

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**TRUSTEE'S SUPPLEMENTAL BRIEF REGARDING PROCEEDS OF
TRAVELERS INSURANCE POLICY**

Robert J. Keach, the chapter 11 trustee (the "Trustee"), submits this supplemental brief regarding the extent of the security interests of Wheeling & Lake Erie Railway Company ("Wheeling") in and to payments made under a commercial property insurance policy, No. QT-630-6357L188-TIL-12 (the "Policy"), issued by Travelers Property Casualty Company of America ("Travelers") to Montreal Maine & Atlantic Railway, Ltd. ("MMA" or the "Debtor"), Montreal Maine & Atlantic Canada, Co. ("MMA Canada"), and other affiliates of the Debtor.¹

Pursuant to section 9-1109 of the Uniform Commercial Code (the "UCC"), Article 9 of the UCC does not apply to "an interest in" or "a claim under" an insurance policy. *See* 11 M.R.S.A. § 9-1109(4)(h). Thus, Wheeling bears the burden of establishing one of two things: (i) MMA's rights on the Petition Date with respect to the Policy were something **other than** an interest in or claim under an insurance policy, such that the UCC applies and Wheeling's UCC-1 is relevant; or (ii) Wheeling had, as of the Petition Date, taken the necessary perfection step under the common law with respect to MMA's rights under the Policy.²

¹ Capitalized terms not otherwise defined herein have the meaning ascribed to them in the *Trustee's Brief Regarding Proceeds of Travelers Insurance Policy* [D.E. 709] (the "Original Brief").

² Pursuant to the Court's request at a hearing on March 13, 2014 (the "Hearing"), this brief supplements the Original Brief and addresses only the distinction between a claim and right to payment and issues of timing. The Trustee

Wheeling's position is premised on directly contradictory arguments. First, Wheeling makes much of the distinction between a "claim" and a "right to payment" in an attempt to characterize the Debtor's interest in the Settlement Payment as a "right to payment" that would fall within the scope of the UCC. During oral argument at the Hearing, counsel for Wheeling asserted the following:

There's a third component of this insurance situation that we believe does come under the UCC, and that is a payment right. **So you have a policy, you have a loss, you make a claim. So far, the secured creditor has nothing to say. But aha, the claim gets resolved, and now a check is written. And we say, it is at that stage where UCC now comes into effect with respect to the payment proceeds--that money that the insurance company becomes obligated to pay to the insured.**

Hearing, 42:56-43:30 (emphasis added).³ In other words, according to this version of Wheeling's argument, a "payment right" exists—and the UCC applies—when the claim is resolved and a "check is written." *Id.* at 44:28-44:32 ("Once the check is written, then the UCC applies.").

However, at the Hearing, Wheeling also argued that the Debtor's "right to payment" arose on July 6, 2013 (the date of the Derailment) or earlier (when the Policy was issued). As asserted by Wheeling's counsel:

The contention was made that the right to payment didn't arise until post-filing when Travelers wrote the check. That's plainly wrong. The right to payment arose when the catastrophe occurred. It may have arisen earlier, when the policy was issued. . . . When the accident occurred, there was a contractual right to payment for loss. Now, the amount wasn't determined, and it might even have been disputed. But there was still a right to payment. And when the check was cut . . . that became, then, . . . liquidated, and undisputed.

incorporates by reference herein all of the arguments contained in the Original Brief, including those related to Wheeling's failure to perfect an interest in the Policy or the Settlement Payment under common law.

³ Citations to the record of the Hearing are to the audio recording of the Hearing. *See* D.E. 749.

Hearing, 1:27:19--1:29:54 (emphasis added). According to this version of Wheeling’s argument, the “right to payment”—which is allegedly different than a “claim under a policy”—arose on the date of the accident.

Regardless of which argument Wheeling chooses to rely on, Wheeling does not have a perfected interest in the Settlement Payment. Assuming that there is a meaningful distinction between a claim under a policy of insurance and a right to payment under a policy of insurance for Article 9 purposes—and Wheeling cites no authority for that proposition—Wheeling does not have a perfected security interest in the Settlement Payment. In order to determine the nature of a debtor’s interest in property, the court must look to the nature of that interest as of the petition date. *See, e.g.*, 11 U.S.C. §§ 544(a), 552(a); A-1 Credit Corp. v. Big Squaw Mountain Corp. (In re Big Squaw Mountain Corp.), 122 B.R. 831 (Bankr. D. Me. 1990); In re Nittolo Land Dev. Assoc., Inc., 333 B.R. 237 (Bankr. S.D.N.Y. 2005). For example, in Big Squaw Mountain, this Court addressed whether a creditor had a perfected security interest in the debtor’s unearned insurance premiums, which unearned insurance premiums ***were converted to cash after the petition date***. *See Big Squaw Mountain*, 122 B.R. at 836. The Court determined that, “[a]t the critical point of inquiry” (*i.e.*, the petition date), the creditor’s “rights as an assignee of unearned premiums constituted a claim ‘in or under [a] policy of insurance’ and, therefore, [was] excluded from the U.C.C.’s coverage by § 9-104(g).” *Id.* In other words, the creditor’s interest in the right to unearned premiums was not a right to payment within the scope of the UCC. Accordingly, the Court analyzed whether the creditor had perfected its interest in the unearned insurance premiums under the Maine common law, rather than Article 9. *See id.* Likewise, in Nittolo, the court explained as follows:

The parties agree that Fleet had no lien in the Southeast Property prior to the sale. In any event, UCC Article 9 does not apply to “the creation or transfer of

an interest in or lien on real property”. UCC § 9–109(d)(11). Fleet claims that upon the sale of the Southeast Property, an “account” was created, and that Fleet's security interest extended to the account. UCC § 9–102(a)(2) defines “Account” to include: “a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of” Although Former Article 9 restricted the definition of account to “any right to payment for goods sold or leased or for services rendered” (*see* Former Article 9–106), Revised Article 9 expanded the definition to a right to payment of proceeds from the sale of real property where the real property “has been or is to be sold”.

Thus, under Revised Article 9, a UCC security interest, which could not apply to real property, can be created in the right of the seller to receive payment for real property that “has been or is to be sold.” The word “created” is crucial in the bankruptcy context, because such a lien would not arise in a post-petition sale of a real property belonging to a debtor where the sale is conducted by the chapter 7 trustee assigned to the debtor's case in the administration of the debtor's bankruptcy case. This is because the security interest in the account is “created” in a right that has been newly acquired post-petition by the bankruptcy estate.

Section 552(b) of the Bankruptcy Code states that security interests in property “acquired before the commencement of the case,” including proceeds, profits, rents or the like that result from the pre-existing security interest will extend post-petition to such proceeds, profits or rents “to the extent provided by such security agreement and by applicable nonbankruptcy law, except to the extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.” Section 552(a) of the Bankruptcy Code provides a different rule where the creditor does not hold a security interest in property prior to the bankruptcy filing:

Except as provided in [Section 552(b)], property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

Section 552(a) provides the normal rule, that a creditor's pre-petition security interest in accounts will not extend to the post-petition proceeds of a trustee's sale of real property.

This, as the Court has alluded, is not a normal case. Mr. Banner sold the Southeast Property as part of the Personal Bankruptcy Case and later determined that the Southeast Property, and consequentially the Proceeds, was not property of the estate in the Personal Bankruptcy Case. At the time the Southeast Property was sold, no bankruptcy case had been commenced against this Debtor, and no bankruptcy estate existed. Thus, when the Debtor's right to payment of the

Proceeds arose pre-petition, in the parlance of Article 9 an “account” was created.

Nittolo, 333 B.R. at 240-41 (emphasis added).

In this case, as of the Petition Date, three things were true: (1) the Derailment (or loss) had occurred; (2) the Debtor had made a claim under the Policy; and (3) Travelers disputed coverage. No right to payment, as Wheeling would describe it, existed and certainly no check had been written. In fact, not even three weeks after the Petition Date, Travelers filed a motion seeking relief from the automatic stay (the “Stay Relief Motion”), so that it could file a declaratory judgment action against the Debtor and its affiliates. *See* D.E. 105. A true and correct copy of the Stay Relief Motion is attached hereto as **Exhibit A**. By Travelers’ proposed declaratory judgment action, Travelers hoped to either obtain a declaratory judgment that it did not have to provide coverage under the Policy, including with respect to loss of business income, or to reform the Policy so that it did not have to provide coverage. *See id.* Only months after the Petition Date did the Trustee and Travelers reach a settlement under which Travelers agreed that the Debtor and its affiliates had a “right to payment” of proceeds under the Policy. *See Chapter 11 Trustee’s Motion for Order Approving Compromise and Settlement with Travelers Property Casualty Company of America*, filed December 19, 2013, D.E. 473. Accordingly, even if an interest in or claim under an insurance policy can be converted into a right to payment that falls within the scope of Article 9, the Debtor’s right to payment of the Settlement Payment was not “created” until well after the Petition Date, and section 552(a) of the Bankruptcy Code cuts off any interest that Wheeling might have in such property. *See* 11 U.S.C. § 552(a).

