

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**RESPONSE TO LIMITED OBJECTION OF THE UNITED STATES TRUSTEE TO  
APPLICATION FOR ORDER, PURSUANT TO SECTIONS 327 AND 328 OF THE  
BANKRUPTCY CODE, AUTHORIZING THE EMPLOYMENT OF BAKER,  
NEWMAN & NOYES, LLC AS ACCOUNTANT FOR THE TRUSTEE  
NUNC PRO TUNC TO AUGUST 7, 2013**

Robert J. Keach (the "Trustee"), the chapter 11 trustee in the above-captioned case, by and through his undersigned counsel, hereby responds to the *Limited Objection of the United States Trustee to Application for Order, Pursuant to Sections 327 and 328 of the Bankruptcy Code, Authorizing the Employment of Baker, Newman & Noyes, LLC as Accountant for the Trustee Nunc Pro Tunc to August 7, 2013* [Docket No. 553] (the "Objection") filed in relation to the *Application for Order, Pursuant to Sections 327 and 328 of the Bankruptcy Code, Authorizing the Employment of Baker, Newman & Noyes, LLC as Accountant for the Trustee Nunc Pro Tunc to August 7, 2013* [Docket No. 466] (the "Retention Application"). The Trustee states as follows:

1. Montreal Maine & Atlantic Railway, Ltd. (the "Debtor") filed a voluntary petition for chapter 11 relief on August 7, 2013 (the "Petition Date"). The Trustee was appointed on August 21, 2013. *See* Docket No. 64.

2. In late September or early October 2013, the Trustee was made aware by employees of Montreal Maine & Atlantic Railway, Ltd. ("MMA") that Baker, Newman &

Noyes, LLC (“BNN”) would be performing certain services for MMA, including, but not limited to, preparing and filing MMA’s 2013 state and federal tax returns and conducting an annual audit. Bernstein, Shur, Sawyer & Nelson, P.A. (“BSSN”), the Trustee’s counsel, contacted BNN on October 10, 2013 to request details regarding the services to be performed by BNN, the fees and expenses to be charged by BNN for preparing the 2013 taxes and annual audit, and additional information that would be relevant in preparing a retention application under Rule 2014 of the Federal Rules of Bankruptcy Procedure and related local rules.

3. Subsequent to contacting BNN, BSSN became aware that, in addition to preparing the 2013 tax returns and annual audit, MMA had, prior to the Petition Date, requested that BNN complete an audit of MMA’s 401(k) plan to be filed with Form 5500, which was required to be filed on or before October 15, 2013. BNN in fact performed these services in relation to the 401(k) plan, all of which services were completed on or before October 1, 2013, as indicated in the spreadsheet attached hereto as Exhibit A. BNN billed a total of 29 hours for these services, and incurred associated fees in the amount of \$7,223.00, in relation to the audit of the 401(k) plan. BNN performed these post-petition services prior to being retained in MMA’s bankruptcy case in order to ensure that the 401(k) audit and filing of the Form 5500 was completed by the October 15 deadline. Failure to timely perform these services would result in MMA incurring penalties and interest.

4. BSSN continued to gather the information necessary to prepare the Retention Application, including discussing and negotiating certain issues related to use of a Canadian accounting firm to prepare and file Canadian tax returns. Additionally, BNN conducted a thorough conflicts check regarding the over 900 individuals and entities listed on the creditor matrix in MMA’s bankruptcy case. BSSN filed the Retention Application as soon as possible

after BNN completed its conflict check and the scope of BNN's retention was resolved, on December 4, 2013.

5. At the time the Retention Application was filed, BNN had not yet begun performing any services related to preparation of the 2013 tax returns or the 2013 audit. In fact, the only post-petition services performed by BNN consist of those related to the 401(k) audit and filing of the Form 5500, which, as described above, was required to be done prior to October 15, 2013 in order to avoid the accrual of interest and penalties, and was in fact completed on or before October 1, 2013. Given the fact that the Trustee was appointed on August 21, 2013, and was not made aware that BNN was required to perform post-petition services related to the 401(k) audit until after such services were completed, it was impossible for the Retention Application to be filed, and the retention of BNN to be authorized, prior to the performance of these post-petition services.

6. Further, and importantly, BNN had a professional responsibility to ensure that the audit of the 401(k) plan be completed prior to the October 15 deadline so that a complete and timely filing of Form 5500 could occur. MMA's estate clearly benefited from these services, and had they not been performed, MMA would have incurred interest and penalties.

