co. (“MMA Canada”). The System originally included 510 route miles of track in Maine, Vermont and Québec, comprising a substantial component of the transportation systems of Northern Maine, Northern New England, Québec, and New Brunswick.

7. In the ordinary course of its business operations, the Debtor, like many other railroads, participated in the Interline Settlement System (the “ISS”). *See* Caruso Decl. ¶ 16-17. The ISS provides, in effect, a central clearing house for all participating railroads to net accounts receivable and payable with respect to other participating railroads’ shares of the freight revenue invoiced to a customer by the originating railroad. Caruso Decl. ¶ 15. The ISS thus mitigates credit risk among railroads by enabling a railroad (hypothetical “Railroad A”) to mitigate the risk that it would pay a fellow railroad (hypothetical “Railroad B”) on an invoice, knowing that Railroad B owes Railroad A on a separate invoice, only to find that Railroad B cannot pay on that second invoice.

8. The MN/NB Railways opted out of the ISS. Caruso Decl. ¶ 17. Instead, the MN/NB Railways entered into an agreement with MMA whereby MMA either (a) invoiced the customer for freight revenue originated by the MN/NB Railways (“originating traffic”) or (b) received freight revenue through the ISS for “received traffic” (which was invoiced to the customer by the originating railroad), in either case for both MMA’s and the MN/NB Railways’ share of the freight revenue. *Id.* Periodically, MMA and the MN/NB Railways settled their accounts payable and receivable as between themselves. *Id.* This business decision amounted

to a determination to avoid the credit-risk-mitigating effect of the ISS for, among other reasons, administrative convenience, and to instead rely on the credit of MMA. *See Id.*

B. Wheeling’s Line of Credit and Security Interest in ISS Proceeds

9. The Debtor obtained financing under a \$6 million revolving line of credit with Wheeling & Lake Erie Railway Company (“Wheeling”) pursuant to that certain Line of Credit and Security Agreement dated as of June 15, 2009 (the “Wheeling LOC”). To secure the obligations under the Wheeling LOC, the Debtor, MMA Canada, and certain other parties entered into a security agreement with Wheeling dated June 15, 2009 (the “Security Agreement”), which granted a security interest to Wheeling in certain of the Debtor’s property—primarily accounts receivable and certain inventory. Wheeling filed a UCC-1 Financing Statement in Delaware to perfect a security interest in the Debtor’s accounts receivable and inventory, along with the proceeds thereof.

10. The proceeds that MMA received via the ISS or from invoicing MN/NB Railways’ customers were thus property Wheeling claimed as collateral. Caruso Decl. ¶ 18. As such, Wheeling would have had a right to payment from such proceeds that would have been senior to any claims the MN/NB Railways could make against them. Caruso Decl. ¶ 18. That the MN/NB Railways’ claim to the ISS and such customer invoice proceeds was junior to another stakeholder’s claim both established and further exacerbated the MN/NB Railways’ sole reliance on MMA’s credit (indeed its borrowings from Wheeling), as opposed to looking to MMA’s direct daily or weekly cash flow for payment. Caruso Decl. ¶ 18.

C. The Derailment and the Debtor’s Bankruptcy Filing

11. On July 6, 2013, an unmanned eastbound MMA train with 72 carloads of crude oil, a buffer car, and 5 locomotive units derailed in Lac-Mégantic, Québec (the “Derailment”). The transportation of the crude oil had begun in New Town, North Dakota by the Canadian

Pacific Railway (“CP”) and MMA Canada later accepted the rail cars from CP at Saint-Jean, Québec. The crude oil was to be transported via the Saint-Jean-Lac-Mégantic line through Maine to its ultimate destination in Saint John, New Brunswick.

12. The Derailment set off several massive explosions, destroyed part of downtown Lac-Mégantic, and is presumed to have killed 47 people. A large quantity of oil was released into the environment, necessitating an extensive cleanup effort. As a result of the Derailment and the related injuries, deaths, and property damage, lawsuits were filed against the Debtor in both the United States and Canada. After the Derailment, Canadian train activity was temporarily halted between Maine and Québec on the MMA Canada line, resulting in the Debtor losing much of its freight business. These effects of the Derailment caused the Debtor’s aggregate gross revenues to fall drastically to approximately \$1 million per month.

13. On August 7, 2013, the Debtor filed a voluntary petition for relief commencing a case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Maine (the “Case”). Simultaneously, MMA Canada filed for protection under Canada’s Companies’ Creditors Arrangement Act (Court File No. 450-11-000167-134). On August 21, 2013, the Office of the United States Trustee (the “U.S. Trustee”) appointed the Trustee to serve as trustee in the Debtor’s Case pursuant to 11 U.S.C. § 1163 [D.E. No. 64].

D. The Debtor’s Schedules and the MN/NB Railways’ Proofs of Claim

14. On September 11, 2013, the Debtor filed its schedule of assets and liabilities and statement of financial affairs [D.E. 216] (the “Schedules”). The Schedules list (a) MN Railway as having a non-contingent, liquidated and undisputed general unsecured claim in the amount of \$144,276.00² (the “Scheduled MN Railway Amount”) and (b) NB Railway as having a contingent, unliquidated and disputed general unsecured claim *owed by MMA Canada* in the

² The Schedules were filed by the Debtor. Based upon the Estate Representative’s review of the Debtor’s books, they reflect a balance of \$144,276.74.

amount of \$2,351,245.00.³ *See* Schedule F (Creditors Holding Unsecured Nonpriority Claims), pp. 134, 150 of 244.

15. On June 13, 2014, the MN/NB Railways filed the Duplicate Claims, and later the same day filed the Asserted 1171(b) Claims. The MN Duplicate Claim and Claim 257 are substantially (if not entirely) identical, as are the NB Duplicate Claim and Claim 259. The Duplicate Claims are thus duplicative of their respective Asserted 1171(b) Claims.

16. Claim 257 asserts claims in the aggregate amount of \$335,101.19 arising from “[f]reight services provided to the Debtor in connection with interline rail shipments.” *See* Claim No. 257. The claim is broken down as follows: (a) a claim asserted to be secured by an “equitable lien . . . under the Six-Month rule applicable in federal court receiverships . . .” in the amount of \$167,228.89 and (b) a claim asserted to be entitled to priority under section 507(a) in the amount of \$187,872. *See* Claim No. 257. Putting aside the character of the claim, Claim 257 thus asserts \$190,825.19 owed in excess of the Scheduled MN Railway Amount.⁴

17. Claim 259 asserts claims in the aggregate amount of \$2,164,471.30 arising from “[f]reight services provided to the Debtor in connection with interline rail shipments.” *See* Claim No. 259. The claim is broken down as follows: (a) a claim asserted to be secured by an “equitable lien . . . under the Six-Month rule applicable in federal court receiverships . . .” in the amount of \$1,971,835 and (b) a claim asserted to be entitled to priority under section 507(a) in the amount of \$192,637. *See* Claim No. 259. Putting aside the character of the claim, the entire amount asserted in Claim 259 is in excess of what the Debtor acknowledged to be a valid claim against MMA in the Schedules.

³ Based upon the Estate Representative’s review of the Debtor’s books, they reflect a balance of \$2,353,964.32.

⁴ As the MN/NB Railways later conceded, section 1171(b) claims are not secured claims. MN/NB Railways claim that such claims are administrative claims; the Trustee contends that they are priority claims ranked below other section 507 priority claims, but further contends that none of the claims held by MN/NB Railways enjoys section 1171(b) priority.

E. The Preference Litigation

18. On August 6, 2015, the Trustee commenced an adversary proceeding against NB Railway which is currently pending before the Bankruptcy Court under case caption, *Keach v. New Brunswick Southern Railway Company Limited*, Adv. Proc. No. 15-01016 (the “NB Preference Litigation”). The Trustee’s complaint under sections 547 and 550 of the Bankruptcy Code seeks the avoidance and recovery of approximately \$1,006,623.10 in preferential transfers received by NB Railways during the 90-day period prior to the Petition Date (the “NB Preference Claim”).

19. On the same date, the Trustee commenced litigation against MN Railway seeking to avoid and recover preferential transfers received by MN Railway in the approximate amount of \$185,957.70 (the “MN Preference Claim” and, collectively with the NB Preference Claim, the “Preference Claims”). The adversary case against MN Railway is currently pending before the Bankruptcy Court under case caption, *Keach v. Maine Northern Railway Company*, Adv. Proc. No. 15-01017 (the “MN Preference Litigation” and, collectively with the NB Preference Litigation, the “Preference Litigation”).