Wheeling’s second argument—that a disputed, prepetition claim under an insurance policy constitutes an “account” or “payment intangible” under the UCC—would write out the insurance exclusion under Article 9, as it conflates a “claim” under an insurance policy with a

“right to payment” under an insurance policy in an effort to work around the Article 9 exclusion. This argument by Wheeling (which is directly contradictory to the first argument it made at the Hearing) is also undercut by the case law holding that, if a right to payment (either under an insurance policy or in relation to real property) does not exist as of the petition date, but instead is only created after the petition date, Article 9 does not apply. *See* Big Squaw Mountain, *supra*; Nittolo, *supra*.

Wheeling has cited to no case law, nor does any exist, that suggests the insurance exclusion under Article 9 has been written out of the UCC by the expanded definition of “account” or any other amendment to the UCC. “Account,” as defined under section 9-1102(2) of the UCC, includes “a right to payment of a monetary obligation . . . [f]or a policy of insurance issued or to be issued.” 11 M.R.S.A. § 9-1102(2). If read as broadly as Wheeling argues, the revised definition of “account” would write out the Article 9 exclusion of an interest in or claim under an insurance policy. Wheeling offers no reasonable explanation of the types of things that would constitute a “claim under a policy” such that the section 109 exclusion would apply. Accordingly, Wheeling’s argument cannot be correct.

Further, the only authority that exists with respect to the revised definition of “account” under the UCC indicates that this definition refers to an insurance agency’s right to a commission from an insurance company for insurance policies sold. *See* Jahn v. Cornerstone Cmty. Bank (In re U.S. Ins. Grp., LLC), No. 09-1079, 2009 WL 4723466, *4-5 (Bankr. E.D. Tenn. Dec. 2, 2009) (finding that while “Article 9 generally does not apply to a transfer of an interest in or an assignment of a claim under an insurance policy,” insurance agency’s right to a commission from insurance company for policies sold fell within Article 9’s definition of “account”); Comm. Nat’l Bank of Pa. v. Seubert & Assocs., Inc., 807 A.2d 297, 303-04 (Pa.

2002) (finding that “interests in commissions and expirations of insurance policies” should be analyzed under Article 9, pursuant to definition of “account,” because Article 9 insurance exclusion applied only to rights under insurance policies). The inclusion of “a right to payment . . . for a policy of insurance issued or to be issued” is designed to facilitate financing by insurers or insurance agents. This has nothing to do with an insured’s right to receive payment under a policy. The insured’s rights are excluded from the scope of Article 9.

In its supplemental memorandum of law [D.E. 795], Wheeling contends that there is a distinction between a “claim” and a “right to payment.” *See id.* at 1. Wheeling then relies extensively on insurance law authorities and principles. *See id.* at 6-14. The Court need not accept Wheeling’s invitation to wade into this thicket.

Wheeling contends that a claim is limited to “the process that an insured must undertake in order to satisfy policy conditions to receipt of money.” *See id.* at 2. In Wheeling’s view, a “claim” does not involve the payment of money, or the right to receive money. Why would Article 9 exclude the transfer of a “claim” under a policy if that doesn’t involve the right to receive money? Secured creditors typically care about assets that have value. Under Wheeling’s view, section 9-1109 would exclude a security interest in a “process that an insured must undertake[,]” a process that is distinct from any “right to payment.” Wheeling presumes that the drafters of Article 9 intended to exclude security interests in a process, but include security interests in an insured’s right to receive money under an insurance policy. That makes no commercial sense, and Wheeling has cited no authority in support of this argument.

In summary, as of the Petition Date, the Debtor did not have a right to payment of the Settlement Payment. All that the Debtor had was a claim under the Policy, which is excluded from Article 9. To expand the definition of “account” or “payment intangible” to include a claim

under an insurance policy would write out the Article 9 insurance exclusion, in contravention of the plain language of the statute and basic tenets of statutory construction. Further, Wheeling is not aided by the common law. The Security Agreement does not provide Wheeling with an interest in the Policy, nor did Wheeling take any steps to perfect an interest in the Policy. Wheeling simply has no interest in the Settlement Payment, under either Article 9 or common law.

Dated: March 27, 2014

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

By his attorneys:

/s/ Michael Fagone

Michael A. Fagone, Esq.

Máire B. Corcoran Ragozzine, Esq.

BERNSTEIN, SHUR, SAWYER & NELSON, P.A.

100 Middle Street

P.O. Box 9729

Portland, ME 04104

Telephone: (207) 774-1200

Facsimile: (207) 774-1127

E-mail: mfagone@bernsteinshur.com



UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF MAINE

_____)	
In re:)	
)	
MONTREAL, MAINE &)	CHAPTER 11
ATLANTIC RAILWAY LTD.,)	Case No. 13-10670
)	
Debtor.)	
_____)	

MOTION OF TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA
 FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), Fed. R. Bankr. P. 4001, and D. Me. LBR 400-1 Travelers Property Casualty Company of America (“Travelers”) requests relief from the automatic stay, for cause, to file a declaratory judgment action (the “Declaratory Judgment Action”) in the United States District Court for the District of Maine (the “District Court”), that would include the Debtor, Montreal, Maine & Atlantic Railway Ltd. (the “Debtor”), as a defendant.¹ A copy of the proposed Complaint in the Declaratory Judgment Action is attached as Exhibit A hereto. The proposed Declaratory Judgment Action seeks a judicial declaration, pursuant to 28 U.S.C. § 2201, that a commercial property insurance policy issued by Travelers to the Debtor, the Canadian Debtor, and affiliates and parent companies thereof does not provide coverage for certain losses to railcars and railroad track and roadbed being claimed, and certain losses of business income or extra expense resulting therefrom, arising out of the derailment of parts of a train in Lac-Megantic, Quebec, Canada, on July 6, 2013 (the “Incident”). The

¹ Travelers also contemplates that the Declaratory Judgment Action would name as a defendant Montreal, Maine & Atlantic Canada Company (the “Canadian Debtor”), which filed a petition seeking relief under Canada’s Companies’ Creditors Arrangement Act in the Superior Court of Quebec. Accordingly, on this date, Travelers is also filing a Motion to Lift the Stay of Proceedings in the *Matter of the Arrangement Relating to Montreal, Maine & Atlantic Canada Co. et al.*, No. 500-11-045094-139 in the Superior Court of the Province of Quebec, District of Montreal.

Declaratory Judgment Action also seeks, alternatively, reformation of the insurance policy to reflect that the mutual intent of the parties was not to provide insurance for losses of business income arising from damage to the railroad rolling stock.

Relief from stay is appropriate because: the issues to be determined with respect to the Debtor in the Declaratory Judgment Action are identical to those issues presented with respect to each of the other U.S. defendants that have not filed for bankruptcy protection; with respect to the Debtor, the Declaratory Judgment Action is a non-core proceeding which would require ultimate determination by the District Court even if initially litigated in this Court; the Declaratory Judgment Action will not interfere with the orderly administration of the Debtor's estate; and the hardship to Travelers by the continuation of the automatic stay outweighs the hardship to the Debtor if the requested relief is granted.

In support of its Motion, Travelers states as follows:

JURISDICTION

1. This motion is a core proceeding over which the Court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(2)(G) and 1334. Venue is proper pursuant to 28 U.S.C. § 1409.

FACTS

A. The Policy

2. Travelers issued to the defendants in the proposed Declaratory Judgment Action a commercial property insurance policy, bearing Policy no. QT-630-6357L188-TIL-13, with a policy period of April 1, 2013 to April 1, 2014 (the "Policy"). The Policy was issued in Maine.

3. The Policy provides only first-party property insurance coverage for certain "Covered Property" described in the Declarations of the Policy, which include certain locomotives involved in the Incident (the "Covered Property"), but do not include the railcars,

the railroad track or the roadbed. The Policy does not provide any third-party liability coverage, and therefore does not provide liability insurance for any claims which may be asserted against the Debtor or its affiliates by third parties who sustained personal injuries or damage to their property as a result of the Incident.

