

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:)
)
Montreal Maine & Atlantic Railway Ltd.,) **Chapter 11**
) **Case No. 13-10670**
)
Debtor.)

JOINT MOTION TO CONTINUE AND RESCHEDULE HEARINGS ON (A) THE RIGHTS OF PARTIES-IN-INTEREST IN THE PROCEEDS OF A CERTAIN INSURANCE POLICY ISSUED BY TRAVELERS CASUALTY COMPANY OF AMERICA; AND (B) WHEELING & LAKE ERIE RAILWAY COMPANY'S MOTION TO ENFORCE CASH COLLATERAL ORDERS

NOW COME Robert J. Keach, the trustee (the "Trustee") of the Montreal Maine & Atlantic, Ltd. (the "Debtor"), and Wheeling & Lake Erie Railway Company ("Wheeling") and jointly request that the Court continue and reschedule certain proceedings related to (a) the adjudication of the rights of certain parties-in-interest in the proceeds of a certain business interruption insurance policy issued by Travelers Casualty Company of America (the "BI Policy Proceeds") as referenced in the Court's December 24, 2013 Order Approving Chapter 11 Trustee Motion for Order Approving Compromise and Settlement with Travelers Property Casualty Company (the "Compromise Order") [D.E. # 550]; and (b) Wheeling's Motion to Enforce Cash Collateral Orders (the "Enforcement Motion") [D.E. # 603]. More specifically, the Trustee and Wheeling request that:

- The joint Canadian/U.S. hearing on the BI Policy Proceeds, currently scheduled to be conducted on March 12, 2014 in Bangor, Maine at 10:00 a.m., be postponed until after the Bankruptcy Court resolves the issue of whether Wheeling has a perfected and enforceable statutory or perfected and enforceable common law security interest in the BI Policy Proceeds;
- That the Bankruptcy Court conduct a hearing on the legal issue of whether Wheeling has a perfected and enforceable statutory or perfected and enforceable common law security interest in the BI Policy Proceeds on March 13, 2014, in Portland, Maine at 10:00 a.m. (which hearing will *not* be a joint Canadian/ U.S. hearing);

- That the Bankruptcy Court reschedule the hearing on the Enforcement Motion from March 12, 2014 in Bangor, Maine at 10:00 a.m. to March 13, 2014 in Portland, Maine at 10:00 a.m. at which time the Bankruptcy Court will conduct a preliminary, non-evidentiary hearing on the same.

In support of this Motion, the Trustee and Wheeling state as follows:

1. There are currently at least ten (10) matters scheduled for hearing on March 12th in Bangor. These include (a) the Trustee's motion to establish deadlines and procedures for filing proofs of claim [D.E. # 496]; (b) the adequacy of the disclosure statement proposed by the Unofficial Committee of Wrongful Death Claimants [D.E. #601]; (c) a motion to bar the Trustee's prosecution of derailment claims against non-debtor defendants [D.E. # 674]; (d) the BI Policy Proceeds issue; and (e) the Enforcement Motion. Some of these matters, such as the BI Policy Proceeds litigation, are scheduled for joint consideration by this Court and the Superior Court (Commercial Division) for the province of Quebec, Canada (the "Canadian Court"). Others, such as the Enforcement Order, are scheduled to be heard solely by the Bankruptcy Court.

2. Given the nature and number of the matters scheduled for hearing on March 12th, and in an attempt to allocate the resources of the Courts and the parties as efficiently as possible, earlier this week the Trustee and Wheeling discussed the concept of moving the hearings on the Wheeling-specific matters – *i.e.*, the BI Policy Proceeds litigation and the Enforcement matters – off of the docket for that day and instead having them heard on March 13th in Portland.

3. In addition, they also discussed the concept of bifurcating the adjudication of the BI Policy Proceeds disputes into two phases. First would be oral argument before the Bankruptcy Court alone on the legal issue of whether Wheeling has a perfected and enforceable statutory or perfected and enforceable common law security interest in the Proceeds at all. Further joint proceedings would be scheduled if the Bankruptcy Court determines that Wheeling

possesses a perfected and enforceable statutory or perfected and enforceable common law security interest in the BI Policy Proceeds. Assuming that the Court finds that Wheeling has a perfected and enforceable statutory or perfected and enforceable common law interest in some or all of the BI Policy Proceeds, then such further proceedings would resolve all remaining issues listed in ¶ 8 of the Compromise Order. Other than the changes made herein, the terms of the Compromise Order shall remain unaltered by the relief requested in this Motion.