20. On September 29, 2015, the MN/NB Railways answered the complaints filed against them by the Trustee and on October 16, 2015, the Bankruptcy Court entered pretrial scheduling orders in both the NB Preference Litigation and the MN Preference Litigation. The pretrial scheduling orders in both cases were subsequently amended to extend the fact and expert discovery deadlines to May 15, 2016 and April 14, 2016, respectively, and have since been stayed pending final resolution of the appeal of the Initial Order.

F. Confirmation of the Plan

21. On July 15, 2015, the Trustee filed the *Trustee’s Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1534].

22. On October 9, 2015, the Bankruptcy Court confirmed the Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015 (as Amended October 8, 2015) [D.E. 1801] (the "Confirmation Order," and the plan confirmed thereby and attached thereto, the "Plan").

The Confirmation Order provides, in pertinent part:

In resolution of the MN/NB Objection [to confirmation of the Plan], any 1171(b) Claims of the MN/NB Railways shall be paid in full, in Cash, on the later of the Initial Distribution date or thirty (30) days after the date such Claims become Allowed Claims. In the event the Bankruptcy Court has not determined, prior to the Initial Distribution Date, the existence of and/or the amount of any Allowed 1171(b) Claims of the MN/NB Railways, if any, as of such date, the Trustee shall set aside, and not distribute pending further order of the Bankruptcy Court making such determination, \$2,139,063.56 to secure any payment, to the extent required, with respect to such Allowed 1171(b) Claims, when and if determined.⁵

Confirmation Order, ¶ 85. As of the date of this Amended Objection, the Initial Distribution Date has not yet occurred.

G. Wheeling's District Court Litigation Against the MN/NB Railways

23. On July 25, 2014 (prior to confirmation of the Plan), the Bankruptcy Court entered an order [D.E. 1047] (the "Lift Stay Order") granting the Trustee's motion approving a compromise with Wheeling whereby, *inter alia*, the automatic stay was modified such that Wheeling became authorized to enforce its rights with respect to certain accounts receivable of MMA that were its collateral pursuant to the Security Agreement, including accounts payable by the MN/NB Railways (the "MN/NB A/R"). The Lift Stay Order did not effect the outright assignment of the MN/NB A/R to Wheeling. The MN/NB A/R thus remains property of the Debtor's estate.

24. On August 14, 2014, Wheeling filed a complaint (the "Wheeling Complaint") against the MN/NB Railways seeking to collect the MN/NB A/R. *See* No. 14-cv-00325-NT (D.

⁵ Capitalized terms used but not defined in this provision of the Confirmation Order shall have the meanings ascribed to such terms in the Confirmation Order or the Plan, as applicable.

Me.) (the “District Court Litigation”). The Wheeling Complaint seeks payment from MN Railway on invoices originally issued by MMA in the amount of \$328,447.78 and payment from NB Railway in the amount of \$12,174.53.

25. On September 23, 2014, the MN/NB Railways answered the Wheeling Complaint [No. 14-cv-00325, D.E. 7 at 4],⁶ asserting, *inter alia*:

23. Plaintiff’s claims are barred to the extent there exists a valid right of setoff, recoupment, or otherwise. Without limiting the foregoing, Defendants further state that Plaintiff, as assignee of MMA US, acquired its interest in the accounts receivable subject to the rights of third parties, including the Defendants. As a result of Defendants[’] prior business relationship with MMA US and/or its affiliates, the Defendants have a valid and enforceable right of setoff and/or recoupment. Defendants’ setoff and/or recoupment rights exceed the amounts that Plaintiff claims to be owed by the Defendants in the Complaint; and thus Defendants’ setoff and/or recoupment rights completely extinguish and bar Plaintiff’s claims.

26. On April 16, 2015, Wheeling moved for partial summary judgment in the District Court Litigation. *See* No. 14-cv-00325, D.E. 21. The same day, the MN/NB Railways also moved for partial summary judgment. *See* No. 14-cv-00325, D.E. 20.

27. On September 15, 2015 the District Court denied Wheeling’s motion for partial summary judgment and granted the MN/NB Railways’ motion for partial summary judgment. *See* No. 14-cv-00325, D.E. 279 (the “Partial SJ Order”).

28. After entry of the Partial SJ Order, the District Court set discovery and further dispositive motion practice deadlines. The parties jointly sought to stay those deadlines pending the result of Wheeling’s litigation against the Estate Representative, which Wheeling stated could provide for Wheeling’s payment in full, which would in turn moot the District Court Litigation. *See* No. 14-cv-00325, D.E. 31 (the “Motion to Stay”). The District Court

⁶ On January 26, 2015, the then-trustee consented to entry of an order by the Bankruptcy Court permitting the MN/NB Railways to, *inter alia*, “exercise their setoff rights in the event the [District Court] determines in the context of the District Court [Litigation] that [the MN/NB Railways] have valid rights of setoff that are superior to Wheeling’s claimed security interest in MMA’s accounts receivable.” *See* 13-10670, D.E. 1349.

granted the Motion to Stay on January 26, 2016, but deferred the establishment of new deadlines. *See* No. 14-cv-00325, D.E. 32.

29. After a subsequent status conference, the District Court extended the stay of the proceedings to November 1, 2016, and required the parties to submit a joint status report by September 30, 2016.

30. On October 11, 2016, the parties submitted the joint status report, reporting in pertinent part that: (a) the Bankruptcy Court had denied the Estate Representative's motion for summary judgment in Wheeling's adversary proceeding against the Estate Representative, and that the parties would be conferring on discovery and pre-trial deadlines; and (b) the MN/NB Railways' request for payment of the Asserted 1171(b) Claim was on appeal before the BAP, and the BAP decision was (at that time) pending; if the MN/NB Railways received payment in full, their setoff defense would be reduced or eliminated. The status report requested a further extension of the stay to April 1, 2017. *See* No. 14-cv-00325, D.E. 38 (the "October 2016 Status Report").

31. On October 12, 2016, the District Court further extended the stay of the District Court Litigation to February 1, 2017, and on February 14, 2017, again further extended the stay to March 1, 2017. *See* No. 14-cv-00325, D.E. 44.

H. Joint Pretrial Orders Relating to the Original Objection

32. In connection with the efforts of the Estate Representative and the MN/NB Railways (collectively, the "Parties") to achieve a final order resolving the issues raised in and relating to the Original Objection, Wheeling raised certain concerns about the estate setting off the MN/NB A/R against the Asserted 1171(b) Claims. In response to Wheeling's concern, the Parties agreed that in their request for a final order on this Amended Objection, instead of "netting" any amounts owed, they would seek to determine finally the amounts that MN

Railway owed to MMA, that MMA owed to MN Railway, that NB Railway owed to MMA, and that MMA owed to NB Railway.

RELIEF REQUESTED

33. By this Amended Objection (and subject to note 1 *supra*), the Trustee requests entry of an order, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1, (a) sustaining the Amended Objection, (b) disallowing the Duplicate Claims in their entireties and expunging the same from the Debtor's claims register, (c) disallowing the Asserted 1171(b) Claims in their entireties, (d) determining the *amount* of (i) MMA's claim against MN Railway, (ii) MN Railway's claim against MMA, (iii) MMA's claim against NB Railway, and (iv) NB Railway's claim against MMA, and what portion (if any) of the MN/NB Railways' claims are entitled to priority under Bankruptcy Code section 1171(b), and (e) granting such other and further relief as this Court deems just and equitable.

BASIS FOR RELIEF

A. The Legal Standard

i. Disallowance of Claims in Chapter 11

34. Section 502(a) provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). The Bankruptcy Code defines a “claim” as a “right to payment,” 11 U.S.C. § 101(5)(A), “usually referring to a right to payment recognized under state law,” In re Hann, 476 B.R. 344, 354 (B.A.P. 1st Cir. 2012), aff'd, 711 F.3d 235 (1st Cir. 2013) (quoting Travelers Cas. and Sur. Co. of America v. Pac. Gas and Elec. Co., 549 U.S. 443, 451 (2007)). Because a “right to payment” constitutes a claim, “the first step in the claims [allowance] process is always to determine whether there *is* a right to payment.” In re Taylor, 289 B.R. 379, 383

(Bankr. N. D. Ind .2003) (emphasis added). A claim with “no basis in fact or law” must be disallowed. Hann, 476 B.R. at 354.