4. The Policy provides coverage only for that property which is described within the Policy's declarations and specifically excludes from coverage "[p]roperty contained on or in railroad rolling stock," and, subject to an endorsements described in paragraphs 5 and 6, "[r]ailroad tracks, [and] beds."

5. The Policy contains an endorsement entitled "Railroad Rolling Stock Damage to Track and Roadbed Coverage" which, subject to certain conditions, provides \$250,000 of coverage for the Debtor's "reasonable and necessary expense to repair or replace damaged track and roadbed."²

6. The Policy also contains an endorsement entitled "Railroad Track & Roadbed Deductible" providing for a deductible of \$250,000 with respect to the track and roadbed coverage provided through the endorsement described in paragraph 5.

7. The Policy contains an additional endorsement entitled "Railroad Rolling Stock 'Business Income' and 'Extra Expense' Coverage," which provides certain coverage for loss of business income and extra expenses occasioned by a "loss of or damage to Covered Property from a Covered Cause of Loss."

8. The endorsement described in paragraph 7 does not provide coverage for loss of business income or extra expense occasioned by a loss of or damage to property which is not "Covered Property."

² As a result of an error, the Policy specifies a \$25,000 limit for damage to railroad track and roadbed. However, the limitation of coverage was intended to be \$250,000 rather than \$25,000.

9. The parties intended the Policy to provide only Extra Expense coverage with respect to the rolling stock, and did not intend the Policy to provide any coverage for loss of Business Income caused by damage to the rolling stock. Due to mistake and inadvertence, the written Policy that was issued and accepted contained form CM T5 27 02 08, which stated that it was providing both “Business Income” and “Extra Expense” coverage for Railroad Rolling Stock. Also due to the mistake and inadvertence, there was no endorsement in the policy which deleted the “Business Income” coverage provided under form CM T5 27 02 08, despite the fact that it was the mutual intent of the parties that the policy provide coverage for Extra Expense only, and not provide coverage for loss of Business Income.

B. The Declaratory Judgment Action

9. Travelers intends to proceed against the Debtor, as well as those parent companies, subsidiaries, and affiliates of the Debtor which are named as insureds under the Policy, in a declaratory judgment action concerning the Policy.

10. The proposed Complaint in the Declaratory Judgment Action alleges, in part:

36. An actual controversy has arisen as to whether, or to what extent, the Policy provides coverage for the Railcars, property contained in the Railcars, the track, the roadbed, and/or loss of business income caused by damage to any such property damage.

37. Travelers is entitled to a declaration that, under the terms of the Policy, it is not required to provide coverage for any damage to the Railcars arising from the Incident.

38. Travelers is also entitled to a declaration that, under the terms of the Policy, it is not required to provide coverage for any damage to property contained in the Railcars arising from the Incident.

39. Travelers is also entitled to a declaration that, under the terms of the Policy, any expense incurred for repairing the track and/or roadbed arising from the Incident is covered only up to a limit of \$250,000, in excess of a deductible of \$250,000.

40. Travelers is also entitled to a declaration that, under the terms of the Policy, it is not required to provide coverage for any loss of “Business Income” or “Extra Expense” which was due to loss of or damage to the Railcars, property contained in the Railcars, or the track and/or roadbed.

11. The proposed Complaint in the Declaratory Judgment Action further pleads a claim for reformation, including the following allegations:

42. The parties intended that the Railroad Rolling Stock insurance provided in the Policy not provide insurance for loss of Business Income, and that the only time element coverage to be provided under the Policy would be Extra Expense.

43. The written Policy was mistakenly issued and accepted with form CM T5 27 02 08, and without an endorsement which would make it clear that the Business Income coverage outlined in form CM T5 27 02 08 would not be applicable.

44. The written Policy should be reformed to delete any coverage for Business Income resulting from damage to Railroad Rolling Stock.

STANDARD FOR RELIEF

12. Relief from the automatic stay imposed by 11 U.S.C. § 362(a) is governed by 11 U.S.C § 362(d) which provides, in relevant part, as follows:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay—

(1) for cause...

13. Pursuant to 11 U.S.C. § 362(d)(1), the Court “shall” grant relief from the automatic stay “for cause.” Cause is not defined within the statute and courts have generally determined that a finding of cause must be made on a case-by-case basis. See Piombo Corp. v. Castlerock Properties (In re Castlerock Properties), 781 F.2d 159,163 (9th Cir. 1986); Peerless Ins. Co. v. Rivera, 208 B.R. 313, 315 (D.R.I. 1997); Goya Foods, Inc. v. Unanue-Casal (In re Unanue-Casal), 159 B.R. 90, 95-96 (D.P.R. 1993), aff’d, 23 F.3d 395 (1st Cir. 1994). Cause may

be found to exist whenever the stay harms the party seeking relief and “lifting the stay will not unduly harm the debtor or the debtor's estate.” In re Turner, 161 B.R. 1, 3 (Bankr. D. Me. 1993); see also Shaughnessy v. United States (In re Shaughnessy), BAP No. MW 06-068, 2007 Bankr. LEXIS 3164, at *6-*7 (BAP 1st Cir. Aug. 17, 2007).

14. Courts have considered a variety of factors to determine whether cause exists. Sonnax Indus., Inc. v. Tri Components Products Corp. (In re Sonnax Indus., Inc.), 907 F.2d 1280, 1286-87 (2d Cir. 1990)(citing In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) which identified twelve factors gleaned from various decisions); Peerless Insurance Co., 208 B.R. at 315 (considering four factors suited to the particular circumstances of the case); In re Unanue-Casal, 159 B.R. at 96 (same). However, no formulaic approach to determine whether cause exists has emerged, and the factors to be considered depend upon the circumstances under which relief from the stay is being sought. In re Shaughnessy, 2007 Bankr. LEXIS 3164, at *6-*7; Peerless Insurance Co., 208 B.R. at 315; In re Unanue-Casal, 159 B.R. at 96.

15. In Peerless Ins. Co. v. Rivera, the court identified four factors which were applicable in order to determine whether an insurer had demonstrated cause to pursue a pending declaratory judgment action concerning the scope of coverage under a policy issued to the debtor:

1. the harm to the party seeking relief from the stay...if the stay is not lifted;
2. the harm to the debtor...if the stay is lifted;
3. the interests of creditors; and
4. the effect on the fair and efficient administration of justice.

Peerless Ins. Co., 208 B.R. at 315.

BASIS FOR RELIEF

Based upon the factors identified by the Peerless court, cause exists to grant Travelers relief from the automatic stay to include the Debtor as a defendant in the proposed Declaratory Judgment Action.

A. Travelers will suffer harm if it is not granted relief from the stay.

If Travelers is not permitted to pursue the Declaratory Judgment Action against the Debtor, it may have to litigate identical coverage issues in multiple actions. For example, even if Travelers were to prevail against the Debtor's co-insureds in a declaratory judgment action, the trustee of the Debtor's estate might still attempt to subsequently pursue claims against Travelers under the Policy in this Court or perhaps a different court. Since the District Court may not enter a declaratory judgment which binds a non-party, Travelers would have to defend itself against a potential claim from the trustee and assert as defenses those arguments which it had already successfully asserted in the Declaratory Judgment Action. Re-litigation of the same issues would be costly and a waste of the parties' resources and judicial resources.

Additionally, and in light of the complex nature of the Debtor's business and the bankruptcy proceeding, Travelers may be unable to obtain a resolution of its potential liability until the assuredly-long process of the Debtor's reorganization is well underway. Preventing Travelers from obtaining a judicial determination of its liability, if any, on account of the Incident would unduly interfere with Travelers' ability to determine its liability, if any, and set its reserves.

B. The Debtor will not be harmed if the stay is lifted in order for Travelers to pursue the Declaratory Judgment Action.

Whether in the context of the proposed Declaratory Judgment Action or in connection with a claim asserted against Travelers under the Policy, the Debtor will ultimately have to litigate the coverage issues raised in the proposed Declaratory Judgment Action, if it does not accede to Travelers' position. Therefore, the relief requested by Travelers will not impose any additional burden or cost upon the estate beyond those which it should already expect to bear as a consequence of the tragic circumstances. In fact, from a purely economic perspective it would be more efficient for the Debtor to determine its rights under the Policy in one proceeding, in the context of the proposed Declaratory Judgment Action.