7. The timing of the filing of the Retention Application was clearly not the result of "oversight," but was necessitated by the timing of the appointment of the Trustee, the deadline by which BNN was required to complete the 401(k) audit, and the need to determine the scope of BNN's retention and for BNN to thoroughly conduct a conflicts check prior to filing the Retention Application. The Trustee submits that the circumstances outlined herein satisfy the legal standard described in the Objection and that BNN's retention should be authorized as of the Petition Date.

Dated: January 2, 2014

ROBERT J. KEACH  
CHAPTER 11 TRUSTEE OF MONTREAL  
MAINE & ATLANTIC RAILWAY, LTD

By his attorneys:

*/s/ Sam Anderson*

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**Montreal Maine & Atlantic 4012(k) Audit  
Hours and Fees Incurred from August 7, 2013 to October 1, 2013**

<b>Date</b>	<b>Employee</b>	<b>Position</b>	<b>Hours</b>	<b>Billed</b>	<b>Rate</b>
8/7/2013	KNOX	Senior Accountant	2.5	300	120
8/7/2013	KNOX	Senior Accountant	1	120	120
<b>8/7/2013 Total</b>			3.5	420	
9/17/2013	KNOX	Senior Accountant	1	120	120
<b>9/17/2013 Total</b>			1	120	
9/12/2013	SANBORN	Audit Principal	1.5	495	330
<b>9/12/2013 Total</b>			1.5	495	
9/13/2013	SANBORN	Audit Principal	2	660	330
<b>9/13/2013 Total</b>			2	660	
9/19/2013	SANBORN	Audit Principal	0.5	165	330
<b>9/19/2013 Total</b>			0.5	165	
9/27/2013	SANBORN	Audit Principal	0.5	165	330
<b>9/27/2013 Total</b>			0.5	165	
9/30/2013	SANBORN	Audit Principal	0.3	99	330
<b>9/30/2013 Total</b>			0.3	99	
8/15/2013	STEWART	Audit Senior Manager	2	500	250
<b>8/15/2013 Total</b>			2	500	
8/19/2013	STEWART	Audit Senior Manager	4	1000	250
<b>8/19/2013 Total</b>			4	1000	
8/20/2013	STEWART	Audit Senior Manager	2	500	250
<b>8/20/2013 Total</b>			2	500	
9/18/2013	WHEELER	Audit Principal	1.5	495	330
<b>9/18/2013 Total</b>			1.5	495	
9/19/2013	STEWART	Audit Senior Manager	3.5	875	250
<b>9/19/2013 Total</b>			3.5	875	
9/20/2013	CHENEY	Tax Principal	0.8	304	380
9/20/2013	HACHEY	Tax Staff Accountant	0.4	50	125
9/20/2013	STEWART	Audt Senior Manager	2	500	250
<b>9/20/2013 Total</b>			3.2	854	
9/26/2013	STEWART	Audit Senior Manager	2	500	250
<b>9/26/2013 Total</b>			2	500	
10/1/2013	STEWART	Audit Senior Manager	1.5	375	250
<b>10/1/2013 Total</b>			1.5	375	
<b>Grand Total</b>			<u>29</u>	<u>7223</u>	

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670  
Chapter 11

**DECLARATION OF GREGORY SANBORN IN SUPPORT OF RESPONSE TO  
LIMITED OBJECTION OF THE UNITED STATES TRUSTEE TO APPLICATION  
FOR ORDER, PURSUANT TO SECTIONS 327 AND 328 OF THE BANKRUPTCY  
CODE, AUTHORIZING THE EMPLOYMENT OF BAKER,  
NEWMAN & NOYES, LLC AS ACCOUNTANT FOR THE TRUSTEE  
NUNC PRO TUNC TO AUGUST 7, 2013**

I, Gregory Sanborn, being duly sworn, depose and say:

1. I am a principal and certified public accountant in the Audit Division of Baker Newman & Noyes, LLC ("BNN"), located at 280 Fore Street, Portland, Maine. BNN is an accounting and advisory firm with offices in Portland, Maine, Manchester and Portsmouth, New Hampshire and Boston, Massachusetts. I am authorized to make this Declaration on behalf of BNN.

2. This Declaration is based on either my personal knowledge and belief, or upon client/matter and accounting records of BNN reviewed by legal and administrative personnel of BNN acting under my direction.