35. Bankruptcy Code section 502(b)(1) provides that if an objection to a claim is filed, the court, after notice and a hearing, “shall allow such claim . . . except to the extent that—(1) such claim is unenforceable against the debtor and property of the debtor” 11 U.S.C. § 502(b)(1). The objecting party must produce evidence that would refute at least one of the allegations essential to the claim’s legal sufficiency. See In re Allegheny Int’l, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992); In re St. Johnsbury Trucking Co., 206 B.R. 318, 323 (Bankr. S.D.N.Y. 1997) (“Any party objecting to the claim has the burden of putting forth evidence sufficient to negate the *prima facie* validity of the claim by refuting one or more of the facts in the filed claim.”), *aff’d* 221 B.R. 692 (S.D.N.Y. 1998), *aff’d* 173 F.3d 846 (2d Cir. 1999). Once the objecting party produces such evidence, the burden shifts back to the claimant to prove the validity of its claim by a preponderance of the evidence. See Allegheny, 954 F.2d at 174 (citing In re WHET, Inc., 33 B.R. 424, 437 (Bankr. D. Mass. 1983)).

36. Bankruptcy Code section 502(d) provides as follows:

Notwithstanding subsections (a) and (b) of this section, ***the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.***

11 U.S.C. § 502(d) (emphasis added). Section 502(d) of the Bankruptcy Code requires disallowance of a claim held by the recipient of a voidable transfer *in toto* if such recipient has not repaid the amount required in accordance with the Bankruptcy Code sections under which the recipient’s liability arises. H.R. Rep. No. 595, 95th Cong., 1st Sess. 354 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 65 (1978).

37. In addition, “a claim may be disallowed at least temporarily and for certain purposes, subject to reconsideration, simply upon the allegation of an avoidable transfer.” 4 COLLIER ON BANKRUPTCY ¶ 502.05[2][a] (16th Ed. 2010); *see also* Enron Corp. v. Avenue Special Situations Fund II (In re Enron Corp.), 340 B.R. 180, 192 n.5, 193 (Bankr. S.D.N.Y. 2006) (finding that debtor did not have to first obtain determination that creditor had received avoidable preference in order to state claim for disallowance of proof of claim, and that a 502(d) objection prior to resolution of the underlying avoidance action rendered the claim disputed), *rev’d on other grounds* by Enron Corp. v. Springfield Assocs. (In re Enron Corp.), 379 B.R. 425 (S.D.N.Y. 2007); Ames Dep’t Stores, Inc., v. ASM Capital, LP (In re Ames Dep’t Stores), No. 01-42217 (Bankr. S.D.N.Y. Dec. 5, 2005) (“Ames”) (finding that administrative claim held by recipient of transfer that was the subject of an avoidance action must be temporarily disallowed until avoidance action against recipient is resolved).

ii. Claims Entitled to Priority Under Bankruptcy Code Section 1171(b)

38. The claims protected by section 1171(b) are referred to as “six-month claims,” which are claims incurred where: (i) the claim arose within six months of the filing of the petition; (ii) the obligation was incurred for a current and necessary operating expense in the ordinary course of business; and (iii) the goods or services giving rise to the claim were not furnished in reliance on the railroad’s general credit. *See* In re Boston & Maine Corp., 634 F.2d 1359, 1379-80 (1st Cir. 1980).

39. As a matter of controlling law in this circuit, pre-petition interline freight claims “do not qualify for any of the express special priorities created by the Act,” including status as “six-month claims.” In re Boston & Maine Corp., 600 F.2d 307, 308, 310 (1st Cir. 1979); *see also* In re McLean Industs., Inc., 103 B.R. 424, 426-27 (Bankr. S.D.N.Y. 1989) (declining to extend priority to prepetition interline rail balances).

B. The Duplicate Claims Should Be Disallowed and Expunged

40. The Trustee objects to the Duplicate Claims, as the MN Duplicate Claim duplicates Claim 257 and the NB Duplicate Claim duplicates Claim 259. If the Duplicate Claims are not disallowed and expunged, the Trustee would be required to pay the same liabilities to the same creditors simply because such creditors filed two different proofs of claim. Accordingly, the Trustee requests that the Duplicate Claims be disallowed and expunged from the Debtor's claims register such that only the Asserted 1171(b) Claims remain (though, as forth below, the Trustee objects to the classification of such Asserted 1171(b) Claims, and as set forth above, reserves the right to object to the amount of such Asserted 1171(b) Claims and the estate's responsibility therefor), as the Duplicate Claims are not "enforceable against the Debtor." *See* 11 U.S.C. § 502(b)(1).

C. The Asserted 1171(b) Claims Are Not Entitled to an "Equitable Lien" or Priority Status Under Bankruptcy Code Section 1171(b)

41. The Asserted 1171(b) claims do not constitute valid 1171(b) Claims for two independent reasons under First Circuit law: *first*, the MN/NB Railways' bases for the claims place them outside the protection of Bankruptcy Code section 1171(b) *per se*, and *second*, the evidence establishes that the MN/NB Railways relied on MMA's general credit, and goods or services furnished in reliance on a railroad's credit fail the test for "six month claims."⁷

i. Interline Payments Are Not Entitled to 1171(b) Priority Status As a Matter of Law

42. As an initial matter, the MN/NB Railways concede that the MN/NB Railways' claims are prepetition claims arising from "[f]reight services provided to the Debtor in connection with *interline rail shipments*." *See* Asserted 1171(b) Claims (emphasis added).

⁷ The Trustee contests the assertion that applicable law provides for the existence of an "equitable lien" securing any valid "six-month claims." But as this objection challenges the status of the Asserted 1171(b) Claims as valid six-month claims in the first instance, the Trustee hereby simply reserves the right to contest in the future whether valid six-month claims are secured by an "equitable lien."

Interline rail shipments are in the nature of “per diem” charges under an interline settlement system like the ISS. But such “per diem claims do not qualify for any of the express special priorities created by the Act,” including status as “six-month claims.” Boston & Maine, 600 F.2d at 308, 310; *see also* McLean Industs., 103 B.R. at 426-27 (declining to extend priority to prepetition interline rail balances). Because the Asserted 1171(b) Claims constitute exactly the kind of claims the First Circuit (among other courts) has already determined fall outside the confines of claims entitled to priority status under Bankruptcy Code section 1171(b), the Asserted 1171(b) Claims should be disallowed and allowed only as general unsecured claims against the Debtor, subject to a reservation of rights as to the amount of such claims.

ii. The MN/NB Railways Relied on the Debtor’s Credit

43. Even putting aside the Asserted 1171(b) Claims’ *per se* disqualification from six-month claim status, the MN/NB Railways’ reliance on MMA’s credit disqualifies their claims from such status. To constitute a “six-month claim,” among other things, the claim holder must have furnished the goods or services giving rise to the claim *other than in reliance on the railroad’s general credit*. *See* Boston & Maine, 634 F.2d at 1379-80, 1382. In particular, the holder of an asserted 1171(b) Claim must demonstrate that it relied on the *current operating revenues* of the railroad in advancing goods or services. *Id.* at 1379-80.

44. But the MN/NB Railways did rely on the Debtor’s credit when furnishing the interline services giving rise to the Asserted 1171(b) Claims (indeed, the current operating revenues of MMA were the collateral of another creditor). *First*, the MN/NB Railways opted out of the ISS and instead determined to settle their accounts payable and receivable directly with MMA. *See* Caruso Decl, ¶ 17. The decision not to partake in the risk-mitigating clearing house system, and instead to wait for MMA to pay the MN/NB Railways directly, is emblematic of the MN/NB Railways’ reliance on MMA’s credit. *See* Caruso Decl, ¶ 17.

Second, the MN/NB Railways could not have been relying on MMA's current operating revenue, as the proceeds MMA received from the ISS were already claimed as Wheeling's collateral, and that security interest was publicly documented in Wheeling's UCC filings. *See* Caruso Decl, ¶ 18. Because the MN/NB Railways stood behind Wheeling in entitlement to the ISS proceeds and proceeds of customer billing (which proceeds constituted MMA's current operating revenue), and because those proceeds paid down the revolving line of credit to permit re-advances on the line, the risk of non-payment assumed by the MN/NB Railways was heightened, thus exacerbating their reliance on MMA's credit. *See* Caruso Decl., ¶ 18. The MN/NB Railways could not possibly have been looking to the Debtor's operating revenues for payment; those revenues paid down Wheeling's line, permitting further advances of credit, which were in turn secured by future accounts and their proceeds. For this reason as well, the MN/NB Railways' claims, as a matter of law, do not merit section 1171(b) priority status.