C. The interests of creditors would be best served by the Debtor's involvement in the Declaratory Judgment Action.

The Debtor presently "contemplates using the proceeds from all [estate] assets, including insurance policies, to fund one or more trusts for the benefit of claimants."³ If the Debtor, or the trustee appointed to administer its estate, intends to propose a plan which pays creditors out of a limited pool of liquidation and insurance proceeds, then creditors should, to the greatest extent feasible, be made aware in advance of solicitation what assets will be available for distribution on account of their claims. The Debtor's involvement in the proposed Declaratory Judgment Action will allow for the speedy resolution of Travelers' potential liability under the Policy, thereby resolving one variable which will confront the trustee in proposing, and the creditors in evaluating, a proposed plan which depends upon a post-confirmation vehicle for recovering assets and resolving claims.

From a creditor's perspective, it would be best for the issue to be decided expeditiously, in a manner which minimizes the expense of litigation. This is especially true given that the

³ Affidavit of Donald Gardner, Jr. in Support of First Day Pleadings, Dkt. No. 11, ¶ 18.

Debtor's rights under the Policy are likely to be determined by the District Court irrespective of the Court's decision on this motion, as explained below.

D. The Debtor's involvement in the Declaratory Judgment Action is essential to the fair and efficient administration of justice.

Given the limited authority conferred upon this Court with respect to non-core proceedings, and the importance of the issues presented in the proposed Declaratory Judgment Action, those issues will almost inevitably be determined by the District Court whether or not the Debtor is included as a defendant. A declaratory judgment action to determine the scope of an insurance policy's coverage is a non-core proceeding. See 28 U.S.C. § 157(b); Nat'l Union Fire Ins. Co. v. Titan Energy, Inc. (In re Titan Energy, Inc.), 837 F.2d 325, 330 (8th Cir. 1988); U.S. Brass Corp. v. California Union Ins., 198 B.R. 940, 945-46 (N.D. Ill. 1996) vacated in part on other grounds by 110 F.3d 1261 (7th Cir. 1997); Gray v. Exec. Risk. Indem. Inc. (In re Molten Metal Technology, Inc.), 271 B.R. 711, 714-15 (Bankr. D. Mass. 2002). Therefore, this Court cannot issue a final judgment with respect to the issues raised in the proposed Declaratory Judgment Action. See 28 U.S.C. § 157(c). Rather, any determination made by this Court with respect to the Policy's scope of coverage would be subject to de novo review by the District Court upon objection by Travelers or the Debtor. See 28 U.S.C. § 157(c). It would be inefficient to address the issues raised in the proposed Declaratory Judgment Action in a separate Debtor-specific proceeding in this Court only to later have this Court's report and recommendation sent to the District Court for de novo review.

CONCLUSION

For the foregoing reasons, and for any other reasons which may be stated at any hearing on this motion, Travelers respectfully requests that the Court grant it relief from the automatic stay in order to file the proposed Declaratory Judgment Action against the Debtor.

Dated at Bangor, Maine, this the 27th day of August, 2013.

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA,

By its attorneys,

/s/ Frederick J. Badger, Jr.

Frederick J. Badger, Jr., Esq. (#215)
fbadger@rwlb.com
Attorney for Travelers Property
Casualty Company of America

/s/ Joshua A. Randlett

Joshua A. Randlett, Esq. (#4681)
jrandlett@rwlb.com
Attorney for Travelers Property
Casualty Company of America

RICHARDSON, WHITMAN, LARGE & BADGER
One Merchants Plaza
P.O. Box 2429
Bangor, ME 04402-2429
(207) 945-5900

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2013, I electronically filed the foregoing Motion For Relief From Automatic Stay with the Clerk of Court by using the CM/ECF system, which will send notification of such filing to each of the following:

Roger J. Clement, Jr., Esq.
Verrill Dana, LLP
One Portland Square
P.O. Box 586
Portland, ME 04112-0586
rclement@verrilldana.com
(Attorney for Debtor)

Nathan R. Hull, Esq.
Verrill Dana, LLP
P.O. Box 586
Portland, ME 04112-0586
nhull@verrilldana.com
(Attorney for Debtor)

Robert J. Keach, Esq.
Bernstein, Shur, Sawyer & Nelson
100 Middle Street, 6th Floor
P.O. Box 9729
Portland, ME 04104-5029
rkeach@bernsteinshur.com
(Trustee)

Stephen G. Morrell, Esq.
Office of the U.S. Trustee
537 Congress Street
Portland, ME 04101
stephen.g.morrell@usdoj.gov
(Office of U.S. Trustee)

Jennifer H. Pincus, Esq.
Office of the U.S. Trustee
537 Congress Street
Portland, ME 04101
jennifer.h.pincus@usdoj.gov
(Office of U.S. Trustee)

Richard P. Olson, Esq.
Perkins Olson, PA
32 Pleasant Street
P.O. Box 449
Portland, ME 04112
rolson@perkinolson.com
(Creditor Committee / Unofficial Committee of Victims)

I further certify that on August 27, 2013, pursuant to Fed. R. Bankr. P. 4001(a)(1) and D. Me. LBR 4001-1(a), I made due notice of this Motion For Relief From Automatic Stay by mailing a confirmed copy thereof via United States Postal Service, postage prepaid, to the Debtor and the following creditors that were included in the list filed pursuant to Fed. R. Bankr. P. 1007(d):

Montreal, Maine & Atlantic Railway, Ltd.
c/o Norma Jean Griffiths, Registered Agent
15 Iron Road
Hermon, ME 04401

New Brunswick Southern Railway Co. Ltd.
P.O. Box 5777
Saint John, NB E2L 4M3
CANADA

Rail World, Inc.
c/o Edward A. Burkhardt, President & CEO
6400 Shafer Court, Suite 275
Des Plaines, IL 60018

Flex Leasing I, LLC
SDS 12-2315
P.O. Box 86
Minneapolis, MN 55486-0086

Canadian Pacific Railway Co.
c/o E. Hunter Harrison, CEO
Lock Box M101979
P.O. Box 2078, Station B
Montreal, PQ H3B 4H4
CANADA

Valero Marketing & Supply
c/o Bill Klesse, Chairman & CEO
One Valero Way
San Antonio, TX 78249-1616

Rail World Locomotive Leasing
c/o Edward A. Burkhardt, President & CEO
6400 Shafter Court, Suite 275
Des Plaines, IL 60018

Gowling Lafleur Henderson LLP
c/o Denise St-Onge
1400, 700 – 2nd Street S.W.
Calgary, AB T2P 4V5
CANADA

Cattron Theimeg
Box 200477
Pittsburgh, PA 15251-0477

Petro Sud-Ouest Inc.
619, Laurent
Granby, PQ J2G 8Y3
CANADA

Ville De Sherbrooke
145 Rue Wellington Nord
C.P. 610
Sherbrooke, QC J1H 5H9
CANADA

RWC, Inc.
248 Lockhouse Road
P.O. Box 876
Westfield, MA 01086-0876

St. Lawrence & Atlantic RR
M2118, Case Postale 11500
Succursale Centre-Ville
Montreal, PQ H3C 5N7
CANADA

Maine Northern Railway
P.O. Box 905, Station A
71 Alison Boulevard
Fredericton, NB E3B 5B4
CANADA

AC Electric Corp.
c/o Dan Parsons, President & CEO
120 Merrow Road
P.O. Box 1508
Auburn, ME 04211-1508

Debroussailleurs GSL, Inc.
5646 Chemin Saint-Remi
St-Adien-De-Ham, PQ J0A 1C0
CANADA

Helm Financial Corporation
Lock Box 13499
13499 Collections Center Drive
Chicago, IL 60693

State of Maine
Maine Revenue Service
c/o Stanley D. Campbell, Deputy Director
P.O. Box 9107
Augusta, ME 04332-9107

Canadian Pacific Railway
c/o E. Hunter Harrison, CEO
P.O. Box 2078
Station B
Montreal, QC H3B 4H4
CANADA

Gowling Lafleur Henderson LLP
c/o R. Scott Jolliffe, Chair & CEO
1400, 700 – 2nd Street S.W.
Calgary, AB T2P 4V5
CANADA

Progress Rail Services
c/o William P. Ainsworth, CEO
24601 Network Place
Chicago, IL 60673-1246

/s/ Joshua A. Randlett, Esq.
Attorney for Travelers Property
Casualty Company of America

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA,

Plaintiff,

V.

MONTREAL, MAINE & ATLANTIC
CORPORATION; MONTREAL, MAINE &
ATLANTIC RAILWAY, LTD.; LMS
ACQUISITION CORPORATION;
MONTREAL, MAINE & ATLANTIC
CANADA COMPANY; and RAIL WORLD,
INC.,

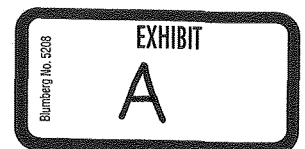
Defendants.