3. I submit this Declaration in the above-captioned case of Montreal Maine & Atlantic Railway, Ltd. ("MMA") in support of the *Application for Order, Pursuant to Sections 327 and 328 of the Bankruptcy Code, Authorizing the Employment of Baker, Newman & Noyes, LLC as Accountant for the Trustee Nunc Pro Tunc to August 7, 2013* [Docket No. 466] (the

“Retention Application”) and the *Response to the Limited Objection of the United States Trustee to Application for Order, Pursuant to Sections 327 and 328 of the Bankruptcy Code, Authorizing the Employment of Baker, Newman & Noyes, LLC as Accountant for the Trustee Nunc Pro Tunc to August 7, 2013* (the “Response”)<sup>1</sup> filed by Robert J. Keach (the “Trustee”) to the *Limited Objection of the United States Trustee to Application for Order, Pursuant to Sections 327 and 328 of the Bankruptcy Code, Authorizing the Employment of Baker, Newman & Noyes, LLC as Accountant for the Trustee Nunc Pro Tunc to August 7, 2013* [Docket No. 553].

4. Prior to the Petition Date, MMA requested that BNN complete an audit of MMA’s 401(k) plan to be filed with Form 5500, which was required to be filed on or before October 15, 2013. BNN in fact performed these services in relation to the 401(k) plan, all of which services were completed on or before October 1, 2013, as indicated in the spreadsheet attached hereto as **Exhibit A**. BNN billed a total of 29 hours for these services, and incurred associated fees in the amount of \$7,223.00, in relation to the audit of the 401(k) plan. BNN performed these post-petition services prior to being retained in MMA’s bankruptcy case in order to ensure that the 401(k) audit and filing of the Form 5500 was completed by the October 15 deadline. Failure to timely perform these services would result in MMA incurring penalties and interest.

5. Subsequent to completing the audit of MMA’s 401(k) plan, on or around October 10, 2013, BNN was contacted by BSSN regarding the filing of an application to retain BNN to prepare and file 2013 tax returns on behalf of MMA.

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<sup>1</sup> Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Response.

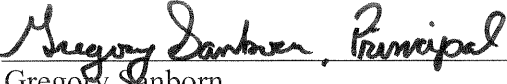
6. Over the next few weeks, BSSN continued to gather the information necessary to prepare the Retention Application, including discussing certain issues related to use of a Canadian accounting firm to prepare and file Canadian tax returns. Additionally, BNN conducted a thorough conflicts check regarding the over 900 individuals and entities listed on the creditor matrix in MMA's bankruptcy case. BNN also notified BSSN that it had performed certain post-petition services on behalf of MMA in relation to the 401(k) audit.

7. At the time the Retention Application was filed, BNN had not yet begun performing any services related to preparation of the 2013 tax returns or the 2013 audit. In fact, the only post-petition services performed by BNN consist of those related to the 401(k) audit and filing of the Form 5500, which, as described above, was required to be done prior to October 15, 2013 in order to avoid the accrual of interest and penalties, and was in fact completed on or before October 1, 2013.

8. BNN had a professional responsibility to ensure that the audit of the 401(k) plan be completed prior to the October 15 deadline so that a complete and timely filing of Form 5500 could occur. MMA's estate clearly benefited from these services, and had they not been performed, MMA would have incurred interest and penalties.

9. I certify under penalty of perjury that the foregoing is true and correct.

Dated: January 2, 2014

  
Gregory Sanborn



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 Hours and Fees Incurred from August 7, 2013 to October 1, 2013**

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Debtor.

Bk. No. 13-10670  
Chapter 11

**CERTIFICATE OF SERVICE**

I, Maire B. Corcoran Ragozzine, being over the age of eighteen and an attorney at Bernstein, Shur, Sawyer & Nelson, P.A. in Portland, Maine, hereby certify that, on January 2, 2014, I filed the *Response to Limited Objection of the United States Trustee to Application for Order, Pursuant to Sections 327 and 328 of the Bankruptcy Code, Authorizing the Employment of Baker, Newman & Noyes, LLC as Accountant for the Trustee Nunc Pro Tunc to August 7, 2013* and the *Declaration of Gregory Sanborn in Support of the Response to Limited Objection of the United States Trustee to Application for Order, Pursuant to Sections 327 and 328 of the Bankruptcy Code, Authorizing the Employment of Baker, Newman & Noyes, LLC as Accountant for the Trustee Nunc Pro Tunc to August 7, 2013* via the Court's CM/ECF electronic filing system. Parties who were served via CM/ECF are listed on the attached Service List.

Dated: January 2, 2014

/s/ Maire B. Corcoran Ragozzine  
Maire B. Corcoran Ragozzine

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Christopher Fong, Esq. on behalf of Creditor Informal Committee of Quebec Claimants

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Taruna Garg, Esq. on behalf of Creditor Estates of Marie Alliance, et al

[tgarg@murthalaw.com](mailto:tgarg@murthalaw.com), [cball@murthalaw.com](mailto:cball@murthalaw.com); [kpatten@murthalaw.com](mailto:kpatten@murthalaw.com)

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Craig Goldblatt on behalf of Interested Party XL Insurance Company, Ltd.

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