45. Both because the Asserted 1171(b) Claims arise from interline rail shipment payables and are thus the equivalent of "per diem" charges not warranting "six-month creditor" status, and because the MN/NB Railways made the business decision to rely on the credit of MMA *subject and subordinate* to the rights of a third party in the proceeds from the ISS, the Asserted 1171(b) Claims are not entitled to priority status under Bankruptcy Code section 1171(b). The Asserted 1171(b) Claims should thus be disallowed.

D. The Asserted 1171(b) Claims Should be Disallowed in Their Entireties Because the Debtor's Records Reflect No Amounts Ultimately Owed by MMA to Either MN Railway or NB Railway

46. As set forth above, the Debtor's records reflect amounts owing to the MN/NB Railways different from the amounts set forth in the Asserted 1171(b) Claims. The below chart summarizes the differences.

	MN/NB Railways' Claims		Debtor's Records	
	Asserted 1171(b) Amount	Asserted 507(a) Amount	Amount Owed by MMA	Amount Owed to MMA
MN Railway [Claim No. 257]	\$167,228.89	\$187,872.00	\$144,276.74	\$330,177.28
NB Railway [Claim No. 259]	\$1,971,835.00	\$192,637.00	\$0.00	\$1,361.82

47. In sum, the Debtor's records reflect that MN Railway owes substantially more to MMA than MMA does to MN Railway, thus not only diminishing the amount of MN Railway's claim against MMA to \$0.00, but leaving a balance that MMA can collect against MN Railway. Claim 257 should thus be disallowed in its entirety. *See* 11 U.S.C. § 502(b)(1); Hann, 473 B.R. at 355 (finding that a claim with "no basis in fact or law" must be disallowed). In light of the agreement summarized *supra* at paragraph 32, the Trustee requests that the Bankruptcy Court determine the amount of MMA's claims against MN Railway and the amount of MN Railway's claims against MMA.

48. In addition, the Debtor's records reflect that MMA owes no amount to NB Railway. Claim 259 should therefore likewise be disallowed in its entirety. *See* 11 U.S.C. § 502(b)(1); Hann, 473 B.R. at 355. In light of the agreement summarized *supra* at paragraph 32, the Trustee requests that the Bankruptcy Court determine the amount of MMA's claims against NB Railway and the amount of NB Railway's claims against MMA.

E. As the Recipients of Transfers Avoidable Under 11 U.S.C. § 547, Any Claims Held by the MN/NB Railways Must Be Disallowed Pursuant to 11 U.S.C. § 502(d)

49. Bankruptcy Code section 502(d) provides, in pertinent part, that "the court shall disallow any claim of any entity from which property is recoverable under section . . . 547" 11 U.S.C. § 502(d). For the reasons set forth in the Preference Claims, the transfers alleged therein to be preferential are avoidable pursuant to 11 U.S.C. § 547. As the Trustee has filed

complaints alleging that both of the MN/NB Railways are recipients of preferential transfers, any claim held by them must be disallowed pursuant to Bankruptcy Code section 502(d). See 4 COLLIER ON BANKRUPTCY ¶ 502.05[2][a] (16th Ed. 2010); Enron, 340 B.R. at 192 n.5, 193; Ames. Accordingly, the Asserted 1171(b) Claims must be disallowed *in toto*. See H.R. Rep. No. 595; S. Rep. No. 989.

RESERVATION OF RIGHTS

50. Nothing contained herein is or should be construed as: (i) an admission as to the validity or extent of any claim against the Debtor, (ii) a waiver of the Trustee's right to dispute any claim on any grounds, or (iii) a promise to pay any claim.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Trustee requests that the Court enter an order, substantially in the form annexed hereto: (i) sustaining this Amended Objection; (ii) disallowing the Duplicate Claims in their entireties and expunging the same from the Debtor's claims register; (iii) disallowing the Asserted 1171(b) Claims in their entireties; (iv) determining the *amount* of (i) MMA's claim against MN Railway, (ii) MN Railway's claim against MMA, (iii) MMA's claim against NB Railway, and (iv) NB Railway's claim against MMA, and what portion (if any) of the MN/NB Railways' claims are entitled to priority under Bankruptcy Code section 1171(b); and (v) granting such other and further relief as may be just.

Dated: February 28, 2017

**ROBERT J. KEACH,
ESTATE REPRESENTATIVE FOR THE
POST-EFFECTIVE DATE ESTATE OF
MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.**

/s/ Robert J. Keach

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**-UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**AMENDED TRUSTEE'S OBJECTION OF ESTATE REPRESENTATIVE 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, IN
AN INACCURATE AMOUNT, AND SUBJECT TO DISALLOWANCE UNDER
BANKRUPTCY CODE SECTION 502(d)**

Robert J. Keach, the ~~chapter 11 trustee~~ estate representative (the "Trustee") of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. ("MMA" or the "Debtor"), hereby submits this amended objection (the "Amended Objection") related to his objection [D.E. 1826] objects (the "Original Objection")¹ to (a) Proofs of Claim No. 242-1 (the "MN Duplicate Claim") and 257-1 ("Claim 257") filed by Maine Northern Railway Company ~~Limited~~ ("MN Railway") and (b) Proofs of Claim No. 243-1 ("NB Duplicate Claim," and together with the MN Duplicate Claim, the "Duplicate Claims") and 259-1 ("Claim 259," and together with Claim 257, the "Asserted 1171(b) Claims") filed by New Brunswick Southern Railway Company Limited ("NB Railway," and together with MN Railway, the "MN/NB Railways"). As set forth below, the Trustee objects to (x) the Duplicate Claims on the basis that

¹ For the reference of parties in interest and the Court, a redline of this Amended Objection as against the Original Objection is attached hereto as Exhibit A. The Original Objection was sustained in part and overruled in part pursuant to D.E. 2034 (the "Initial Order"), though certain issues raised in the Original Objection were not resolved by the Initial Order. Pursuant to D.E. 2311 (the "Amended JPO"), the Estate Representative was permitted to file this Amended Objection raising certain additional issues related to the Original Objection. The Amended Objection is therefore designed to solicit a final order on all issues raised in this Amended Objection (without re-litigating any issues resolved by the Initial Order). For the avoidance of doubt, by this Amended Objection, the Trustee does not seek to re-litigate any issues resolved by the Initial Order.

they are duplicative of their respective Asserted 1171(b) Claims and (y) the Asserted 1171(b) Claims on the basis that they are improperly asserted as administrative and/or priority claims against the Debtor, do not correspond with the Debtor's books and records, and are subject to disallowance pursuant to section 502(d) of title 11 of the United States Code (the "Bankruptcy Code"). In support of this Amended Objection, the Trustee states as follows:

JURISDICTION, VENUE AND BASES FOR RELIEF

1. The United States District Court for the District of Maine (the "District Court") has original, but not exclusive, jurisdiction over this chapter 11 case pursuant to 28 U.S.C. § 1334(a) and over this Amended Objection pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(a) and Rule 83.6 of the District Court's local rules, the District Court has authority to refer and has referred this chapter 11 case, and, accordingly, this Amended Objection, to this Court.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has constitutional authority to enter judgment in this action.

3. Venue over this chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue over this proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

4. The relief sought in this Amended Objection is predicated upon Bankruptcy Code sections 502(b)(1), (d) and 1171~~2~~(b) ~~of title 11 of the United States Code (the "Bankruptcy Code")~~, Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 3007-1 of the Local Rules for the United States Bankruptcy Court for the District of Maine (the "Local Rules").

5. The *Declaration of Fred C. Caruso in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1688] (the "Caruso Decl.") provides further support for the facts alleged in ~~this~~ the Original Objection.

BACKGROUND

A. Relevant Operational Background and the Interline Settlement System

6. From January 2003 until May 2014, the Debtor operated an integrated, international shortline freight railroad system (the “System”) with its wholly owned Canadian subsidiary, Montréal Maine & Atlantic Canada Co. (“MMA Canada”). The System originally included 510 route miles of track in Maine, Vermont and Québec, comprising a substantial component of the transportation systems of Northern Maine, Northern New England, Québec, and New Brunswick.

7. In the ordinary course of its business operations, the Debtor, like many other railroads, participated in the Interline Settlement System (the “ISS”). *See* Caruso Decl. ¶ 16-17. The ISS provides, in effect, a central clearing house for all participating railroads to net accounts receivable and payable with respect to other participating railroads’ shares of the freight revenue invoiced to a customer by the originating railroad. Caruso Decl. ¶ 15. The ISS thus mitigates credit risk among railroads by enabling a railroad (hypothetical “Railroad A”) to mitigate the risk that it would pay a fellow railroad (hypothetical “Railroad B”) on an invoice, knowing that Railroad B owes Railroad A on a separate invoice, only to find that Railroad B cannot pay on that second invoice.