Civil Action No. _____

PROPOSED COMPLAINT

Nature of the Action

1. This is an action for a declaratory judgment under a commercial property insurance policy issued by Plaintiff, Travelers Property Casualty Company of America (“Travelers”) to Defendants, Montreal, Maine & Atlantic Corporation, LMS Acquisition Corporation, Montreal, Maine & Atlantic Railway, Ltd., Montreal, Maine & Atlantic Canada Company, and Rail World, Inc. (collectively, “MMA”). Travelers seeks a declaratory judgment that the policy does not provide coverage for certain losses to railcars and railroad track and roadbed being claimed by MMA, and certain losses of business income or extra expense resulting therefrom, arising out of the derailment of parts of a train in Lac-Megantic, Quebec, Canada, on July 6, 2013. In the alternative, Travelers seeks reformation of the insurance policy to reflect that the parties intended the policy to provide only Extra Expense



coverage with respect to the rolling stock, and did not intend the policy to provide any coverage for loss of Business Income caused by damage to the rolling stock.

Parties

2. The plaintiff, Travelers, is an insurance company organized under the laws of Connecticut, with its principal place of business located at One Tower Square, Hartford, Connecticut 06103.

3. Defendant Montreal, Maine & Atlantic Corporation is a corporation organized under the laws of Delaware, with its principal place of business located at 15 Iron Road, Hermon, Maine 04401.

4. Defendant Montreal, Maine & Atlantic Railway, Ltd. is a corporation that was organized under the laws of Delaware, with its principal place of business located at 15 Iron Road, Hermon, Maine 04401.

4. Defendant LMS Acquisition Corporation is a corporation organized under the laws of Delaware, with its principal place of business located at 15 Iron Road, Hermon, Maine 04401.

5. Montreal, Maine & Atlantic Canada Company is organized under the laws of Nova Scotia, Canada, with a registered office in Halifax, Nova Scotia, Canada, and a principal place of business located at 15 Iron Road, Hermon, Maine 04401.

6. Defendant Rail World, Inc. is a corporation organized under the laws of Illinois with its principal place of business located at 6400 Shafer Court, Suite 275, Rosemont, IL 60018.

Jurisdiction and Venue

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the parties are citizens of different States and the amount in controversy exceeds \$75,000, exclusive of interest and costs. The value of the property damage at issue, as described below, substantially exceeds \$75,000, and the total aggregate policy limit is \$7,500,000.

8. All of the Defendants are subject to personal jurisdiction in Maine because the insurance policy was issued in Maine and some or all of the Defendants regularly do business in Maine.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the property that is the subject of the action was garaged in Maine, and/or § 1391(b)(3) because the defendants are subject to personal jurisdiction in this District.

Facts

10. On or about March 15, 2013, Defendants submitted an application for property and inland marine insurance to Travelers that contained the specifications for the insurance they were seeking for the April 1, 2013 to April 1, 2014 policy term. One of the coverages being applied for was Railroad Rolling Stock Insurance, which was intended to insure certain scheduled items of railroad rolling stock owned by and/or in the care, custody, or control of one or more of the Defendants.

11. The application for Railroad Rolling Stock insurance specified that Defendants were seeking limits of \$5,000,000 for “Any One Occurrence inclusive of Extra Expense, Flood and Earth Movement.” (emphasis in original). The application for Railroad Rolling Stock

Insurance did not make any other mention of seeking coverage for either Extra Expense or for loss of business income.

12. On March 20, 2013, Zachary Bowling, the underwriter for Travelers, sent an email to Peter Bleach, the broker for and representative of the Defendants, and asked the following question: "We are doing our final review today, and the BI [i.e., Business Income] for the RRRS [i.e., Railroad Rolling Stock] came up. I know we had discussed, but do we need to include this year?"

13. On March 21, 2013, in the morning, the broker, Peter Bleach, responded to Travelers' question as follows: "Sorry abt the delay in responding. We do not need full BI for the rolling stock. All we need is a combined limit of \$5,000,000 or \$7.5mm to include Extra Expense which is the real exposure. I think the clause is very clear. In the event of a derailment or a collision, the R/R could incur an EE claim for rerouting expenses and other additional costs to clear track, etc.. Freight trains don't have a business income exposure. If there is a derailment or collision, the freight eventually arrives at the intended destination. If the freight is damaged, this is a liability exposure insured under the railroad liability coverage." The Travelers policy did not provide the railroad liability coverage, which was underwritten by a different insurance company unaffiliated with Travelers.

14. Having received this information, during the afternoon of March 21, 2013, Zachary Bowling obtained approval to issue the policy with combined limits of \$7,500,000, in accordance with the application and the March 20, 2013 clarifying email from the broker. The written approval instructions Bowling received from his supervisor contained the following instruction: "RRRS-\$5mm EE not BI-let's review the form."

15. After receiving the above described approval, Zachary Bowling sent a formal detailed proposal to the broker for the Defendants. The proposal included the following specification for the Railroad Rolling Stock insurance: “RR Rolling Stock BI and EE is Extra Expense Only***” The proposal was subsequently finalized and accepted by the Defendants without any change to this provision.

16. On or about April 19, 2013, Travelers issued to Defendants a commercial property insurance policy, bearing Policy No. QT-630-6357L188-TIL-13, with a policy period of April 1, 2013 to April 1, 2014 (the “Policy”). A certified copy of the Policy that was issued is attached as Exhibit A hereto. The Policy was issued to Defendants in Maine.

17. Due to mistake and inadvertence, the written Policy that was issued and accepted contained form CM T5 27 02 08, which stated that it was providing both “Business Income” and “Extra Expense” coverage for Railroad Rolling Stock. Also due to the mistake and inadvertence, there was no endorsement in the policy which deleted the “Business Income” coverage provided under form CM T5 27 02 08, despite the fact that it was the mutual intent of the parties that the policy provide coverage for Extra Expense only, and not provide coverage for loss of Business Income.

18. On or about July 6, 2013, a portion of a train operated by MMA, consisting of locomotives, railcars, and a caboose, derailed in Lac-Megantic, Quebec, Canada (the “Incident”). Some of the railcars (the “Railcars”) derailed. Some of the Railcars and their contents were damaged in connection with the derailment.

19. The Policy provides only first-party property insurance coverage for certain “Covered Property” described in the Declarations of the Policy, as described in further detail

below. The Policy does not provide any third-party liability insurance coverage, and therefore does not provide liability insurance for any claims that may be brought against MMA by other third parties who sustained personal injuries or damage to their property as a result of the Incident. Upon information and belief, MMA obtained third-party liability insurance from another insurance company or companies unaffiliated with Travelers. This lawsuit does not involve third-party liability insurance.

20. MMA has made a claim with Travelers under the Policy for damage to a locomotive, the Railcars, and railroad track and roadbed arising from the Incident. Travelers has not yet completed its investigation of the claim because the authorities investigating the Incident have only recently permitted Travelers access to the scene to evaluate the claimed damage. MMA has also made a claim with Travelers under the Policy for losses of business income resulting from the damage to the locomotive, the Railcars and the Track.

The Policy Does Not Cover the Railcars or Property Contained Therein

21. The “Railroad Rolling Stock Coverage Form” in the Policy contains the following grant of coverage and provisions concerning “Covered Property”:

We will pay for direct physical loss of or damage to Covered Property from any of the Covered Causes of Loss.

1. Covered Property

Covered Property, as used in this Coverage Form, means the following property described in the Declarations:

- a. Your railroad rolling stock including locomotives, railcars, and other equipment operated on railroad tracks;
- b. Your mobile equipment not licensed for highway use, which you use in the course of your railroad operations; and
- c. Similar property of others in your care, custody or control.

2. Property Not Covered

Covered Property does not include:

- a. Property that you loan, lease or rent to others;
- b. Property for sale or in the course of manufacture;
- c. Property while waterborne;
- d. Property contained on or in railroad rolling stock or mobile equipment;
- e. Railroad tracks, beds, switches, signals, trestles, bridges, tunnels or ties; or
- f. Contraband or property in the course of illegal transportation or trade.

(Policy, "Railroad Rolling Stock Coverage Form," at 1 (emphasis added).)

22. The Railcars do not fall within the definition of "Covered Property," quoted in Paragraph 21 above, because the Railcars are not "described in the Declarations" of the Policy, or in the Railroad Rolling Stock Schedule which is incorporated by reference into the Declarations.