4. The Trustee and Wheeling believe that this shift in the scheduling of issues will ensure that the Courts have sufficient time on March 12th and 13th to appropriately hear and consider the host of matters currently docketed for hearing on the 12th.

5. On Wednesday, March 5, 2104, the Trustee and Wheeling consulted with Canadian counsel for the Receiver who agreed to this course of action. Counsel for the Trustee and Wheeling then contacted the Bankruptcy Court Clerk's to suggest that the Court consider this course of action. That afternoon, the Bankruptcy Court scheduled a telephonic status conference at which the Court and counsel for the Trustee and Wheeling discussed this scheduling proposal.

6. At the Bankruptcy Court's request, the parties are filing this Motion seeking formal approval of this rescheduling plan from both the Bankruptcy Court and the Canadian Court.

Notice

7. Notice of the Scheduling Motion, together with a Notice of Hearing and a proposed form of order, were served on the all parties receiving notice through the Court's electronic filing system. Under the circumstances, Wheeling and the Trustee hereby request that this Court find that such service is sufficient notice to all parties in interest in this case.

WHEREFORE, the Trustee and Wheeling respectfully request that the Bankruptcy Court enter an order, with the consent of the Canadian Court, enter an order:

- A. Rescheduling the hearing on the Enforcement Order to Thursday, March 13, 2014 at 10:00 a.m. in Portland, Maine;
- B. Bifurcating the continued hearing on the pending BI Policy Proceeds dispute and conducting a Bankruptcy Court only (*i.e.*, non-joint) hearing on the legal issue of whether Wheeling has any perfected and enforceable statutory or perfected and enforceable common law interest in some or all of the same on Thursday March 13, 2014, at 10:00 a.m. in Portland; and
- C. Granting such other relief as Court deems just and appropriate.

Dated: March 7, 2014

/s/ Michael A. Fagone

Michael A. Fagone

Counsel for Robert A. Keach, Chapter 11 Trustee of
Montreal, Maine & Atlantic Railway, Ltd.

BERNSTEIN, SHUR, SAWYER & NELSON, P.A.
100 Middle Street
P.O. Box 9729
Portland, ME 04104
207.774.1200

Dated: March 7, 2014

/s/ David C. Johnson

George J. Marcus
Daniel L. Rosenthal
David C. Johnson
Andrew C. Helman

Counsel for Wheeling & Lake Erie Railway
Company

MARCUS, CLEGG & MISTRETTE, P.A.
One Canal Plaza, Suite 600
Portland, ME 04101
207.828.8000

CERTIFICATE OF SERVICE

I, Holly C. Pelkey, hereby certify that I am over eighteen years old and that I caused a true and correct copy of the above document, proposed Order and Notice of Hearing to be served upon the parties electronically at the addresses set forth on the Service List set forth below on 7th day of March, 2014.

/s/ Holly C. Pelkey _____

Holly C. Pelkey
Legal Assistant

Mailing Information for Case 13-10670

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:)
)
Montreal Maine & Atlantic Railway Ltd.,) **Chapter 11**
) **Case No. 13-10670**
)
Debtor.)

**ORDER GRANTING JOINT MOTION TO CONTINUE AND RESCHEDULE
HEARINGS ON (A) THE RIGHTS OF PARTIES-IN-INTEREST IN THE PROCEEDS
OF A CERTAIN INSURANCE POLICY ISSUED BY TRAVELERS CASUALTY
COMPANY OF AMERICA; AND (B) WHEELING & LAKE ERIE RAILWAY
COMPANY'S MOTION TO ENFORCE CASH COLLATERAL ORDERS**

Upon consideration of the Joint Motion to Continue and Reschedule Hearings on (A) the Rights of Parties-In-Interest in the Proceeds of a Certain Insurance Policy Issued by Travelers Casualty Company of America; and (B) Wheeling & Lake Erie Railway Company's Motion to Enforce Cash Collateral Orders (the "Scheduling Motion"), a hearing having been held, and the Court having heard the arguments of counsel, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

