

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.,

Debtor.

Chapter 11  
Case No. 13-10670

**OBJECTION OF RAIL WORLD LOCOMOTIVE LEASING, LLC  
TO PROPOSED ASSUMPTION AND ASSIGNMENT OF LEASES**

Rail World Locomotive Leasing, LLC ("RWLL"), by and through its undersigned counsel, hereby objects (the "Objection") to the proposed assumption and assignment of its unexpired locomotive lease agreements as set forth herein and in accordance with the Assumption and Assignment Procedures submitted by Robert J. Keach, the chapter 11 trustee of the Debtor (the "Trustee"), in connection with the sale of substantially all of the Debtor's assets. In support of its Objection, RWLL respectfully states as follows:

**BACKGROUND**

1. On August 7, 2013 (the "Commencement Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). On August 21, 2013, the Trustee was appointed as the chapter 11 trustee of the Debtor pursuant to section 1163 of the Bankruptcy Code.

2. Prior to the Commencement Date, on or about February 10, 2004, RWLL and the Debtor, as successor-in-interest to The MMA Rolling Stock Corporation, entered into that certain Railworld Locomotive Lease Agreement, as amended (the "2004 Lease"), pursuant to which the Debtor leased certain locomotives from RWLL.

3. RWLL and the Debtor are also parties to that certain Railroad Locomotive Lease Agreement dated July 1, 2012 (the "2012 Lease," and together with the 2004 Lease Agreement, the "Leases"), pursuant to which the Debtor leased certain locomotives from RWLL.

4. On December 20, 2013, the Trustee filed the Notice of (A) Sale of Substantially All of the Assets of Montreal, Maine & Atlantic Railway, Ltd. and Montreal, Maine & Atlantic Canada, Co.; (B) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (C) Procedure for Determining Cure Amounts (the "Sale Notice").<sup>1</sup> Attached to the Sale Notice were the Assignment and Assumption Procedures, and attached to the Assignment and Assumption Procedures is a schedule listing executory contracts to be assumed and assigned and the proposed cure amounts (the "Contract & Cure Schedule").

5. The Contract & Cure Schedule lists the Leases and indicates that the Trustee's calculation of cure costs associated with the Leases is \$234,147.70 (the "Proposed Cure Amount").

### **OBJECTION**

6. Section 365(b) of the Bankruptcy Code provides that:

**[365](b)(1)** If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee -

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ; [and]

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b).

---

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Sale Notice.

7. Courts have made it abundantly clear that, before a debtor can assume an executory contract or unexpired lease that is in default, "it must first comply with the cure, compensation and future performance requirements of section 365(b)(1)." *In re Coporacion de Servicios Medicos Hospitalarios de Fajardo*, 805 F.2d 440, 447 (1st Cir. 1986); *see also In re BankVest Capital Corp.*, 360 F.3d 291, 296 (1st Cir. 2004).

8. The Proposed Cure Amount for the Leases, as provided in the Contract & Cure Schedule, is understated according to RWLL's books and records. Accordingly, the Proposed Cure Amount is insufficient to permit the Trustee to assume and assign the Leases.

9. The Trustee's Contract & Cure Schedule encompasses defaults under the Leases through August 31, 2013, calculating a proposed cure amount of \$234,147.70 (the "Proposed Cure Amount"). However, RWLL's calculation, as supported by its own invoices and accounting records, shows that the cure amount owed through August 31, 2013 is \$269,189.27. Moreover, because the defaults are ongoing, there are additional cure costs accruing under the Leases from August 31, 2013 through the proposed date of the Sale Hearing totaling \$72,735.29, for a total cure amount of \$366,560.79 (the "Total Cure Amount"). Attached hereto as Exhibit A is a detailed account of the Total Cure Amount owed to RWLL in connection with the assumption and assignment of the Leases. RWLL will provide additional supporting documents to the Trustee and appropriate parties which evidence the Total Cure Amount upon request.

10. In order to cure the Debtor's defaults under the Leases, the Trustee must promptly pay to RWLL \$366,560.79.

**ADDITIONAL OBJECTIONS AND RESERVATION OF RIGHTS**

11. To date, RWLL has yet to receive evidence of adequate assurance of future performance from the proposed purchaser. Accordingly, RWLL objects to the assumption and assignment of the Leases to the extent such evidence of adequate assurance is not provided prior to the Sale Hearing.