8. The MN/NB Railways opted out of the ISS. Caruso Decl. ¶ 17. Instead, the MN/NB Railways entered into an agreement with MMA whereby MMA either (a) invoiced the customer for freight revenue originated by the MN/NB Railways (“originating traffic”) or (b) received freight revenue through the ISS for “received traffic” (which was invoiced to the customer by the originating railroad), in either case for both MMA’s and the MN/NB Railways’ share of the freight revenue. *Id.* Periodically, MMA and the MN/NB Railways settled their accounts payable and receivable as between themselves. *Id.* This business decision amounted

to a determination to avoid the credit-risk-mitigating effect of the ISS for, among other reasons, administrative convenience, and to instead rely on the credit of MMA. *See Id.*

B. Wheeling’s Line of Credit and Security Interest in ISS Proceeds

9. The Debtor obtained financing under a \$6 million revolving line of credit with Wheeling & Lake Erie Railway Company (“Wheeling”) pursuant to that certain Line of Credit and Security Agreement dated as of June 15, 2009 (the “Wheeling LOC”). To secure the obligations under the Wheeling LOC, the Debtor, MMA Canada, and certain other parties entered into a security agreement with Wheeling dated June 15, 2009 (the “Security Agreement”), which granted a security interest to Wheeling in certain of the Debtor’s property—primarily accounts receivable and certain inventory. Wheeling filed a UCC-1 Financing Statement in Delaware to perfect a security interest in the Debtor’s accounts receivable and inventory, along with the proceeds thereof.

10. The proceeds that MMA received via the ISS or from invoicing MN/NB Railways’ customers were thus property Wheeling claimed as collateral. Caruso Decl. ¶ 18. As such, Wheeling would have had a right to payment from such proceeds that would have been senior to any claims the MN/NB Railways could make against them. Caruso Decl. ¶ 18. That the MN/NB Railways’ claim to the ISS and such customer invoice proceeds was junior to another stakeholder’s claim both established and further exacerbated the MN/NB Railways’ sole reliance on MMA’s credit (indeed its borrowings from Wheeling), as opposed to looking to MMA’s direct daily or weekly cash flow for payment. Caruso Decl. ¶ 18.

C. The Derailment and the Debtor’s Bankruptcy Filing

11. On July 6, 2013, an unmanned eastbound MMA train with 72 carloads of crude oil, a buffer car, and 5 locomotive units derailed in Lac-Mégantic, Québec (the “Derailment”). The transportation of the crude oil had begun in New Town, North Dakota by the Canadian

Pacific Railway (“CP”) and MMA Canada later accepted the rail cars from CP at Saint-Jean, Québec. The crude oil was to be transported via the Saint-Jean-Lac-Mégantic line through Maine to its ultimate destination in Saint John, New Brunswick.

12. The Derailment set off several massive explosions, destroyed part of downtown Lac-Mégantic, and is presumed to have killed 47 people. A large quantity of oil was released into the environment, necessitating an extensive cleanup effort. As a result of the Derailment and the related injuries, deaths, and property damage, lawsuits were filed against the Debtor in both the United States and Canada. After the Derailment, Canadian train activity was temporarily halted between Maine and Québec on the MMA Canada line, resulting in the Debtor losing much of its freight business. These effects of the Derailment caused the Debtor’s aggregate gross revenues to fall drastically to approximately \$1 million per month.

13. On August 7, 2013, the Debtor filed a voluntary petition for relief commencing a case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Maine (the “Case”). Simultaneously, MMA Canada filed for protection under Canada’s Companies’ Creditors Arrangement Act (Court File No. 450-11-000167-134). On August 21, 2013, the Office of the United States Trustee (the “U.S. Trustee”) appointed the Trustee to serve as trustee in the Debtor’s Case pursuant to 11 U.S.C. § 1163 [D.E. No. 64].

D. The Debtor’s Schedules and the MN/NB Railways’ Proofs of Claim

14. On September 11, 2013, the Debtor filed its schedule of assets and liabilities and statement of financial affairs [D.E. 216] (the “Schedules”). The Schedules list (a) MN Railway as having a non-contingent, liquidated and undisputed general unsecured claim in the amount of \$144,276.00² (the “Scheduled MN Railway Amount”) and (b) NB Railway as having a contingent, unliquidated and disputed general unsecured claim *owed by MMA Canada* in the

² [The Schedules were filed by the Debtor. Based upon the Estate Representative’s review of the Debtor’s books, they reflect a balance of \\$144,276.74.](#)

amount of \$2,351,245.00.³ See Schedule F (Creditors Holding Unsecured Nonpriority Claims), pp. 134, 150 of 244.

15. On June 13, 2014, the MN/NB Railways filed the Duplicate Claims, and later the same day filed the Asserted 1171(b) Claims. The MN Duplicate Claim and Claim 257 are substantially (if not entirely) identical, as are the NB Duplicate Claim and Claim 259. The Duplicate Claims are thus duplicative of their respective Asserted 1171(b) Claims.

16. Claim 257 asserts claims in the aggregate amount of \$335,101.19 arising from “[f]reight services provided to the Debtor in connection with interline rail shipments.” See Claim No. 257. The claim is broken down as follows: (a) a claim asserted to be secured by an “equitable lien . . . under the Six-Month rule applicable in federal court receiverships . . .” in the amount of \$167,228.89 and (b) a claim asserted to be entitled to priority under section 507(a) in the amount of \$187,872. See Claim No. 257. Putting aside the character of the claim, Claim 257 thus asserts \$190,825.19 owed in excess of the Scheduled MN Railway Amount.⁴

17. Claim 259 asserts claims in the aggregate amount of \$2,164,471.30 arising from “[f]reight services provided to the Debtor in connection with interline rail shipments.” See Claim No. 259. The claim is broken down as follows: (a) a claim asserted to be secured by an “equitable lien . . . under the Six-Month rule applicable in federal court receiverships . . .” in the amount of \$1,971,835 and (b) a claim asserted to be entitled to priority under section 507(a) in the amount of \$192,637. See Claim No. 259. Putting aside the character of the claim, the entire

³ Based upon the Estate Representative’s review of the Debtor’s books, they reflect a balance of \$2,353,964.32.

⁴ ~~The Trustee reserves the right to object to the amount of Claim 257 in the future. In any event, a~~ As the MN/NB Railways later conceded, section 1171(b) claims are not secured claims. MN/NB Railways claim that such claims are administrative claims; the Trustee contends that they are priority claims ranked below other section 507 priority claims, but further contends that none of the claims held by MN/NB Railways enjoys section 1171(b) priority.

amount asserted in Claim 259 is in excess of what the Debtor acknowledged to be a valid claim against MMA in the Schedules.⁵

E. The Preference Litigation

18. On August 6, 2015, the Trustee commenced an adversary proceeding against NB Railway which is currently pending before the Bankruptcy Court under case caption, *Keach v. New Brunswick Southern Railway Company Limited*, Adv. Proc. No. 15-01016 (the “NB Preference Litigation”). The Trustee’s complaint under sections 547 and 550 of the Bankruptcy Code seeks the avoidance and recovery of approximately \$1,006,623.10 in preferential transfers received by NB Railways during the 90-day period prior to the Petition Date (the “NB Preference Claim”).

19. On the same date, the Trustee commenced litigation against MN Railway seeking to avoid and recover preferential transfers received by MN Railway in the approximate amount of \$185,957.70 (the “MN Preference Claim” and, collectively with the NB Preference Claim, the “Preference Claims”). The adversary case against MN Railway is currently pending before the Bankruptcy Court under case caption, *Keach v. Maine Northern Railway Company*, Adv. Proc. No. 15-01017 (the “MN Preference Litigation” and, collectively with the NB Preference Litigation, the “Preference Litigation”).

20. On September 29, 2015, the MN/NB Railways answered the complaints filed against them by the Trustee and on October 16, 2015, the Bankruptcy Court entered pretrial scheduling orders in both the NB Preference Litigation and the MN Preference Litigation. The pretrial scheduling orders in both cases were subsequently amended to extend the fact and expert discovery deadlines to May 15, 2016 and April 14, 2016, respectively, and have since been stayed pending final resolution of the appeal of the Initial Order.

⁵-The Trustee reserves the right to object to the amount of Claim 259 in the future, as well as MMA’s responsibility therefor.

E.F. Confirmation of the Plan

~~18.21.~~ On July 15, 2015, the Trustee filed the *Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1534].

