

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE**

In re:

MONTREAL, MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670

Chapter 11

ROBERT J. KEACH, solely in his capacity as
the chapter 11 trustee for MONTREAL,
MAINE & ATLANTIC RAILWAY, LTD.,

Plaintiff

v.

WORLD FUEL SERVICES CORPORATION,
WORLD FUEL SERVICES, INC.,
WESTERN PETROLEUM COMPANY,
WORLD FUEL SERVICES, CANADA, INC.,
AND PETROLEUM TRANSPORT
SOLUTIONS, LLC, CANADIAN PACIFIC
RAILWAY COMPANY, AND IRVING OIL
LIMITED

Defendants.

Adversary Proceeding No. 14-1001

MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Robert J. Keach, in his capacity as trustee (the “Trustee”) of Montreal Maine & Atlantic Railway, Ltd. (the “Debtor”), the plaintiff in the above-captioned adversary proceeding (the “Adversary Proceeding”), by and through his undersigned counsel, hereby moves this Court for leave to file a second amended complaint in this action pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, as made applicable to this proceeding by Rule 7015 of the Federal Rules of Bankruptcy Procedure, for the purpose adding an additional party defendant (the “Motion”). In support of this Motion, the Trustee states as follows:

BACKGROUND

1. On January 30, 2014, the Trustee filed his complaint [Adv. D.E. 1] (the “Complaint”) against World Fuel Services Corporation, World Fuel Services Company, Western Petroleum Company, World Fuel Services, Canada, Inc., and Petroleum Transport Solutions, LLC (collectively, the “WFS Entities”) asserting a cause of action for negligence, as well as a request for the disallowance of claims. See Complaint, ¶¶ 98-104, 111. Pursuant to this Court’s order dated May 28, 2014 [D.E. 26], the WFS Entities filed an answer to the Complaint on May 29, 2014 [Adv. D.E. 27].

2. On November 17, 2014, the Trustee filed the Motion for Leave to Amend Complaint (the “First Motion to Amend”) [Adv. D.E. 60] seeking, *inter alia*, to add Canadian Pacific Railway Company (“CPR”) and Irving Oil Limited as additional parties defendant. On December 23, 2015, the Court entered an order granting the First Motion to Amend [Adv. D.E. 88]. Thereafter, on January 9, 2015, the Trustee filed, and subsequently served, the First Amended Complaint (the “Amended Complaint”) [Adv. D.E. 95].

3. Pursuant to the Amended Joint Pretrial Statement/Pretrial Order (the “Amended JPO”) [Adv. D.E. 108] and the Third Amended Joint Pretrial Statement/Pretrial Order [Adv. D.E. 113], the Trustee and the WFS Entities are engaged in the initial stages of discovery, while the Trustee and CPR are currently engaged in jurisdictional discovery. A pretrial conference will be scheduled following the completion of discovery. See Amended JPO, Section XIII.

4. A status conference is currently scheduled for April 28, 2015 [Adv. D.E. 124].

5. The Trustee now seeks leave to amend the Amended Complaint (the “Second Amended Complaint”) in order to add an additional party defendant. A copy of the proposed Second Amended Complaint is attached hereto as **Exhibit A**.

RELIEF REQUESTED

6. Through this Motion, the Trustee requests that this Court enter an Order, substantially in the form attached hereto as **Exhibit B**, granting leave to the Trustee to file the Second Amended Complaint pursuant to Fed. R. Civ. P. 15(a)(2), as made applicable to this Adversary Proceeding by Fed. R. Bankr. P. 7015.

BASIS FOR RELIEF

7. Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, made applicable here by Rule 7015 of the Federal Rules of Bankruptcy Procedure, leave to amend a pleading “shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a)(2). “[T]his mandate is to be heeded.” Foman v. Davis, 371 U.S. 178, 182 (1962) (citation omitted). Indeed, “[i]f the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits.” Id.; *see also* J.S. McCarthy, Co. v. Brausse Diecutting & Converting Equip., Inc., 226 F.R.D. 14, 17 (D. Me. 2005) (recognizing that “the spirit of the rule dictates a preference for decisions on the merits”) (internal quotation marks and citations omitted). Thus,

[i]n the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.--the leave sought should, as the rules require, be ‘freely given.’