23. Property contained in the Railcars is not "Covered Property" as that term is defined in the Policy because: (a) property contained in the Railcars does not fall within the definition of "Covered Property" quoted in Paragraph 21 above; and (b) the "Property Not Covered" section, quoted in Paragraph 21 above, specifies that "Covered Property does not include . . . d. Property contained on or in railroad rolling stock"

24. The Policy does not provide coverage for damage to the Railcars.

25. The Policy does not provide coverage for damage to any property in the Railcars.

Coverage for Damage to the Track Is Limited to \$250,000 Excess of a \$250,000 Deductible

26. As quoted in Paragraph 21 above, the "Railroad Rolling Stock Coverage Form" in the Policy specifies that "Covered Property does not include . . . Railroad tracks, beds . . . or ties"

27. The Policy contains an endorsement entitled “Railroad Rolling Stock Damage to Track and Roadbed Coverage,” which provides as follows:

This endorsement modifies insurance provided under the RAILROAD ROLLING STOCK COVERAGE FORM.”

A. The following Additional Coverage is added to Section – A Coverage:

1. Damage to Track and Roadbed

We will pay your reasonable and necessary expense to repair or replace damaged track and roadbed located on your premises or for which you are legally liable if the damage is caused by derailment or collision. The most we will pay under this Additional Coverage is \$25,000 for the sum of all covered expenses arising during each separate 12 month period of this policy.

The limit for this Additional Coverage is in addition to the Limit of Insurance.

28. The endorsement quoted in Paragraph 27 above was intended to provide a limit of \$250,000 instead of \$25,000.

29. The Policy also contains an endorsement entitled “Railroad Track & Road Bed Deductible” providing for a “Railroad Track and Roadbed Deductible” of \$250,000. The Policy thus provides coverage of up to \$250,000 for expense to repair or replace damaged track and roadbed that exceeds \$250,000. For example, if one of the defendants incurs expenses of \$350,000 to repair or replace damaged track or roadbed, the policy would provide coverage of \$100,000.

The Policy As Written Does Not Provide Coverage for Loss of Business Income or Extra Expense Caused by Damage to the Railcars, Property in the Railcars, or the Track

30. The Policy (as issued) contains form CM T5 27 02 08, an endorsement entitled “Railroad Rolling Stock ‘Business Income’ and ‘Extra Expense’ Coverage.” That form provides as follows:

This endorsement modifies insurance provided under the RAILROAD ROLLING STOCK COVERAGE FORM.”

A. The following Additional Coverage is added to Section – A Coverage:

1. “Business Income” and “Extra Expense”

We will pay:

- (a) The amount by which your “Business Income” is actually reduced during the “period of restoration” due to loss of or damage to Covered Property from a Covered Cause of Loss; and
- (b) Your necessary “Extra Expense” to continue normal operations following loss of or damage to Covered Property from a Covered Cause of Loss.

31. As noted above, it was not the intent of the parties that the Policy provide insurance for loss of Business Income. In any event, however, even as mistakenly issued, the written Policy does not provide coverage for loss of “Business Income” due to loss of or damage to the Railcars because the Railcars are not “Covered Property” as that term is defined in the “Railroad Rolling Stock Coverage Form.” The Policy also does not provide coverage for “Extra Expense” due to loss of or damage to the Railcars because the Railcars are not “Covered Property” as that term is defined in the “Railroad Rolling Stock Coverage Form.”

32. As noted above, it was not the intent of the parties that the Policy provide insurance for loss of Business Income. In any event, however, even as mistakenly issued, the written Policy does not provide coverage for loss of “Business Income” due to loss of or damage to property contained in the Railcars because property contained in the Railcars was not “Covered Property” as that term is defined in the “Railroad Rolling Stock Coverage Form.” The Policy also does not provide coverage for “Extra Expense” due to loss of or damage to property contained in the Railcars because property contained in the Railcars was not “Covered Property” as that term is defined in the “Railroad Rolling Stock Coverage Form.”

33. As noted above, it was not the intent of the parties that the Policy provide insurance for loss of Business Income. In any event, however, even as mistakenly issued, the written Policy does not provide coverage for loss of "Business Income" due to loss of or damage to the track or roadbed because neither the track nor the roadbed property were "Covered Property" as that term is defined in the "Railroad Rolling Stock Coverage Form." The Policy also does not provide coverage for "Extra Expense" due to loss of or damage to the track or roadbed because neither the track nor the roadbed were "Covered Property" as that term is defined in the "Railroad Rolling Stock Coverage Form."

34. The Policy does not provide coverage for loss of "Business Income" or "Extra Expense" due to loss of or damage to the track or roadbed because neither the track nor the roadbed were "Covered Property" as that term is defined in the "Railroad Rolling Stock Coverage Form."

COUNT ONE
(Declaratory Judgment Pursuant To 28 U.S.C. § 2201)

35. Travelers repeats and realleges the allegations contained in Paragraphs 1 through 34 above, as if fully set forth herein.

36. An actual controversy has arisen as to whether, or to what extent, the Policy as issued provides coverage for the Railcars, property contained in the Railcars, the track, the roadbed, and/or loss of business income and/or Extra Expense caused by damage to any such property damage.

37. Travelers is entitled to a declaration that, under the terms of the Policy, it is not required to provide coverage for any damage to the Railcars arising from the Incident.

38. Travelers is also entitled to a declaration that, under the terms of the Policy, it is not required to provide coverage for any damage to property contained in the Railcars arising from the Incident.

39. Travelers is also entitled to a declaration that, under the terms of the Policy, any expense incurred for repairing the track and/or roadbed arising from the Incident is covered only up to a limit of \$250,000, in excess of a deductible of \$250,000.

40. Travelers is also entitled to a declaration that, under the terms of the Policy as issued, it is not required to provide coverage for any loss of "Business Income" or "Extra Expense" which was due to loss of or damage to the Railcars, property contained in the Railcars, or the track and/or roadbed.

COUNT TWO

(Reformation)

41. Travelers repeats and realleges the allegations contained in Paragraphs 1 through 34 above, as if fully set forth herein.

42. The parties intended that the Railroad Rolling Stock insurance provided in the Policy not provide insurance for loss of Business Income, and that the only time element coverage to be provided under the Policy would be Extra Expense.

43. The written Policy was mistakenly issued and accepted with form CM T5 27 02 08, and without an endorsement which would make it clear that the Business Income coverage outlined in form CM T5 27 02 08 would not be applicable.

44. The written Policy should be reformed to delete any coverage for Business Income resulting from damage to Railroad Rolling Stock.

REQUESTS FOR RELIEF

WHEREFORE, Travelers respectfully requests that the Court grant it the following relief:

- A. Enter a declaratory judgment that the Policy does not provide coverage for any damage to the Railcars, or to property contained in the Railcars;
- B. Enter a declaratory judgment that any expense incurred for repairing damage to the track or the roadbed arising from the Incident is covered only up to a limit of \$250,000, in excess of a deductible of \$250,000;
- C. Enter a declaratory judgment that the Policy does not provide coverage for any loss of "Business Income" or "Extra Expense" which was due to loss of or damage to the Railcars, property contained in the Railcars, or the track or the roadbed;
- D. Reform the Policy to delete any coverage for loss of Business Income resulting from loss to Railroad Rolling Stock; and
- E. Grant such other relief as this Court deems just and appropriate.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

CERTIFICATE OF SERVICE

I, Maire B. Corcoran Ragozzine, Esq., being over the age of eighteen and an attorney at Bernstein, Shur, Sawyer & Nelson, P.A. in Portland, Maine, hereby certify that, on March 27, 2014, I filed the *Trustee's Supplemental Brief Regarding Proceeds of Travelers Insurance Policy* via the Court's CM/ECF electronic filing system and served upon all parties receiving notice through the CM/ECF system.

Dated: March 27, 2014

/s/ Maire B. Corcoran Ragozzine, Esq.
Maire B. Corcoran Ragozzine, Esq.

