

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670  
Chapter 11

**SECOND AMENDED JOINT PRETRIAL STATEMENT AND ORDER BETWEEN THE  
ESTATE REPRESENTATIVE AND NEW BRUNSWICK SOUTHERN RAILWAY  
COMPANY LIMITED AND MAINE NORTHERN RAILWAY COMPANY**

Pursuant to the Court's order dated September 6, 2017, Robert J. Keach, the estate representative (the "Estate Representative") for the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. ("MMA"), and New Brunswick Southern Railway Company Limited ("NBSR") and Maine Northern Railway Company ("MNR," and together with NBSR, the "Irving Railroads"), hereby submit the following Second Amended Joint Pretrial Statement/Pretrial Order ("JPS") 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") and agree that, upon the Court's endorsement, its terms shall govern pretrial proceedings.

As an initial matter, the Estate Representative and the Irving Railroads (together, the "Parties") have conferred as directed by the Court.

### **PLEADINGS**

1. The pleadings are complete, provided, however, that all parties reserve the right to amend pleadings to conform to the evidence at trial.

### **STATEMENT OF LEGAL ISSUES**

2. The Parties do not anticipate the presentment of any legal issues to the Court for determination, other than the Irving Railroads' presentment of the issue of whether certain statements made by or on behalf of the Estate Representative, or MMA, in pleadings and/or other papers filed in MMA's chapter 11 case, or in other proceedings related thereto, constitute judicial admissions which estop the Estate Representative from taking contrary positions in this matter. The Irving Railroads will request that the Court take judicial notice of such statements.

### **STATEMENT OF ANTICIPATED FACTUAL ISSUES**

3. The following factual issues will be presented to the Court for determination:
- (a) Based upon this Court's oral ruling entered on February 5, 2016 [D.E. 1955], the Court's order overruling in part the Estate Representative's objection to the Irving Railroads' proofs of claim [D.E. 2034], and the Opinion and Judgment entered by the United States Bankruptcy Appellate Panel for the First Circuit on October 21, 2016 [D.E. 2250 and 2251] (the "BAP Decision"), what amount of the Irving Railroads' claims is entitled to priority under 11 U.S.C. § 1171(b)?
  - (b) To the extent any of the Irving Railroads' claims are not entitled to priority under 11 U.S.C. § 1171(b), what is the amount of the Irving Railroads' non-priority general unsecured claims?

### **JURISDICTION**

4. The Parties agree that this is a core matter, in its entirety, on which the Bankruptcy Court can enter final judgment.

### **JURY TRIAL**

5. Neither Party seeks a jury trial.

**DISCLOSURES**

6. Neither party is disclosing expert witnesses.

**DISCOVERY**

7. Discovery is complete.

**STIPULATION**

8. The Parties, through counsel, filed their Second Set of Stipulations [D.E. 2381] on August 15, 2017. The Parties do not anticipate filing additional stipulations.

**EXHIBITS/WITNESSES**

**A. Exhibits**

9. The pretrial exchange of and objection to exhibits is complete.
10. Pre-marking exhibits shall consist of clearly designating each proposed exhibit in the order of its probable presentation at trial. The Estate Representative's proposed exhibits shall be designated by number preceded by "ER"; the Irving Railroads' proposed exhibits shall be designated by number preceded by "I". Copies of proposed exhibits shall be accompanied by a list of the exhibits with a brief identification of each.

**B. Witnesses**

11. The pretrial exchange of and objection to witnesses is complete.
12. **NOTE:** Designation of a non-party witness on an opponent's list of witnesses does not relieve a party of assuring the presence of that witness at trial if his or her testimony is desired.

**PRETRIAL MOTIONS**

13. All pretrial motions and motions for summary judgment shall be filed no later than October 25, 2017.

**FINAL PRETRIAL CONFERENCE**

14. The Court held a Final Pretrial Conference on September 6, 2017. The Parties do not anticipate that a further pretrial conference will be required.

*[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]*

Dated: October 3, 2017

/s/ Robert J. Keach, Esq.

Robert J. Keach, Esq.  
Adam R. Prescott, Esq. (admitted *pro hac vice*)  
BERNSTEIN, SHUR, SAWYER & NELSON, P.A.  
100 Middle Street, P.O. Box 9729  
Portland, ME 04101  
Tel: (207) 774-1200  
Email: rkeach@bernsteinshur.com  
aprescott@bernsteinshur.com

*Counsel for Robert J. Keach, Estate Representative  
of the Post-Effective Date Estate of Montreal Maine  
& Atlantic Railroad Ltd.*

Dated: October 3, 2017

/s/ Alan R. Lepene

Alan R. Lepene, Esq.  
Thompson Hine  
3900 Key Center, 127 Public Square  
Cleveland, OH 44114  
Tel: (216) 566-5520  
Email: Alan.Lepene@ThompsonHine.com

*and*

Keith Cunningham, Esq.  
Pierce Atwood LLP  
Merrill's Wharf  
254 Commercial Street  
Portland, ME 04101  
Tel: 207-791-1187  
Email: kcunningham@pierceatwood.com

*Counsel for New Brunswick Southern Railway  
Company Limited and Maine Northern Railway  
Company*

**ENDORSED AND ENTERED as an ORDER of the COURT**

\_\_\_\_\_  
**U.S. Bankruptcy Judge**

\_\_\_\_\_  
**Date**