Foman, 371 U.S. at 182; *see also* Cambridge Mut. Ins. Co. v. Patriot Mut. Ins. Co., 323 F.Supp.2d 108, 110 (D. Me. 2004) (recognizing that “[u]nder the liberal standard of Rule 15(a), few reasons will justify denying a motion to amend the pleadings”); *see also* Federal Deposit Ins. Corp v. Consolidated Mortg. & Finance Corp., 805 F.2d 14, 16 (1st Cir. 1986) (Rule 15 “requires that motions to amend be liberally granted in the absence of undue prejudice to the

opposing party.”). In line with these principles, “Rule 15(a) encourages a non-punctilious view of motions to amend pleadings.” J.S. McCarthy, 226 F.R.D. at 16 (concluding that “to deny McCarthy’s motion to amend would be to interpret Rule 15(a) in an overly punctilious fashion inconsistent with the liberal dictates of the Rule”). The philosophy behind this liberal rule is that “a party should not be precluded by technicalities of pleading from presenting his claim or defense on its merits unless the pleadings have misled the opposing party to his prejudice.” 1 FIELD, MCKUSICK & WROTH, MAINE CIVIL PRACTICE § 15.3 at 302-03 (2d ed.1981) (noting that prejudice means more than an increased likelihood of defeat in the litigation if the amendment is granted).

8. Moreover, leave to amend to add additional defendants should also be freely granted particularly where amendment is sought prior to general discovery and the claims against the newly-added defendants arise out of the same occurrence or series of occurrences or there are common questions of fact or law. *See, e.g.* Fed. R. Civ. P. 20(a)(2); *see also*, Forsberg v. Ocwen Loan Servicing LLC, 2014 WL 3563298 at *4 (W.D. Wash., July 18, 2014) (granting leave to amend to add additional defendants where claims arose out of same facts as existing complaint); In re Western States Wholesale Natural Gas Antitrust Litigation, 619 F. Supp. 2d 1062, 1073 (D. Nev. 2008) (allowing amendment to add new parties over objections where no scheduling order had been entered, no deadline had been established for adding parties, and general discovery had not commenced.); Marshall v. McCown Deleeuw & Co., 391 F. Supp. 2d 880, (D. Idaho 2005) (motion to amend to add several new defendants in WARN action granted.)

9. Here, consistent with the general rule, the Trustee should be granted leave to file the Second Amended Complaint. There is no undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the Defendants, or futility of the amendment. The Trustee and the WFS Entities are still in the early

stages of formal discovery, while discovery efforts between the Trustee and CPR have been limited to the issue jurisdiction. Accordingly, the existing parties will suffer no prejudice whatsoever. The Trustee merely seeks to amend the Amended Complaint based on new facts, information and evidence that have come to light or have become available to the Trustee since the filing of the Amended Complaint. Specifically, as reflected in the Second Amended Complaint, the Trustee seeks to add SMBC Rail Services, LLC (“SMBC”) as a party defendant in this Adversary Proceeding. Moreover, the Adversary Proceeding is still in its early stages. As noted above, a Pretrial Conference has not yet been held, and discovery is still in the early stages.

10. Counsel to SMBC and all Defendants have been served with this Motion.

CONCLUSION

For all of the foregoing reasons, the Trustee requests that this Court enter an Order granting the Trustee leave to file his Second Amended Complaint, and such other and further relief as the Court deems just and proper.

Dated: April 15, 2015

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

By his attorneys:

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WORLD FUEL SERVICES CORPORATION,
WORLD FUEL SERVICES, INC.,
WESTERN PETROLEUM COMPANY,
WORLD FUEL SERVICES, CANADA, INC.,
PETROLEUM TRANSPORT SOLUTIONS,
LLC, CANADIAN PACIFIC RAILWAY
COMPANY, IRVING OIL LIMITED, and
SMBC RAIL SERVICES, LLC,

Defendants.

Adversary Proceeding No.

SECOND AMENDED COMPLAINT

Robert J. Keach, solely in his capacity as the chapter 11 trustee of Montreal, Maine & Atlantic Railway, Ltd. (the “Trustee”), by and through his undersigned counsel, brings this Second Amended Complaint asserting direct claims against Defendants World Fuel Services Corporation (“WFSC”), World Fuel Services, Inc. (“WFSI”), Western Petroleum Company (“Western Petroleum”) (WFSC, WFSI, and Western Petroleum, collectively, the “World Fuel Defendants”), Canadian Pacific Railway Company (“CPR”), and Irving Oil Ltd. (“Irving”) (the

World Fuel Defendants, CPR, and Irving, collectively, the “Shipping Defendants”), as well as SMBC Rail Services, LLC (“SMBC,” and together with the Shipping Defendants, the “Defendants”). The Trustee also brings this Second Amended Complaint seeking disallowance of the Proofs of Claim filed by any and all of the Defendants and by Defendant World Fuel Services Canada, Inc. (“WF Canada”) and Defendant Petroleum Transport Solutions, LLC (“PTS”) (WF Canada, and PTS, collectively, the “Objection Defendants”). In support of this Second Amended Complaint, the Trustee avers as follows:

Nature of the Action

1. This action arises out of Defendants’ individual and/or collective negligence and/or violation of applicable laws and regulations in connection with the shipment of crude oil upon and the subsequent derailment of a freight train transporting seventy-two tank cars loaded with crude oil (the “Train”) in Lac-Mégantic, Quebec (Canada) on July 6, 2013 (the “Derailment”).