~~19.22.~~ On October 9, 2015, the Bankruptcy Court confirmed the Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015 (as Amended October 8, 2015) [D.E. 1801] (the "Confirmation Order," and the plan confirmed thereby and attached thereto, the "Plan").

The Confirmation Order provides, in pertinent part:

In resolution of the MN/NB Objection [to confirmation of the Plan], any 1171(b) Claims of the MN/NB Railways shall be paid in full, in Cash, on the later of the Initial Distribution date or thirty (30) days after the date such Claims become Allowed Claims. In the event the Bankruptcy Court has not determined, prior to the Initial Distribution Date, the existence of and/or the amount of any Allowed 1171(b) Claims of the MN/NB Railways, if any, as of such date, the Trustee shall set aside, and not distribute pending further order of the Bankruptcy Court making such determination, \$2,139,063.56 to secure any payment, to the extent required, with respect to such Allowed 1171(b) Claims, when and if determined.⁶

Confirmation Order, ¶ 85. As of the date of this Amended Objection, the Initial Distribution Date has not yet occurred.

G. Wheeling's District Court Litigation Against the MN/NB Railways

23. On July 25, 2014 (prior to confirmation of the Plan), the Bankruptcy Court entered an order [D.E. 1047] (the "Lift Stay Order") granting the Trustee's motion approving a compromise with Wheeling whereby, *inter alia*, the automatic stay was modified such that Wheeling became authorized to enforce its rights with respect to certain accounts receivable of MMA that were its collateral pursuant to the Security Agreement, including accounts payable by the MN/NB Railways (the "MN/NB A/R"). The Lift Stay Order did not effect the outright

⁶ Capitalized terms used but not defined in this provision of the Confirmation Order shall have the meanings ascribed to such terms in the Confirmation Order or the Plan, as applicable.

assignment of the MN/NB A/R to Wheeling. The MN/NB A/R thus remains property of the Debtor's estate.

24. On August 14, 2014, Wheeling filed a complaint (the "Wheeling Complaint") against the MN/NB Railways seeking to collect the MN/NB A/R. See No. 14-cv-00325-NT (D. Me.) (the "District Court Litigation"). The Wheeling Complaint seeks payment from MN Railway on invoices originally issued by MMA in the amount of \$328,447.78 and payment from NB Railway in the amount of \$12,174.53.

25. On September 23, 2014, the MN/NB Railways answered the Wheeling Complaint [No. 14-cv-00325, D.E. 7 at 4],⁷ asserting, *inter alia*:

23. Plaintiff's claims are barred to the extent there exists a valid right of setoff, recoupment, or otherwise. Without limiting the foregoing, Defendants further state that Plaintiff, as assignee of MMA US, acquired its interest in the accounts receivable subject to the rights of third parties, including the Defendants. As a result of Defendants' prior business relationship with MMA US and/or its affiliates, the Defendants have a valid and enforceable right of setoff and/or recoupment. Defendants' setoff and/or recoupment rights exceed the amounts that Plaintiff claims to be owed by the Defendants in the Complaint; and thus Defendants' setoff and/or recoupment rights completely extinguish and bar Plaintiff's claims.

26. On April 16, 2015, Wheeling moved for partial summary judgment in the District Court Litigation. See No. 14-cv-00325, D.E. 21. The same day, the MN/NB Railways also moved for partial summary judgment. See No. 14-cv-00325, D.E. 20.

27. On September 15, 2015 the District Court denied Wheeling's motion for partial summary judgment and granted the MN/NB Railways' motion for partial summary judgment. See No. 14-cv-00325, D.E. 279 (the "Partial SJ Order").

⁷ On January 26, 2015, the then-trustee consented to entry of an order by the Bankruptcy Court permitting the MN/NB Railways to, *inter alia*, "exercise their setoff rights in the event the [District Court] determines in the context of the District Court [Litigation] that [the MN/NB Railways] have valid rights of setoff that are superior to Wheeling's claimed security interest in MMA's accounts receivable." See 13-10670, D.E. 1349.

28. After entry of the Partial SJ Order, the District Court set discovery and further dispositive motion practice deadlines. The parties jointly sought to stay those deadlines pending the result of Wheeling's litigation against the Estate Representative, which Wheeling stated could provide for Wheeling's payment in full, which would in turn moot the District Court Litigation. See No. 14-cv-00325, D.E. 31 (the "Motion to Stay"). The District Court granted the Motion to Stay on January 26, 2016, but deferred the establishment of new deadlines. See No. 14-cv-00325, D.E. 32.

29. After a subsequent status conference, the District Court extended the stay of the proceedings to November 1, 2016, and required the parties to submit a joint status report by September 30, 2016.

30. On October 11, 2016, the parties submitted the joint status report, reporting in pertinent part that: (a) the Bankruptcy Court had denied the Estate Representative's motion for summary judgment in Wheeling's adversary proceeding against the Estate Representative, and that the parties would be conferring on discovery and pre-trial deadlines; and (b) the MN/NB Railways' request for payment of the Asserted 1171(b) Claim was on appeal before the BAP, and the BAP decision was (at that time) pending; if the MN/NB Railways received payment in full, their setoff defense would be reduced or eliminated. The status report requested a further extension of the stay to April 1, 2017. See No. 14-cv-00325, D.E. 38 (the "October 2016 Status Report").

31. On October 12, 2016, the District Court further extended the stay of the District Court Litigation to February 1, 2017, and on February 14, 2017, again further extended the stay to March 1, 2017. See No. 14-cv-00325, D.E. 44.

H. Joint Pretrial Orders Relating to the Original Objection

32. In connection with the efforts of the Estate Representative and the MN/NB Railways (collectively, the “Parties”) to achieve a final order resolving the issues raised in and relating to the Original Objection, Wheeling raised certain concerns about the estate setting off the MN/NB A/R against the Asserted 1171(b) Claims. In response to Wheeling’s concern, the Parties agreed that in their request for a final order on this Amended Objection, instead of “netting” any amounts owed, they would seek to determine finally the amounts that MN Railway owed to MMA, that MMA owed to MN Railway, that NB Railway owed to MMA, and that MMA owed to NB Railway.

RELIEF REQUESTED

~~20.33.~~ By this Amended Objection (and subject to note 1 *supra*), the Trustee requests entry of an order, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1, (a) sustaining the Amended Objection, (b) disallowing the Duplicate Claims in their entireties and expunging the same from the Debtor’s claims register, (c) disallowing the Asserted 1171(b) Claims in their entireties~~and allowing such claims (subject to a reservation of rights with respect to the amount of such claims) only as general unsecured claims against the Debtor~~, (d) determining the amount of (i) MMA’s claim against MN Railway, (ii) MN Railway’s claim against MMA, (iii) MMA’s claim against NB Railway, and (iv) NB Railway’s claim against MMA, and what portion (if any) of the MN/NB Railways’ claims are entitled to priority under Bankruptcy Code section 1171(b), and (de) granting such other and further relief as this Court deems just and equitable.

BASIS FOR RELIEF

A. The Legal Standard

i. Disallowance of Claims in Chapter 11

~~21.34.~~ Section 502(a) provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). The Bankruptcy Code defines a “claim” as a “right to payment,” 11 U.S.C. § 101(5)(A), “usually referring to a right to payment recognized under state law,” *In re Hann*, 476 B.R. 344, 354 (B.A.P. 1st Cir. 2012), *aff’d*, 711 F.3d 235 (1st Cir. 2013) (quoting *Travelers Cas. and Sur. Co. of America v. Pac. Gas and Elec. Co.*, 549 U.S. 443, 451 (2007)). Because a “right to payment” constitutes a claim, “the first step in the claims [allowance] process is always to determine whether there is a right to payment.” In re Taylor, 289 B.R. 379, 383 (Bankr. N. D. Ind. 2003) (emphasis added). A claim with “no basis in fact or law” must be disallowed. Hann, 476 B.R. at 354.

35. Bankruptcy Code section 502(b)(1) provides that if an objection to a claim is filed, the court, after notice and a hearing, “shall allow such claim . . . except to the extent that—(1) such claim is unenforceable against the debtor and property of the debtor” 11 U.S.C. § 502(b)(1). The objecting party must produce evidence that would refute at least one of the allegations essential to the claim’s legal sufficiency. *See In re Allegheny Int’l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992); *In re St. Johnsbury Trucking Co.*, 206 B.R. 3 18, 323 (Bankr. S.D.N.Y. 1997) (“Any party objecting to the claim has the burden of putting forth evidence sufficient to negate the *prima facie* validity of the claim by refuting one or more of the facts in the filed claim.”), *aff’d* 221 B.R. 692 (S.D.N.Y. 1998), *aff’d* 173 F.3d 846 (2d Cir. 1999). Once the objecting party produces such evidence, the burden shifts back to the claimant

to prove the validity of its claim by a preponderance of the evidence. *See Allegheny*, 954 F.2d at 174 (citing *In re WHET, Inc.*, 33 B.R. 424, 437 (Bankr. D. Mass. 1983)).