12. RWLL reserves the right to update or supplement this Objection as necessary or to submit additional evidence in further support hereof. RWLL further reserves the right to file a separate objection to the proposed sale of the Debtor's assets in accordance with the Sale Notice to the extent that the Sale Motion and proposed order approving the sale violates the Bankruptcy Code or applicable law with regard to the assumption and assignment of the Leases.

**WHEREFORE**, RWLL respectfully requests that the Court enter an order providing that the Trustee must pay to RWLL the cure amount of \$366,560.79 in order for the Trustee to assume and assign the Leases and grant such other and further relief as this Court deems necessary and proper.

Dated: January 15, 2014

DENTONS US LLP

/s/ Patrick C. Maxcy

Patrick C. Maxcy

Alan S. Gilbert (*admitted pro hac vice*)

Stefanie Wowchuk McDonald (*admitted pro hac vice*)

233 South Wacker Drive

Chicago, Illinois 60606

Tel: (312) 876-8000

Fax: (312) 876-7934

*Counsel to Rail World Locomotive Leasing,  
LLC*

**CERTIFICATE OF SERVICE**

I, Patrick C. Maxcy, hereby certify that on the 15th day of January 2014, the **OBJECTION OF RAIL WORLD LOCOMOTIVE LEASING, LLC TO THE PROPOSED ASSUMPTION AND ASSIGNMENT OF LEASES** was electronically filed with the Clerk of the Court using the CM/ECF filing system, and thus, caused a true and correct copy of the foregoing to be served upon all counsel and parties of record. The undersigned further certifies that I served the following parties via e-mail on January 15, 2014: (i) Trustee's Counsel, c/o Michael A. Fagone, Esq., Bernstein, Shur, Sawyer & Nelson, P.A. (e-mail: [mfagone@bernsteinshur.com](mailto:mfagone@bernsteinshur.com)); (ii) the Monitor, c/o Andrew Adessky, Richter Consulting (e-mail: [aadesky@richter.ca](mailto:aadesky@richter.ca)); (iii) counsel to the Monitor, c/o Sylvain Vauclair, Woods LLP (e-mail: [svauclair@woods.qc.ca](mailto:svauclair@woods.qc.ca)); (iv) MMA Canada, c/o Patrice Benoit, Gowling Lafleur Henderson LLP (e-mail: [patrice.benoit@gowlings.com](mailto:patrice.benoit@gowlings.com)); (v) Stephen Morrell, Assistant U.S. Trustee (e-mail: [Stephen.G.Morrell@usdoj.gov](mailto:Stephen.G.Morrell@usdoj.gov)); and (vi) Counsel to the Stalking Horse, c/o Terence M. Hynes, Esq., Sidley Austin LLP (e-mail: [thynes@sidley.com](mailto:thynes@sidley.com)) and Jeffrey C. Steen, Esq. (e-mail: [jsteen@sidley.com](mailto:jsteen@sidley.com)).

*/s/ Patrick C. Maxcy*  
\_\_\_\_\_  
Patrick C. Maxcy  
DENTONS US LLP  
233 South Wacker Drive  
Chicago, Illinois 60606  
Tel: (312) 876-8000  
Fax: (312) 876-7934