2. Montreal, Maine & Atlantic Railway, Ltd. (“MMAR”) and its wholly-owned Canadian subsidiary, Montreal Maine & Atlantic Canada Co. (“MMA Canada”), operate an integrated, international shortline freight railroad system involving five hundred ten miles of track located in the States of Maine and Vermont, and the Canadian Province of Québec.

3. MMAR and MMA Canada were the operators of the Train at the time of the Derailment. SMBC leased a number of the tank cars that made up the Train to Western Petroleum. The entire shipment of crude oil was subject to a through bill of lading issued by CPR to Western Petroleum, WFSC and/or WFSI and naming Irving as the consignee. Irving was the importer of the crude oil into Canada; the shipment was bound for an Irving refinery.

4. The Train’s cargo of crude oil, which was produced from the Bakken Formation

in North Dakota, was owned by WFSI. The Shipping Defendants arranged for its transport by rail from New Town, North Dakota to Irving's oil refinery in Saint John, New Brunswick (Canada). CPR issued to WFSI, WFSC and/or Western Petroleum a through bill of lading (the "Bill of Lading") as to the entire shipment of crude oil calling for shipment through to Irving's refinery in Saint John, New Brunswick, Canada. The Train was originally operated by CPR, which later "handed it off" to MMAR, but no new bill of lading was issued and the shipment remained subject to CPR's original through bill of lading. Irving was the ultimate purchaser of the crude oil cargo, which it imported from the United States into Canada.

5. Safe and prudent shipping practices, as well as governmental regulations in the United States and Canada, mandate that parties involved in shipment and/or importation of certain types of products that are deemed to be hazardous -- which includes crude oil -- must ensure that the product is properly classified, identified, labelled, and packaged so as to enable safe transport of such cargo.

6. As detailed below, if the goods are not properly classified, or if there are reasonable grounds to suspect that the goods are not properly classified, the parties responsible for the shipment have an affirmative duty not to place the goods for shipment, or to stop any such shipment, until the classification can be clarified or corrected.

7. The shipping documents provided by the Shipping Defendants identified the Train's entire cargo of crude oil as a Class 3 flammable liquid having a high flash point -- the temperature at which organic material gives off sufficient vapors to ignite -- and, hence, a low danger. The Bill of Lading identified the shipment as "Packing Group III", the safest classification in that category.

8. These representations were false. On the contrary, tests conducted after the Derailment have confirmed that the crude oil had a dangerously low flash point and was highly volatile. Moreover, a number of the safety data sheets supplied to WFSI, WRSC and/or Western Petroleum, covering a significant portion of the crude oil shipped, identified the oil as Packing Group I, the most dangerous, volatile and explosive classification in that category.

9. The tank cars provided to MMAR for transport of the crude oil cargo, including those provided by SMBC, were all of the same model and design, so-called DOT-111's. Defendants knew or should have known that, without reinforced shells, head shields, valves, and other exposed fittings, this type of tank car was prone to rupture upon derailment. Further, Defendants knew or should have known that unreinforced tank cars were unsafe and unsuitable for the transport of such cargo. Indeed, the governing leases for a number of the tank cars leased to Western Petroleum, WFSC and/or WFSI expressly prohibited shipment of crude oil classified as Packing Group I or even Packing Group II in the leased tank cars, presumably because the lessors, including SMBC, and/or manufacturers of such tank cars were aware that they were not fit for the shipment of such dangerous goods.

10. Had the Shipping Defendants properly classified, identified, and labelled the Train's crude oil cargo, MMAR could and would have taken steps that would have avoided the Derailment, and/or the crude oil would have been shipped, from the outset, in other, safer tank cars, or not shipped at all.

11. The Derailment caused many of the Train's tank cars to rupture. Given its low flash point, the crude oil that leaked from the ruptured tank cars ignited, resulting in a number of concussive explosions and a massive, uncontrolled fire.

12. The explosions and fire, in turn, resulted in the loss of forty-seven lives, the destruction of a substantial portion of downtown Lac-Mégantic, significant environmental damage, the disruption of local businesses, and the evacuation of many of Lac-Mégantic's residents.