1. Service of the Scheduling Motion¹, as described therein, constitutes adequate service and notice of the Motion upon all parties in interest.
2. The Motion is hereby GRANTED, as follows:
3. The Enforcement Motion is hereby rescheduled for a preliminary, non-evidentiary hearing to Thursday, March 13, 2014 at 9:00 a.m. in Portland, Maine;
4. A hearing on the legal issue of whether Wheeling has perfected and enforceable statutory security interest or perfected and enforceable common law security interest in some or all of the BI Policy Proceeds (*non-joint hearing*) will be conducted on Thursday March 13, 2014, at 9:00 a.m. in Portland; and
5. Further joint proceedings will be scheduled if the Bankruptcy Court determines that Wheeling possesses a perfected and enforceable statutory security interest or perfected and enforceable common law security interest in some or all of the BI

¹ Defined terms shall have the same meanings as ascribed to them in the Joint Motion unless otherwise noted herein.

Policy Proceeds. Assuming that the Court finds that Wheeling has a perfected and enforceable statutory security interest or perfected and enforceable common law interest in some or all of the BI Policy Proceeds, then such further proceedings will resolve all remaining issues listed in ¶ 8 of the Compromise Order. Other than the changes made herein, the terms of the Compromise Order shall remain unaltered by the terms of this Order;

Date: March __, 2014

Hon. Louis J. Kornreich
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:)
) **Chapter 11**
Montreal Maine & Atlantic Railway Ltd.,) **Case No. 13-10670**
)
Debtor.)

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **Wednesday, March 12, 2014, at 10:00 a.m.** a hearing will be held at the United States Bankruptcy Court, 202 Harlow Street, Bangor, Maine, on ***Motion to Expedite Joint Motion to Continue and Reschedule Hearings on (A) the Rights of Parties-In-Interest in the Proceeds of a Certain Insurance Policy Issued by Travelers Casualty Company of America; and (B) Wheeling & Lake Erie Railway Company's Motion to Enforce Cash Collateral Orders*** (the "Motion to Expedite").

If any party in interest shall have an objection to the Motion to Expedite, such party shall assert an objection at the hearing. Such objecting party shall also file with the Court a written statement setting forth the basis for such objection **before 5:00 p.m. on Tuesday, March 11, 2014**, and concurrently serve (by facsimile and first class U.S. mail, postage prepaid) upon counsel for Wheeling & Lake Erie Railway Company, David C. Johnson, Esq., MARCUS, CLEGG & MISTRETTA, P.A., One Canal Plaza, Suite 600, Portland, ME 04101-4035, facsimile no. 207-773-3210. Unless an objecting party appears at the hearing to assert the basis for such objection before the Bankruptcy Court, and timely files a written statement, such objection shall be deemed to have been waived and abandoned.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE RELIEF REQUESTED IN THE MOTION TO EXPEDITE MAY BE GRANTED BY DEFAULT WITHOUT FURTHER NOTICE OR HEARING.

If the Expedited Hearing Motion is granted at that time, the Court will immediately thereafter conduct a preliminary hearing to consider, and may grant at that time ***Joint Motion to Continue and Reschedule Hearings on (A) the Rights of Parties-In-Interest in the Proceeds of a Certain Insurance Policy Issued by Travelers Casualty Company of America; and (B) Wheeling & Lake Erie Railway Company's Motion to Enforce Cash Collateral Orders*** (the "Scheduling Motion").

If any party in interest shall have an objection to the Scheduling Motion, such party shall assert an objection at the hearing. Such objecting party shall also file with the Court a written statement setting forth the basis for such objection **before 5:00 p.m. on Tuesday, March 11, 2014**, and concurrently serve (by facsimile and first class U.S. mail, postage prepaid) upon counsel for Wheeling & Lake Erie Railway Company, David C.

Johnson, Esq., MARCUS, CLEGG & MISTRETТА, P.A., One Canal Plaza, Suite 600,
Portland, ME 04101-4035, facsimile no. 207-773-3210. Unless an objecting party
appears at the hearing to assert the basis for such objection before the Bankruptcy Court,
and timely files a written statement, such objection shall be deemed to have been waived
and abandoned.

Dated: March 7, 2014

/s/ David C. Johnson

George J. Marcus
David C. Johnson
Andrew C. Helman

Counsel for Wheeling & Lake Erie Railway
Company

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