BERNSTEIN, SHUR, SAWYER & NELSON
100 Middle Street
P.O. Box 9729
Portland, ME 04104-5029
(207) 774-1200

SERVICE LIST

Served via CM/ECF:

D. Sam Anderson, Esq. on behalf of Attorney Bernstein, Shur, Sawyer & Nelson
sanderson@bernsteinshur.com,
acummings@bernsteinshur.com; sspizuoco@bernsteinshur.com; astewart@bernsteinshur.com

D. Sam Anderson, Esq. on behalf of Trustee Robert J. Keach
sanderson@bernsteinshur.com,
acummings@bernsteinshur.com; sspizuoco@bernsteinshur.com; astewart@bernsteinshur.com

Aaron P. Burns on behalf of Interested Party New England Independent Transmission Company,
LLC
aburns@pearcedow.com, rpearce@pearcedow.com, lsmith@pearcedow.com

Richard Paul Campbell on behalf of Creditor Progress Rail Services Corporation
rpcampbell@campbell-trial-lawyers.com, mmichitson@campbell-trial-lawyers.com

Roger A. Clement, Jr., Esq. on behalf of Attorney Verrill Dana LLP
rclement@verrilldana.com, nhull@verrilldana.com; bankr@verrilldana.com

Roger A. Clement, Jr., Esq. on behalf of Debtor Montreal Maine & Atlantic Railway Ltd.
rclement@verrilldana.com, nhull@verrilldana.com; bankr@verrilldana.com

Roger A. Clement, Jr., Esq. on behalf of Trustee Robert J. Keach
rclement@verrilldana.com, nhull@verrilldana.com; bankr@verrilldana.com

Daniel C. Cohn, Esq. on behalf of Creditor Estates of Marie Alliance, et al
dcohn@murthalaw.com, njoyce@murthalaw.com

Maire Bridin Corcoran Ragozzine, Esq. on behalf of Defendant Robert J. Keach, in his capacity as
Chapter 11 Trustee of Maine Montreal and Atlantic Railway, Ltd.
mcorcoran@bernsteinshur.com,
sspizuoco@bernsteinshur.com; astewart@bernsteinshur.com; acummings@bernsteinshur.com; kfox@bernsteinshur.com; kquirk@bernsteinshur.com

Maire Bridin Corcoran Ragozzine, Esq. on behalf of Trustee Robert J. Keach
mcorcoran@bernsteinshur.com,
sspizuoco@bernsteinshur.com; astewart@bernsteinshur.com; acummings@bernsteinshur.com; kfox@bernsteinshur.com; kquirk@bernsteinshur.com

Keith J. Cunningham, Esq. on behalf of Creditor Eastern Maine Railway Company
kcunningham@pierceatwood.com, mpottle@pierceatwood.com; rkelly@pierceatwood.com

Keith J. Cunningham, Esq. on behalf of Creditor Maine Northern Railway Company
kcunningham@pierceatwood.com, mpottle@pierceatwood.com; rkelly@pierceatwood.com

Keith J. Cunningham, Esq. on behalf of Creditor New Brunswick Southern Railway Company
kcunningham@pierceatwood.com, mpottle@pierceatwood.com; rkelly@pierceatwood.com

Debra A. Dandeneau on behalf of Creditor CIT Group, Inc.
, arvin.maskin@weil.com

Joshua R. Dow, Esq. on behalf of Creditor Canadian Pacific Railway
jdow@pearcedow.com, rpearce@pearcedow.com; lsmith@pearcedow.com

Joshua R. Dow, Esq. on behalf of Creditor Canadian Pacific Railway Co.
jdow@pearcedow.com, rpearce@pearcedow.com; lsmith@pearcedow.com

Michael A. Fagone, Esq. on behalf of Attorney Bernstein, Shur, Sawyer & Nelson
mfagone@bernsteinshur.com,
acummings@bernsteinshur.com; astewart@bernsteinshur.com; sspizuoco@bernsteinshur.com; kquirk@bernsteinshur.com; kfox@bernsteinshur.com

Michael A. Fagone, Esq. on behalf of Debtor Montreal Maine & Atlantic Railway Ltd.
mfagone@bernsteinshur.com,
acummings@bernsteinshur.com; astewart@bernsteinshur.com; sspizuoco@bernsteinshur.com; kquirk@bernsteinshur.com; kfox@bernsteinshur.com

Michael A. Fagone, Esq. on behalf of Defendant Robert J. Keach, in his capacity as Chapter 11
Trustee of Maine Montreal and Atlantic Railway, Ltd.
mfagone@bernsteinshur.com,
acummings@bernsteinshur.com; astewart@bernsteinshur.com; sspizuoco@bernsteinshur.com; kquirk@bernsteinshur.com; kfox@bernsteinshur.com

Michael A. Fagone, Esq. on behalf of Plaintiff Robert J. Keach
mfagone@bernsteinshur.com,
acummings@bernsteinshur.com; astewart@bernsteinshur.com; sspizuoco@bernsteinshur.com; kquirk@bernsteinshur.com; kfox@bernsteinshur.com

Michael A. Fagone, Esq. on behalf of Trustee Robert J. Keach
mfagone@bernsteinshur.com,
acummings@bernsteinshur.com; astewart@bernsteinshur.com; sspizuoco@bernsteinshur.com; kquirk@bernsteinshur.com; kfox@bernsteinshur.com

Daniel R. Felkel, Esq. on behalf of Creditor Dakota Plains Transloading, LLC, Dakota Petroleum Transport Solutions LLC, Dakota Plains Marketing LLC
dfelkel@troubhheisler.com

Jeremy R. Fischer on behalf of Interested Party Indian Harbor Insurance Company
jfischer@dwmlaw.com, aprincedwmlaw.com

Jeremy R. Fischer on behalf of Interested Party Railroad Acquisition Holdings LLC
jfischer@dwmlaw.com, aprincedwmlaw.com

Jeremy R. Fischer on behalf of Interested Party XL Insurance Company, Ltd.
jfischer@dwmlaw.com, aprincedwmlaw.com

Isaiah A. Fishman on behalf of Creditor C. K. Industries, Inc.
ifishman@krasnowsaunders.com, ryant@krasnowsaunders.com; cvalente@krasnowsaunders.com

Peter J. Flowers on behalf of Creditor Estates of Stephanie Bolduc
pjf@meyers-flowers.com

Christopher Fong, Esq. on behalf of Creditor Informal Committee of Quebec Claimants
christopherfong@paulhastings.com

Christopher Fong, Esq. on behalf of Creditor Official Committee of Victims
christopherfong@paulhastings.com

Taruna Garg, Esq. on behalf of Creditor Estates of Marie Alliance, et al
tgarg@murthalaw.com, cball@murthalaw.com; kpatten@murthalaw.com

Jay S. Geller on behalf of Creditor Western Petroleum Corporation
jgeller@maine.rr.com

Jay S. Geller on behalf of Defendant Petroleum Transport Solutions, LLC
jgeller@maine.rr.com

Jay S. Geller on behalf of Defendant Western Petroleum Company

jgeller@maine.rr.com

Jay S. Geller on behalf of Defendant World Fuel Services Corporation

jgeller@maine.rr.com

Jay S. Geller on behalf of Defendant World Fuel Services, Canada, Inc.

jgeller@maine.rr.com

Jay S. Geller on behalf of Defendant World Fuel Services, Inc.

jgeller@maine.rr.com

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

craig.goldblatt@wilmerhale.com

Frank J. Guadagnino on behalf of Creditor Maine Department of Transportation

fguadagnino@clarkhillthorpreed.com

Michael F. Hahn, Esq. on behalf of Creditor Bangor Savings Bank

mhahn@eatonpeabody.com,

clavertu@eatonpeabody.com;dcroizier@eatonpeabody.com;jmiller@eatonpeabody.com;dgerry@eatonpeabody.com

Andrew Helman, Esq. on behalf of Creditor Wheeling & Lake Erie Railway Company

ahelman@mcm-law.com, bankruptcy@mcm-law.com

Andrew Helman, Esq. on behalf of Plaintiff Wheeling & Lake Erie Railway Company

ahelman@mcm-law.com, bankruptcy@mcm-law.com

Paul Joseph Hemming on behalf of Creditor Canadian Pacific Railway Co.

pheemming@briggs.com, pkringen@briggs.com

Seth S. Holbrook on behalf of Creditor Atlantic Specialty Insurance Company

holbrook_murphy@msn.com

Nathaniel R. Hull, Esq. on behalf of Debtor Montreal Maine & Atlantic Railway Ltd.

nhull@verrilldana.com, bankr@verrilldana.com

David C. Johnson on behalf of Creditor Wheeling & Lake Erie Railway Company

bankruptcy@mcm-law.com, djohnson@mcm-law.com

David C. Johnson on behalf of Plaintiff Wheeling & Lake Erie Railway Company
bankruptcy@mcm-law.com, djohnson@mcm-law.com

Jordan M. Kaplan, Esq. on behalf of Creditor Brotherhood of Locomotive Engineers and Trainmen
jkaplan@zwerdling.com, mwolly@zwerdling.com

Robert J. Keach, Esq. on behalf of Trustee Robert J. Keach
rkeach@bernsteinshur.com,
acummings@bernsteinshur.com; astewart@bernsteinshur.com; kquirk@bernsteinshur.com