13. The death and destruction arising out of the Derailment spawned numerous claims, suits, and proceedings against MMAR, including: (i) suits seeking damages for personal injury, wrongful death, and property damage; (ii) governmental proceedings seeking to recover the clean-up costs of environmental damage; and (iii) claims seeking indemnity and/or contribution with respect to those claims, suits, and proceedings. The damages resulting from the Derailment have been estimated to be in the hundreds of millions of dollars, and potentially in excess of a billion dollars.

14. These claims, suits, and proceedings, in turn, impelled MMAR to seek bankruptcy protection under chapter 11 of the Bankruptcy Code and have, effectively, destroyed MMAR's business, causing a serious devaluation of MMAR's assets.

15. Defendants owed a duty to the public at large and to MMAR specifically to take reasonable measures to avoid or mitigate the dangers associated with the transport of the Train's crude oil cargo and to exercise reasonable care to ensure that the Train could be operated in a safe manner to eliminate or reduce the risk of a derailment or minimize the damage that would result in the event of a derailment.

16. Such duties included, but were not limited to: (i) properly classifying the cargo; (ii) not placing the crude oil for transport until the shipment was properly tested and properly classified; (iii) stopping the shipment of the crude oil until it was properly classified; (iv) ensuring that MMAR was informed of the highly dangerous nature of the Train's cargo by,

among other things, ensuring that the crude oil cargo was properly identified, classified, and labelled as a highly flammable liquid so that MMAR could implement adequate safety procedures and protocols; and (v) providing safe and appropriate packaging for the crude oil cargo, including providing properly designed and reinforced tank cars that would have prevented or reduced the damages resulting from the Derailment.

17. Defendants breached those duties, which breaches proximately caused MMAR to suffer substantial injuries. MMAR's injuries include, but are not limited to: (i) the costs and expenses associated with being named in the numerous suits, actions, and proceedings in various jurisdictions, which arise out of the Derailment; (ii) actual or potential liability for the claims made against MMAR in such suits, actions, and proceedings; and (iii) the destruction of MMAR's business operations, and the lost value of its assets; asset value lost exceeds \$50 million.

18. By this action, MMAR seeks to recover damages from Defendants, jointly and severally and in an amount to be determined at trial, for those injuries.

Jurisdiction and Venue

19. This Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b).

20. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

21. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2), including, without limitation, §157(b)(2)(C). The Objection Defendants, PTS, and WF Canada, have each filed a proof of claim in MMAR's chapter 11 case: PTS filed POC No. 28 and WF Canada filed POC No. 30. Additionally, WFSI filed a proof of claim, POC No. 32; WFSC filed a proof of claim, POC No. 31; and Western Petroleum filed a proof of claim, POC No. 29. Those proofs of claim

assert claims allegedly arising out of the Derailment. In addition, CPR has filed a proof of claim, claim 92-2 (filed 6/13/14), asserting *inter alia*, claims allegedly arising out of the Derailment. This Adversary Proceeding is a core matter over which the Court may, consistent with the United States Constitution, exercise the judicial power of the United States of America.

Parties

22. The Trustee was appointed MMAR's bankruptcy trustee pursuant to 11 U.S.C. § 1163 on August 21, 2013, and has, since that date, continued to function as the chapter 11 trustee of MMAR. MMAR, the debtor in this chapter 11 case, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Hermon, Maine. MMAR is the parent company of MMA Canada, a company formed and existing as an unlimited liability company under the law of Nova Scotia, and MMAR is or may be liable for the debts and obligations of MMA Canada.

23. Upon information and belief, Defendant WFSC is a corporation organized and existing under the laws of the State of Florida, with its principal place of business located in Miami, Florida.

24. Upon information and belief, Defendant WFSI is a corporation organized and existing under the laws of the State of Florida, with its principal place of business located in Miami, Florida.

25. Upon information and belief, Defendant Western Petroleum is a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business located in Wayzata, Minnesota.

26. Upon information and belief, Defendant WF Canada is a corporation organized and existing under the laws of British Columbia (Canada), with its principal place of business

located in Miami, Florida.

27. Upon information and belief, Defendant PTS is a limited liability company organized and existing under the laws of the State of Minnesota, with its principal place of business located in Eden Prairie, Minnesota.

28. Upon information and belief, Defendant CPR is a corporation organized and existing under the laws of Alberta, Canada, with its principal place of business located in Calgary, Alberta, Canada, and with a place of business in Montreal, Quebec, Canada.

29. Upon information and belief, Defendant Irving is a corporation organized and existing under the laws of New Brunswick, Canada, with its principal place of business located in Saint John, New Brunswick, Canada. Various affiliates of Irving have filed proofs of claim in MMAR's chapter 11 case (See claims 242-1, 243-1, 257-1 and 259-1) and/or have appeared in the chapter 11 case and filed pleadings therein.