36. Bankruptcy Code section 502(d) provides as follows:

Notwithstanding subsections (a) and (b) of this section, *the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.*

11 U.S.C. § 502(d) (emphasis added). Section 502(d) of the Bankruptcy Code requires disallowance of a claim held by the recipient of a voidable transfer *in toto* if such recipient has not repaid the amount required in accordance with the Bankruptcy Code sections under which the recipient's liability arises. H.R. Rep. No. 595, 95th Cong., 1st Sess. 354 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 65 (1978).

~~22.~~37. In addition, “a claim may be disallowed at least temporarily and for certain purposes, subject to reconsideration, simply upon the allegation of an avoidable transfer.”
4 COLLIER ON BANKRUPTCY ¶ 502.05[2][a] (16th Ed. 2010); see also Enron Corp. v. Avenue Special Situations Fund II (In re Enron Corp.), 340 B.R. 180, 192 n.5, 193 (Bankr. S.D.N.Y. 2006) (finding that debtor did not have to first obtain determination that creditor had received avoidable preference in order to state claim for disallowance of proof of claim, and that a 502(d) objection prior to resolution of the underlying avoidance action rendered the claim disputed), *rev'd on other grounds* by Enron Corp. v. Springfield Assocs. (In re Enron Corp.), 379 B.R. 425 (S.D.N.Y. 2007); Ames Dep't Stores, Inc., v. ASM Capital, LP (In re Ames Dep't Stores), No. 01-42217 (Bankr. S.D.N.Y. Dec. 5, 2005) (“Ames”) (finding that administrative claim held by recipient of transfer that was the subject of an avoidance action must be temporarily disallowed until avoidance action against recipient is resolved).

ii. Claims Entitled to Priority Under Bankruptcy Code Section 1171(b)

~~23.38.~~ The claims protected by section 1171(b) are referred to as “six-month claims,” which are claims incurred where: (i) the claim arose within six months of the filing of the petition; (ii) the obligation was incurred for a current and necessary operating expense in the ordinary course of business; and (iii) the goods or services giving rise to the claim were not furnished in reliance on the railroad’s general credit. *See In re Boston & Maine Corp.*, 634 F.2d 1359, 1379-80 (1st Cir. 1980).

~~24.39.~~ As a matter of controlling law in this circuit, pre-petition interline freight claims “do not qualify for any of the express special priorities created by the Act,” including status as “six-month claims.” *In re Boston & Maine Corp.*, 600 F.2d 307, 308, 310 (1st Cir. 1979); *see also In re McLean Industs., Inc.*, 103 B.R. 424, 426-27 (Bankr. S.D.N.Y. 1989) (declining to extend priority to prepetition interline rail balances).

B. The Duplicate Claims Should Be Disallowed and Expunged

~~25.40.~~ The Trustee objects to the Duplicate Claims, as the MN Duplicate Claim duplicates Claim 257 and the NB Duplicate Claim duplicates Claim 259. If the Duplicate Claims are not disallowed and expunged, the Trustee would be required to pay the same liabilities to the same creditors simply because such creditors filed two different proofs of claim. Accordingly, the Trustee requests that the Duplicate Claims be disallowed and expunged from the Debtor’s claims register such that only the Asserted 1171(b) Claims remain (though, as forth below, the Trustee objects to the classification of such Asserted 1171(b) Claims, and as set forth above, reserves the right to object to the amount of such Asserted 1171(b) Claims and the estate’s responsibility therefor), as the Duplicate Claims are not “enforceable against the Debtor.” *See* 11 U.S.C. § 502(b)(1).

C. **The Asserted 1171(b) Claims Are Not Entitled to an “Equitable Lien” or Priority Status Under Bankruptcy Code Section 1171(b) and Should Thus Be Recharacterized As General Unsecured Claims**

~~26.41.~~ The Asserted 1171(b) claims do not constitute valid 1171(b) Claims for two independent reasons under First Circuit law: *first*, the MN/NB Railways’ bases for the claims place them outside the protection of Bankruptcy Code section 1171(b) *per se*, and *second*, the evidence establishes that the MN/NB Railways relied on MMA’s general credit, and goods or services furnished in reliance on a railroad’s credit fail the test for “six month claims.”⁸

i. ***Interline Payments Are Not Entitled to 1171(b) Priority Status As a Matter of Law***

~~27.42.~~ As an initial matter, the MN/NB Railways concede that the MN/NB Railways’ claims are prepetition claims arising from “[f]reight services provided to the Debtor in connection with *interline rail shipments*.” See Asserted 1171(b) Claims (emphasis added). Interline rail shipments are in the nature of “per diem” charges under an interline settlement system like the ISS. But such “per diem claims do not qualify for any of the express special priorities created by the Act,” including status as “six-month claims.” Boston & Maine, 600 F.2d at 308, 310; see also McLean Indus., 103 B.R. at 426-27 (declining to extend priority to prepetition interline rail balances). Because the Asserted 1171(b) Claims constitute exactly the kind of claims the First Circuit (among other courts) has already determined fall outside the confines of claims entitled to priority status under Bankruptcy Code section 1171(b), the Asserted 1171(b) Claims should be disallowed and allowed only as general unsecured claims against the Debtor, subject to a reservation of rights as to the amount of such claims.

⁸ The Trustee contests the assertion that applicable law provides for the existence of an “equitable lien” securing any valid “six-month claims.” But as this objection challenges the status of the Asserted 1171(b) Claims as valid six-month claims in the first instance, the Trustee hereby simply reserves the right to contest in the future whether valid six-month claims are secured by an “equitable lien.”

ii. ***The MN/NB Railways Relied on the Debtor's Credit***

~~28.43.~~ Even putting aside the Asserted 1171(b) Claims' *per se* disqualification from six-month claim status, the MN/NB Railways' reliance on MMA's credit disqualifies their claims from such status. To constitute a "six-month claim," among other things, the claim holder must have furnished the goods or services giving rise to the claim *other than in reliance on the railroad's general credit*. See Boston & Maine, 634 F.2d at 1379-80, 1382. In particular, the holder of an asserted 1171(b) Claim must demonstrate that it relied on the *current operating revenues* of the railroad in advancing goods or services. Id. at 1379-80.

~~29.44.~~ But the MN/NB Railways did rely on the Debtor's credit when furnishing the interline services giving rise to the Asserted 1171(b) Claims (indeed, the current operating revenues of MMA were the collateral of another creditor). ***First***, the MN/NB Railways opted out of the ISS and instead determined to settle their accounts payable and receivable directly with MMA. See Caruso Decl, ¶ 17. The decision not to partake in the risk-mitigating clearing house system, and instead to wait for MMA to pay the MN/NB Railways directly, is emblematic of the MN/NB Railways' reliance on MMA's credit. See Caruso Decl, ¶ 17. ***Second***, the MN/NB Railways could not have been relying on MMA's current operating revenue, as the proceeds MMA received from the ISS were already claimed as Wheeling's collateral, and that security interest was publicly documented in Wheeling's UCC filings. See Caruso Decl, ¶ 18. Because the MN/NB Railways stood behind Wheeling in entitlement to the ISS proceeds and proceeds of customer billing (which proceeds constituted MMA's current operating revenue), and because those proceeds paid down the revolving line of credit to permit re-advances on the line, the risk of non-payment assumed by the MN/NB Railways was heightened, thus exacerbating their reliance on MMA's credit. See Caruso Decl., ¶ 18. The MN/NB Railways could not possibly have been looking to the Debtor's operating revenues for

payment; those revenues paid down Wheeling’s line, permitting further advances of credit, which were in turn secured by future accounts and their proceeds. For this reason as well, the MN/NB Railways’ claims, as a matter of law, do not merit section 1171(b) priority status.

~~30.45.~~ Both because the Asserted 1171(b) Claims arise from interline rail shipment payables and are thus the equivalent of “per diem” charges not warranting “six-month creditor” status, and because the MN/NB Railways made the business decision to rely on the credit of MMA *subject and subordinate* to the rights of a third party in the proceeds from the ISS, the Asserted 1171(b) Claims are not entitled to priority status under Bankruptcy Code section 1171(b). The Asserted 1171(b) Claims should thus be disallowed ~~and allowed only as general unsecured claims against the Debtor.~~⁹

D. The Asserted 1171(b) Claims Should be Disallowed in Their Entireties Because the Debtor’s Records Reflect No Amounts Ultimately Owed by MMA to Either MN Railway or NB Railway

~~31.46.~~ As set forth above, the Debtor’s records reflect amounts owing to the MN/NB Railways different from the amounts set forth in the Asserted 1171(b) Claims. The below chart summarizes the differences.