*Counsel to Rail World Locomotive  
Leasing, LLC*

**(A) Cure Amount Through 8/31/2013**

<u>Invoice No.</u>	<u>Description</u>	<u>Bill Date</u>	<u>Amount</u>
651	Lease billing - Jul 2012 (lease of 758)	7/31/2012	\$811.01
656	Lease billing - Aug 2012 (lease of 758)	8/31/2012	\$4,650.00
659	Lease billing - Sep 2012 (lease of 758, 293 & 270 - also includes Jul & Aug lease of 270 & 293)	10/3/2012	\$36,240.00
664	Lease billing - Aug 2012 (C39-8 locomotives placed in service on 08/16/2012)	10/30/2012	\$15,217.26
667	Lease billing - Oct 2012 (C39-8 locomotives + 758)	10/31/2012	\$14,661.00
669	Lease billing - Nov 2012 (C39-8 locomotives + 758)	12/5/2012	\$14,511.00
673	Lease billing - Dec 2012 (C39-8 locomotives + 758 + 450)	1/6/2013	\$18,261.00
675	Lease billing - Jan 2013 (C39-8 locomotives + 758 + 450)	1/31/2013	\$19,311.00
679	Lease billing - Feb 2013 (C39-8 locomotives + 758 + 450)	3/8/2013	\$18,411.00
683	Lease billing - Mar 2013 (C39-8 locomotives + 758 + 450)	4/10/2013	\$19,311.00
686	Lease billing - Apr 2013 (C39-8 locomotives + 758 + 450 + 270)	4/30/2013	\$22,011.00
689	Lease billing - May 2013 (C39-8 locomotives + 758 + 450 + 270)	6/7/2013	\$18,961.00
694	Lease billing - Jun 2013 (C39-8 locomotives + 758 + 450 + 270)	6/30/2013	\$22,011.00
696	Lease billing - Jul 2013 (C39-8 locomotives + 758 + 450 + 270)	8/7/2013	\$22,411.00
707	Lease billing - 08/01/2013 thru 08/06/2013 (C39-8 locomotives + 758 + 450 + 270)	11/7/2013	\$4,337.61
708	Lease billing - 08/07/2013 thru 08/31/2013 (C39-8 locomotives + 758 + 450 + 270)	11/7/2013	\$18,073.39
<b>Total lease rental due Rail World Locomotive Leasing through 08/31/2013:</b>			<b><u>\$269,189.27</u></b>

**(B) Cure Amount Through 1/23/2014**

<u>Invoice No.</u>	<u>Description</u>	<u>Bill Date</u>	<u>Amount</u>
651	Lease billing - Jul 2012 (lease of 758)	7/31/2012	\$811.01
656	Lease billing - Aug 2012 (lease of 758)	8/31/2012	\$4,650.00
659	Lease billing - Sep 2012 (lease of 758, 293 & 270 - also includes Jul & Aug lease of 270 & 293)	10/3/2012	\$36,240.00
664	Lease billing - Aug 2012 (C39-8 locomotives placed in service on 08/16/2012)	10/30/2012	\$15,217.26
667	Lease billing - Oct 2012 (C39-8 locomotives + 758)	10/31/2012	\$14,661.00
669	Lease billing - Nov 2012 (C39-8 locomotives + 758)	12/5/2012	\$14,511.00
673	Lease billing - Dec 2012 (C39-8 locomotives + 758 + 450)	1/6/2013	\$18,261.00
675	Lease billing - Jan 2013 (C39-8 locomotives + 758 + 450)	1/31/2013	\$19,311.00
679	Lease billing - Feb 2013 (C39-8 locomotives + 758 + 450)	3/8/2013	\$18,411.00
683	Lease billing - Mar 2013 (C39-8 locomotives + 758 + 450)	4/10/2013	\$19,311.00
686	Lease billing - Apr 2013 (C39-8 locomotives + 758 + 450 + 270)	4/30/2013	\$22,011.00
689	Lease billing - May 2013 (C39-8 locomotives + 758 + 450 + 270)	6/7/2013	\$18,961.00

694	Lease billing - Jun 2013 (C39-8 locomotives + 758 + 450 + 270)	6/30/2013	\$22,011.00
696	Lease billing - Jul 2013 (C39-8 locomotives + 758 + 450 + 270)	8/7/2013	\$22,411.00
707	Lease billing - 08/01/2013 thru 08/06/2013 (C39-8 locomotives + 758 + 450 + 270)	11/7/2013	\$4,337.61
708	Lease billing - 08/07/2013 thru 08/31/2013 (C39-8 locomotives + 758 + 450 + 270)	11/7/2013	\$18,073.39
709	Lease billing - Sep 2013 (C39-8 locomotives + 758 + 450 + 270)	11/7/2013	\$22,011.00
710	Lease billing - Oct 2013 (C39-8 locomotives + 758 + 450 + 270)	11/7/2013	\$22,411.00
711	Lease billing - Nov 2013 (C39-8 locomotives + 758 + 450 + 270)	12/6/2013	\$22,011.00
712	Lease billing - Dec 2013 (C39-8 locomotives + 450 + 270) (11 days/31 days x \$17,761.00)	1/12/2014	\$6,302.29
			\$11,458.71
			<u>\$13,177.52</u>
<b>Total lease rental due Rail World Locomotive Leasing through 01/23/2014:</b>			<u><u>\$366,560.79</u></u>