30. Upon information and belief, Defendant SMBC is a limited liability corporation organized and existing under the laws of Delaware, with its principal place of business in Chicago, Illinois.

Background

A. Crude Oil Extracted From The Bakken Formation Is Known Within The Petroleum Industry To Be Potentially More Volatile Than Other North American Crude Oil

31. Crude oil is the term for "unprocessed" oil, which exists under the earth's surface.

32. Crude oil, also known as petroleum, is a fossil fuel, inasmuch as it is produced naturally from decaying plants and animals living in ancient seas millions of years ago. Crude oil varies in color, from clear to tar-black, and in viscosity, from watery to almost solid.

33. Crude oil has little commercial utility in its natural state. Petroleum refining is the means by which crude oil is processed and refined to produce other valuable products such as

gasoline, diesel fuel, and heating oils.

34. The “Bakken Formation” is a sub-surface rock formation covering approximately two hundred thousand square miles in the States of Montana and North Dakota, as well as the Canadian Provinces of Saskatchewan and Manitoba.

35. The Bakken Formation contains one of the largest reserve of crude oil ever discovered in North America.

36. Crude oil has been extracted from the Bakken Formation for more than sixty years; however, production was historically limited due to the difficulty in extracting the oil and the accompanying expense.

37. In recent years, however, advancements in drilling technology and hydraulic fracking -- the process of fracturing subsurface rock formations through high pressure injection of water, sand, and/or chemicals -- has greatly increased the volume of crude oil extracted from the Bakken Formation.

38. Production of crude oil from the Bakken Formation in North Dakota has risen from less than three thousand barrels per day in 2005 to up to approximately one million barrels per day (or more) today.

39. Prior to the boom in oil production from the Bakken Formation, North American crude oil had historically been known to have a high enough flash point that it did not present high risk of spontaneous ignition.

40. However, crude oil extracted from the Bakken Formation has become known to the petroleum industry to be of a different character. Much of the crude oil extracted from wells in the Bakken Formation includes other materials, including volatile vapors, gases, and liquids such as propane, butane, and natural gasoline. These vapors, gasses, and liquids are often

explosive and can self-ignite at low ambient temperatures.

B. Unreinforced DOT-111 Tank Cars Are Known Within The Petroleum Industry To Be Prone To Rupture Upon Derailment

41. There are no petroleum refineries located in or around the State of North Dakota, nor is there a pipeline system to transport crude oil extracted from the Bakken Formation in North Dakota to most oil refineries. Such transportation is accomplished almost entirely by rail.

42. Crude oil is transported along railways in what are known as tank cars.

43. For more than two decades, one of the most common types of tank cars used to transport hazardous liquids, including crude oil, throughout North America has been the DOT-111 (“DOT-111”). The Defendants knew, or should have known, about the risks associated with the use of DOT-111s.

44. For many years preceding the Derailment, government safety regulators and the media have documented and reported that DOT-111 tank cars were prone to tear or rupture upon a collision and/or derailment, which could potentially spill their cargo.

45. During this time, the petroleum industry, its shippers, and the lessors of DOT-111 tank cars have been aware that the risk of DOT-111 tank car ruptures could be eliminated or reduced by implementing certain design changes, such as reinforced shells, head shields, valves, and other exposed fittings. Moreover, since 2011, the rail industry has required that all newly-manufactured DOT-111 tank cars contain design changes of this type so as to eliminate or reduce the risk of rupture in the case of a collision and/or derailment.

46. Cargo volatility is an important consideration in determining rail car selection as well as applicable safety procedures and protocols to be implemented with respect to any shipment of hazardous material.

47. Prudent and safe shipping practices dictate that hazardous flammable liquids that are explosive and capable of self-igniting at low ambient temperatures should not be transported in a train including DOT-111 tank cars that do not have reinforced shells, heads shields, valves, and other exposed fittings, unless the train operator is able to implement enhanced safety procedures and protocols to prevent or minimize the risk of derailment.

48. Prudent and safe shipping practices further dictate that, unless a train's operator is made aware that the train's cargo contains hazardous, flammable liquids that are explosive and capable of self-igniting at low ambient temperatures and is, therefore, able to implement enhanced safety procedures and protocols to prevent or minimize the risk of derailment, such cargo should not be transported in a train including DOT-111 tank cars that do not have reinforced shells, head shields, valves, and other exposed fittings.