	<u>MN/NB Railways’ Claims</u>		<u>Debtor’s Records</u>	
	<u>Asserted 1171(b) Amount</u>	<u>Asserted 507(a) Amount</u>	<u>Amount Owed by MMA</u>	<u>Amount Owed to MMA</u>
<u>MN Railway [Claim No. 257]</u>	\$167,228.89	\$187,872.00	\$144,276.74	\$330,177.28
<u>NB Railway [Claim No. 259]</u>	\$1,971,835.00	\$192,637.00	\$0.00	\$1,361.82

~~32.~~

47. In sum, the Debtor’s records reflect that MN Railway owes substantially more to MMA than MMA does to MN Railway, thus not only diminishing the amount of MN Railway’s

⁹ ~~As set forth above, the Trustee reserves the right to contest the amount of such general unsecured claims and the estate’s responsibility therefor at a later date.~~

claim against MMA to \$0.00, but leaving a balance that MMA can collect against MN Railway. Claim 257 should thus be disallowed in its entirety. See 11 U.S.C. § 502(b)(1); Hann, 473 B.R. at 355 (finding that a claim with “no basis in fact or law” must be disallowed). In light of the agreement summarized *supra* at paragraph 32, the Trustee requests that the Bankruptcy Court determine the amount of MMA’s claims against MN Railway and the amount of MN Railway’s claims against MMA.

48. In addition, the Debtor’s records reflect that MMA owes no amount to NB Railway. Claim 259 should therefore likewise be disallowed in its entirety. See 11 U.S.C. § 502(b)(1); Hann, 473 B.R. at 355. In light of the agreement summarized *supra* at paragraph 32, the Trustee requests that the Bankruptcy Court determine the amount of MMA’s claims against NB Railway and the amount of NB Railway’s claims against MMA.

E. As the Recipients of Transfers Avoidable Under 11 U.S.C. § 547, Any Claims Held by the MN/NB Railways Must Be Disallowed Pursuant to 11 U.S.C. § 502(d)

49. Bankruptcy Code section 502(d) provides, in pertinent part, that “the court shall disallow any claim of any entity from which property is recoverable under section . . . 547” 11 U.S.C. § 502(d). For the reasons set forth in the Preference Claims, the transfers alleged therein to be preferential are avoidable pursuant to 11 U.S.C. § 547. As the Trustee has filed complaints alleging that both of the MN/NB Railways are recipients of preferential transfers, any claim held by them must be disallowed pursuant to Bankruptcy Code section 502(d). See 4 COLLIER ON BANKRUPTCY ¶ 502.05[2][a] (16th Ed. 2010); Enron, 340 B.R. at 192 n.5, 193; Ames. Accordingly, the Asserted 1171(b) Claims must be disallowed *in toto*. See H.R. Rep. No. 595; S. Rep. No. 989.

RESERVATION OF RIGHTS

~~33.50.~~ Nothing contained herein is or should be construed as: (i) an admission as to the validity or extent of any claim against the Debtor, (ii) a waiver of the Trustee's right to dispute any claim on any grounds, or (iii) a promise to pay any claim.

NOTICE

~~34.— Notice of this Objection was served on the following parties on the date and in the manner set forth in the certificate of service: (a) Debtor's counsel; (b) U.S. Trustee; (c) counsel to the Official Committee of Victims; and (d) counsel to MN/NB Railways. The Trustee submits that no other or further notice need be provided.~~

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Trustee requests that the Court enter an order, substantially in the form annexed hereto: (i) sustaining this Amended Objection; (ii) disallowing the Duplicate Claims in their entireties and expunging the same from the Debtor's claims register; (iii) disallowing the Asserted 1171(b) Claims ~~and allowing such claims only as general unsecured claims against the Debtor in their entireties (subject to the reservation of rights above)~~; (iv) determining the amount of (i) MMA's claim against MN Railway, (ii) MN Railway's claim against MMA, (iii) MMA's claim against NB Railway, and (iv) NB Railway's claim against MMA, and what portion (if any) of the MN/NB Railways' claims are entitled to priority under Bankruptcy Code section 1171(b); and (iv) granting such other and further relief as may be just.

Dated: ~~October~~ February 19 20157

ROBERT J. KEACH,
~~CHAPTER 11 TRUSTEE~~ ESTATE
REPRESENTATIVE FOR THE POST-
EFFECTIVE DATE ESTATE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.

~~By his attorneys:~~

/s/ ~~Lindsay K. Zahradka~~ Robert J. Keach

~~Sam Anderson~~ Robert J. Keach
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

ORDER RESOLVING AMENDED OBJECTION OF ESTATE REPRESENTATIVE TO PROOFS OF CLAIM FILED BY NEW BRUNSWICK SOUTHERN RAILWAY COMPANY LIMITED AND MAINE NORTHERN RAILWAY COMPANY ON THE BASIS THAT CERTAIN OF SUCH CLAIMS ARE DUPLICATIVE OF OTHERS, AND SUCH OTHERS ARE IMPROPERLY ASSERTED AS ADMINISTRATIVE AND/OR PRIORITY CLAIMS AND, IN AN INACCURATE AMOUNT, AND SUBJECT TO DISALLOWANCE UNDER BANKRUPTCY CODE SECTION 502(d)

This matter having come before the Court on the *Amended Objection of Estate Representative to Proofs of Claim Filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company on the Basis That Certain of Such Claims Are Duplicative of Others, and Such Others are Improperly Asserted As Administrative and/or Priority Claims, in an Inaccurate Amount, and Subject to Disallowance Under Bankruptcy Code Section 502(d)* (the “Amended Objection”)¹ filed by Robert J. Keach, the estate representative (the “Trustee”) of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (“MMA” or the “Debtor”), which amended the Trustee’s original objection [D.E. 1826] (the “Original Objection”); and this Court having resolved certain of the issues raised in the Original Objection by the Initial Order; and after such notice and opportunity for hearing as was required by the Bankruptcy Code, the Bankruptcy Rules, and this Court’s local rules, and after due deliberation and sufficient cause appearing therefore, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** that:

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Amended Objection.

1. Nothing in this Order amends or supersedes any finding or conclusion set forth in the Initial Order.

2. To the extent not already resolved by the Initial Order, the Amended Objection is granted as set forth below.

3. MMA owes MN Railway \$_____. Of that amount, \$_____ is entitled to priority status under Bankruptcy Code section 1171(b) and \$_____ is a general unsecured claim.

4. MN Railway owes MMA \$_____.

5. MMA's owes NB Railway \$_____. Of that amount, \$_____ is entitled to priority status under Bankruptcy Code section 1171(b) and \$_____ is a general unsecured claim.

6. NB Railway owes MMA \$_____.

7. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: _____, 2017 _____

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

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

NOTICE OF HEARING

Robert J. Keach, the estate representative (the “Trustee”) of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (“MMA” or the “Debtor”), has filed an *Amended Objection of the Estate Representative to Proofs of Claim Filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company on the Basis That Certain of Such Claims Are Duplicative of Others, and Such Others are Improperly Asserted as Administrative and/or Priority Claims, in an Inaccurate Amount, and Subject to Disallowance Under Bankruptcy Code Section 502(d)* (the “Amended Objection”).¹

A hearing on the Amended Objection has been scheduled to be held at the Bankruptcy Court, 537 Congress Street, 2nd Floor, Portland, Maine on **April 4, 2017 at 9:00 a.m.**

The MN/NB Railways shall file a response, if any, to the Amended Objection on or before **March 14, 2017**. Any other party in interest, including but not limited to Wheeling and Lake Erie Railway Company, may file any appropriate pleading in response to the Amended Objection or to the MN/NB Railways’ response thereto on or before **March 21, 2017**. The Estate Representative and the Irving Railroads shall file any reply to any of the above on or before **March 28, 2017**.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Amended Objection, and may enter an order sustaining the requested relief without further notice or hearing.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed in the Amended Objection.

Dated: February 28, 2017

ROBERT J. KEACH
ESTATE REPRESENTATIVE OF THE POST-
EFFECTIVE DATE ESTATE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.

/s/ Robert J. Keach, Esq_____.

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