Curtis E. Kimball, Esq. on behalf of Creditor Center Beam Flat Car Company, Inc.
ckimball@rudman-winchell.com, jphair@rudman-winchell.com; cderrah@rudmanwinchell.com

Curtis E. Kimball, Esq. on behalf of Creditor First Union Rail
ckimball@rudman-winchell.com, jphair@rudman-winchell.com; cderrah@rudmanwinchell.com

Curtis E. Kimball, Esq. on behalf of Creditor J. M. Huber Corporation
ckimball@rudman-winchell.com, jphair@rudman-winchell.com; cderrah@rudmanwinchell.com

Thomas Addison Knowlton, Esq. on behalf of Creditor Maine Revenue Services
Thomas.a.knowlton@maine.gov

Andrew J. Kull, Esq. on behalf of Creditor Estate of Jefferson Troester
akull@mittelassen.com, ktrogner@mittelassen.com

George W. Kurr, Jr. on behalf of Creditor Estates of David Lacroix Beaudoin
gwkurr@grossminsky.com, tmseymour@grossminsky.com

George W. Kurr, Jr. on behalf of Creditor Estates of Marie Alliance, et al
gwkurr@grossminsky.com, tmseymour@grossminsky.com

George W. Kurr, Jr. on behalf of Creditor Estates of Stephanie Bolduc
gwkurr@grossminsky.com, tmseymour@grossminsky.com

George W. Kurr, Jr. on behalf of Creditor Real Custeau Claimants et al
gwkurr@grossminsky.com, tmseymour@grossminsky.com

Alan R. Lepene, Esq. on behalf of Creditor Eastern Maine Railway Company
Alan.Lepene@ThompsonHine.com, Cathy.Heldt@ThompsonHine.com

Alan R. Lepene, Esq. on behalf of Creditor Maine Northern Railway Company
Alan.Lepene@ThompsonHine.com, Cathy.Heldt@ThompsonHine.com

Alan R. Lepene, Esq. on behalf of Creditor New Brunswick Southern Railway Company
Alan.Lepene@ThompsonHine.com, Cathy.Heldt@ThompsonHine.com

Alan R. Lepene, Esq. on behalf of Interested Party Irving Paper Limited
Alan.Lepene@ThompsonHine.com, Cathy.Heldt@ThompsonHine.com

Alan R. Lepene, Esq. on behalf of Interested Party Irving Pulp & Paper, Limited
Alan.Lepene@ThompsonHine.com, Cathy.Heldt@ThompsonHine.com

Alan R. Lepene, Esq. on behalf of Interested Party J.D. Irving, Limited
Alan.Lepene@ThompsonHine.com, Cathy.Heldt@ThompsonHine.com

Edward MacColl, Esq. on behalf of Creditor CIT Group, Inc.
emaccoll@thomport.com, bbowman@thomport.com, jhuot@thomport.com, eakers@thomport.com

Benjamin E. Marcus, Esq. on behalf of Interested Party Railroad Acquisition Holdings LLC
bmarcus@dwmlaw.com, hwhite@dwmlaw.com, dsoucy@dwmlaw.com

Benjamin E. Marcus, Esq. on behalf of Interested Party XL Insurance Company, Ltd.
bmarcus@dwmlaw.com, hwhite@dwmlaw.com, dsoucy@dwmlaw.com

George J. Marcus, Esq. on behalf of Creditor Wheeling & Lake Erie Railway Company
bankruptcy@mcm-law.com

George J. Marcus, Esq. on behalf of Plaintiff Wheeling & Lake Erie Railway Company
bankruptcy@mcm-law.com

Patrick C. Maxcy, Esq. on behalf of Creditor Rail World, Inc.
patrick.maxcy@dentons.com

Patrick C. Maxcy, Esq. on behalf of Defendant LMS Acquisition Corp.
patrick.maxcy@dentons.com

Patrick C. Maxcy, Esq. on behalf of Defendant Montreal Maine & Atlantic Corporation
patrick.maxcy@dentons.com

Patrick C. Maxcy, Esq. on behalf of Other Prof. Edward A. Burkhardt, Robert Grindrod, Gaynor

Ryan, Joseph McGonigle, Donald M. Gardner, Jr., Cathy Aldana, Rail World, Inc, Rail World Holdings, LLC, Rail World Locomotive Leasing, LLC and Earlston As
patrick.maxcy@dentons.com

John R McDonald, Esq. on behalf of Creditor Canadian Pacific Railway Co.
jmcdonald@briggs.com, mjacobson@briggs.com

Kelly McDonald, Esq. on behalf of Creditor Camden National Bank
kmcdonald@mpmlaw.com, kwillette@mpmlaw.com

Kelly McDonald, Esq. on behalf of Creditor GNP Maine Holdings, LLC
kmcdonald@mpmlaw.com, kwillette@mpmlaw.com

James F. Molleur, Esq. on behalf of Creditor Brotherhood of Locomotive Engineers and Trainmen
jim@molleurlaw.com,
all@molleurlaw.com; tanya@molleurlaw.com; jen@molleurlaw.com; barry@molleurlaw.com; kati@molleurlaw.com; martine@molleurlaw.com; Jessica@molleurlaw.com

Ronald Stephen Louis Molteni, Esq. on behalf of Interested Party Surface Transportation Board
moltenir@stb.dot.gov

Victoria Morales on behalf of Creditor Maine Department of Transportation
Victoria.Morales@maine.gov,
rhotaling@clarkhillthorpreed.com, Toni.Kemmerle@maine.gov, ehocky@clarkhill.com, Nathan.Moalton@maine.gov, Robert.Elder@maine.gov

Dennis L. Morgan on behalf of Creditor Fred's Plumbing & Heating, Inc.
dmorgan@coopercargillchant.com, hplourde@coopercargillchant.com

Stephen G. Morrell, Esq. on behalf of U.S. Trustee Office of U.S. Trustee
stephen.g.morrell@usdoj.gov

Kameron W. Murphy, Esq. on behalf of Creditor Midwest Railcar Corporation
kmurphy@tuethkeeney.com, gcasey@tuethkeeney.com

Office of U.S. Trustee
ustpregion01.po.ecf@usdoj.gov

Richard P. Olson, Esq. on behalf of Creditor Informal Committee of Quebec Claimants
rolson@perkinsolson.com, jmoran@perkinsolson.com; lkubiak@perkinsolson.com

Jeffrey T. Piampiano, Esq. on behalf of Interested Party XL Insurance Company, Ltd.
jpiampiano@dwmlaw.com, aprince@dwmlaw.com; hwhite@dwmlaw.com

Jennifer H. Pincus, Esq. on behalf of U.S. Trustee Office of U.S. Trustee
Jennifer.H.Pincus@usdoj.gov

William C. Price on behalf of Creditor Maine Department of Transportation
wprice@clarkhill.com, rhotaling@clarkhillthorpreed.com

Elizabeth L. Slaby on behalf of Creditor Maine Department of Transportation
bslaby@clarkhillthorpreed.com

F. Bruce Sleeper, Esq. on behalf of Creditor Guy Ouellet
bankruptcy@jbgh.com

F. Bruce Sleeper, Esq. on behalf of Creditor Louis-Serges Parent
bankruptcy@jbgh.com

F. Bruce Sleeper, Esq. on behalf of Creditor Serge Jacques
bankruptcy@jbgh.com

F. Bruce Sleeper, Esq. on behalf of Creditor Yannick Gagne
bankruptcy@jbgh.com

Renee D. Smith on behalf of Creditor Western Petroleum Corporation
renee.smith@kirkland.com, brian.rittenhouse@kirkland.com

John Thomas Stemplewicz on behalf of Creditor United States of America
john.stemplewicz@usdoj.gov

Deborah L. Thorne, Esq. on behalf of Creditor GATX Corporation
deborah.thorne@btlaw.com

Timothy R. Thornton on behalf of Creditor Canadian Pacific Railway Co.
pvolk@briggs.com

Mitchell A. Toups on behalf of Interested Party Wrongful Death, Personal Injury, Business,
Property and Environmental Clients as of September 1, 2013
matoups@wgttlaw.com, jgordon@wgttlaw.com

Jason C. Webster, Esq. on behalf of Creditor Estates of David Lacroix Beaudoin

jwebster@thewebsterlawfirm.com,

dgarcia@thewebsterlawfirm.com; hvicknair@thewebsterlawfirm.com

William H. Welte, Esq. on behalf of Creditor Atlantic Specialty Insurance Company

wwelte@weltelaw.com

Elizabeth J. Wyman, Esq. on behalf of Creditor Maine Department of Transportation

liz.wyman@maine.gov, eve.fitzgerald@maine.gov