C. Proper Classification And Identification Of Crude Oil Is Essential For Safe Transportation By Rail

49. A party offering a hazardous material for shipment within the United States and/or importation into Canada has the duty, among others, to ensure that: (i) all hazardous materials are properly identified and classified; (ii) the hazard class or classes that characterize the hazard(s) associated with the material are properly identified; (iii) the proper packing group, if applicable, is assigned to each material; and (iv) the hazardous material is transported in appropriate packaging.

50. For example, under the regulations applicable to the Canadian Transportation of Dangerous Goods Act in effect as of July 6, 2013 (Transportation of Dangerous Goods Regulations, SOR/DORS/2001-286 ("TDGR")), "[b]efore allowing a carrier to take possession of dangerous goods for transport, the consignor must determine the classification of the dangerous goods " in accordance with the regulations." TDGR §2.2(1). "When importing goods

into Canada, the consignor must ensure that [the goods] have the correct classification before they are transported into Canada.” TDGR §2.2(2). “Consignor” means a person who “is named in the shipping document as the consignor” or “imports ...dangerous goods into Canada” or (if the other two definitions do not apply) “has possession of dangerous goods immediately before they are in transport.” TDGR §1.4. Moreover, “if an error in classification is noticed or if there are reasonable grounds to suspect an error in classification the consignor must not allow a carrier to take possession of the dangerous goods for transport until the classification has been verified or corrected.” TDGR §2.2(5). In addition, [a] carrier who notices an error in classification or has reasonable grounds to suspect an error in classification while the dangerous goods are in transport must advise the consignor and must stop transporting the dangerous goods until the consignor verifies or corrects the classification.” TDGR §2.2(6). “Classification” means, for dangerous goods, as applicable, the shipping name, the primary class, the compatibility group, the subsidiary class, the UN number, the packing group, and the infection substance category.” TDGR §1.4 (emphasis supplied).

51. There are nine recognized classes of hazardous substances in the United States and Canada. These classes define the type of risk a hazardous material may pose.

52. Crude Oil falls within “Hazard Class 3 – Flammable Liquids.”

53. The packing groups applicable to a particular hazard class indicate the degree of risk a hazardous material may pose in transport in relation to other materials within that hazard class.

54. There are three packing groups applicable to Class 3 Hazardous Materials: Packing Group I, indicating high danger, Packing Group II, indicating moderate danger, and Packing Group III, indicating low danger.

55. Classification within these packing groups is determined by the material's flash point and initial boiling point, as follows:

Packing Group	Flash Point	Initial Boiling Point
I		$\leq 35^{\circ}\text{C}$ (95°F)
II	$\leq 23^{\circ}\text{C}$ (73°F)	$> 35^{\circ}\text{C}$ (95°F)
III	$\geq 23^{\circ}\text{C}$ (73°F) but $\leq 60.5^{\circ}\text{C}$ (141°F)	$> 35^{\circ}\text{C}$ (95°F)

56. Prudent and safe shipping practices dictate that, in order to properly classify and identify a particular shipment of crude oil, its properties must be determined. These properties include, but are not limited to, its flash point, corrosivity, specific gravity at loading and reference temperatures, as well as the presence and concentration of other compounds.

57. This information concerning a particular shipment of crude oil is also necessary to: (i) select the proper tank car packaging; (ii) ensure that the proper tank car outage -- the "head space" or amount of unfilled space in the tank car -- is maintained; and (iii) devise and implement appropriate transportation safety procedures and protocols.

58. The flash point and initial boiling point of crude oil can vary greatly. Depending upon these and other properties, a particular shipment of crude oil can fall into Packing Group I, II, or III.

59. Defendants knew or had reasonable grounds to suspect that the testing of Bakken crude oil prior to shipment by rail cars was inadequate and was likely to lead to misclassification.

60. For example, an Irving refinery employee gave a presentation at a Crude Oil Quality Association conference in Seattle, Washington less than one month before the Derailment, in which he showed a series of PowerPoint slides entitled Crude By Rail Quality

Issues (the “Irving PowerPoint”).

61. The Irving PowerPoint reveals Irving’s awareness of a number of quality control and safety issues concerning the transport of crude oil by rail. Among other things, the Irving PowerPoint notes that under current practices:

- (i) Sampling of crude oil is performed at the delivery point; that source sampling program is almost non-existent;
- (ii) Purchasers rely primarily on established and sometimes outdated assays to make purchase decisions;
- (iii) Rail car crude cargo consists of co-mingled product;
- (iv) Irving’s refinery had encountered rail cars littered with trash, others with residual substances, and one car contained three different crude types;
- (v) “Samples are not from a homogenous mixture”; and
- (vi) “Rail cars after 5-7 days delivery time have begun layering; water and sediment on bottom; light products on top.”

62. The PowerPoint notes that the current practice of delivery point sampling is “too late in the process to address any safety issues.” It goes on to recommend more testing at the loading terminals to help “identify issues related to safety of personnel or specification while the rail car is in transit,” and states that “This will give time to plan action from the data.”

Facts

A. The Shipping Defendants Obtained Crude Oil From The North Dakota Bakken Formation, Arranged For Its Shipment To Saint John, New Brunswick (Canada), And Falsely Assigned It A Packing Group III Designation, Indicating A Low Danger

63. On or about June 29, 2013, the World Fuel Defendants and Irving obtained and offered for shipment a supply of crude oil from New Town, North Dakota to Saint John, New

Brunswick (Canada).

64. The crude oil product was obtained from eleven different suppliers from a number of wells located within the North Dakota Bakken Formation.

65. This crude oil product had been transported by trucks over highways from several supplier facilities, where it was “transloaded” -- the process of transferring a shipment from one mode of transportation to another -- into rail tank cars. Each rail tank car was filled from approximately three truck loads.

66. This process of transloading resulted in the tank cars holding a blend of crude oil from a variety of sources.

67. The information contained in material safety data sheets (“MSDS”) provided by the suppliers of this crude oil varied widely and was, at times, contradictory.

68. While all of these MSDSs identified the product as a Class 3 – Flammable Liquid, some MSDSs designated their shipment as Packing Group I, some MSDSs designated their shipment as Packing Group II, and one MSDS designated the shipment as Packing Group III. Two MSDSs indicated that it was necessary to “determine flash point to accurately classify packing group.” A MSDS for more than a quarter of the total volume of crude oil designated the cargo unequivocally as Packing Group I.

69. The shipping documents from the trucks that delivered this crude oil to the rail loading facility assigned the product a Packing Group II – Moderate Danger designation.

70. Under applicable regulations, the mix of possible classifications and the predominance of the Packing Group I classification in the MSDS forms mandated that the entire shipment be classified as Packing Group I, or highly dangerous. *See, e.g.*, TDGR §2.5. Moreover, the Shipping Defendants should not have placed the oil for transport, and should have

prevented its shipment, until the classification was clarified or corrected.

71. Notwithstanding the varied and sometimes conflicting product classification and identification designations provided by the suppliers and delivery trucks, and contrary to applicable regulations in the U.S. and Canada, the Shipping Defendants classified and identified the entire seventy-two tank car shipment of crude oil on the bill of lading as Petroleum Crude Oil, UN1267, Class 3, Packing Group III, indicating a high flash point and initial boiling point and, hence, a low danger.

72. The Shipping Defendants conducted either no investigation and analysis, or a faulty investigation and analysis, to determine the properties of their shipment of crude oil. Moreover, the predominant classification provided by the MSDS forms was ignored.

73. The World Fuel Defendants' and Irving's shipment of crude oil was loaded into a number of DOT-111 tank cars that had been leased from, among others, SMBC, and that had been manufactured prior to 2011, the year in which government regulations mandated that all newly-manufactured DOT-111 tank cars contain enhanced resistance against rupture. Upon information and belief, these cars had not been retrofitted with reinforced shells, head shields, valves, or other exposed fittings and were, therefore, subject to a high risk of rupture in the event of a collision or derailment. The leases applicable to a number of these cars prohibited shipment of Packing Group I or Packing Group II product.

74. The World Fuel Defendants and Irving arranged for the shipment of the tank cars from the New Town, North Dakota intermodal transloading facility to Cote Saint-Luc, outside Montreal, Quebec (Canada), *via* CPR, and from there to Irving's refinery in Saint John, New Brunswick (Canada) *via* MMAR.

75. The bill of lading for this shipment was issued by CRP and identified Western Petroleum as the shipper, WFSC as the party to be billed, and Irving as the consignee. WSFI claims to have held title to the crude oil and to have been the party actually billed for the shipment by CPR.

B. MMAR's Receipt Of The Shipping Defendants' Crude Oil Shipment And The Derailment

76. The Train departed from the New Town, North Dakota intermodal facility on or about June 29, 2013.

77. The Train was comprised of the seventy-two DOT-111 tank cars and one box car, which were provided by Defendants, and several CPR locomotives.

78. CPR transported the Train to CPR's rail yard in Cote Saint-Luc, Quebec (Canada).

79. On or about July 5, 2013, CPR transferred the seventy-two DOT-111 tank cars and box car to MMAR.

80. Applicable Canadian law and/or regulations, as well as the joint rate agreement between MMAR and CPR, required that MMAR accept Defendants' rail cars and cargo and transport it through to its intended destination.

81. MMAR connected one of its locomotives at the head end of the Train, followed by a VB remote control car, followed by four additional locomotives, followed by the seventy-two DOT-111 tank cars.

82. MMAR then commenced the second leg of the Train's transport toward its ultimate destination -- the Irving Oil refinery in Saint John, New Brunswick (Canada).

83. MMAR had no knowledge concerning the actual properties of the crude oil contained in the Train's DOT-111 tank cars beyond what was contained on the Waybill provided

by CPR: Petroleum Crude Oil, UN1267, Class 3, Packing Group III, indicating a high flash point and initial boiling point and, hence, a low danger.

84. Had the Shipping Defendants made MMAR aware that their crude oil cargo was, in fact, Packing Group I, a hazardous substance, MMAR would have implemented safety procedures and protocols that would have prevented the Derailment. Among other things, these procedures and protocols would have required that the Train never be left unattended, always be parked on a blocked, side track, and never be parked on a main track.

85. Shortly before midnight on July 5, 2013, MMAR parked and secured the Train on its main track near the town of Nantes, Quebec (Canada) and left it unattended. The main track at this location had a slight descending grade of approximately 1.2%.

86. At or around 1:00 a.m. on July 6, 2013, the unattended Train started to move downgrade.

87. The Train gathered speed as it rolled uncontrolled down the descending grade toward the town of Lac-Mégantic.

88. Sixty-two of the DOT-111 tank cars and the single box car ultimately derailed near the town center of Lac-Mégantic.

89. Many, if not all, of the DOT-111 tank cars ruptured upon derailment, releasing their contents of crude oil.

90. The released crude oil ignited upon release, resulting in a number of massive explosions and an accompanying large pool of fire that burned for several days.

91. As many as forty-seven people were killed and additional people may have suffered injuries as a result of the explosions and fire.

92. The town center of Lac-Mégantic sustained extensive damage from the explosions and fire.

93. The air, soil, and water in and around the site of the Derailment also sustained significant contamination from the spilled crude oil and the resulting fires.

C. The Derailment Forced MMAR To Seek Bankruptcy Protection And Resulted In MMAR Being Joined In And Facing Potential Liability In A Number Of Civil And Administrative Actions And Proceedings, Which Has Destroyed MMAR's Business

94. At the time of the Derailment, MMAR was a going-concern business, which had recently experienced substantial growth in both revenues and profits.

95. Prior to the Derailment, MMAR reasonably projected that it would continue to experience growth in both revenues and profitability into the future.

96. Instead, the Derailment precipitated the MMAR's chapter 11 filing and ultimate liquidation.

97. As a result of the Derailment, MMAR's business was effectively destroyed. The Trustee received Court approval to sell substantially all of MMAR's assets, and the Trustee has closed on that sale for a purchase price of approximately \$15 million. MMAR no longer has any operating business, let alone a profitable operating businesses.

98. Following the Derailment, MMAR was named as a defendant in a number of civil actions brought by the representatives and administrators of the estates of deceased victims of the Derailment in the Circuit Court of Cook County, Illinois (the "Illinois Cases"); the Illinois Cases have since been transferred to the United States District Court for the District of Maine.

99. MMAR has incurred and will continue to incur substantial costs and expenses in defending against the claims made in the Illinois Cases, and additional cases to be filed.

100. MMAR faces the risk of significant liabilities with respect to the claims made in the Illinois Cases, and additional cases to be filed.

101. MMAR and MMA Canada have been named as respondents in a class action petition brought by representatives and administrators of the estates of deceased victims of the Derailment in the Superior Court of the Province of Quebec (Canada), District of Mégantic (the “Canadian Class Action”).

102. MMAR has incurred and will continue to incur substantial costs and expenses in defending against the claims made in the Canadian Class Action.

103. MMAR faces the risk of significant liabilities with respect to the claims made in the Canadian Class Action.

104. MMAR and MMA Canada have been named as respondents by the government of Quebec (Canada) in Orders 628 and 628-A, issued under §114.1 of the provincial Environment Quality Act, c.Q-2, which seek to hold MMAR and MMA Canada responsible for the costs of cleanup and remediation of the environmental damage caused by the Derailment (the “Clean-Up Proceeding”).

105. MMAR has incurred and will continue to incur substantial costs and expenses in defending against the claims made in the Clean-Up Proceeding.

106. MMAR faces the risk of significant liabilities with respect to the Clean-Up Proceeding.

107. The World Fuel Defendants, as consignors of the crude oil shipment, had an affirmative duty to withhold the crude oil from shipment or transport until the shipment was properly classified.

108. Irving, as the importer of the goods into Canada and as a party with reasonable grounds to suspect an error in classification, had an affirmative duty to not place the goods for shipment, or to stop the shipment, until the classification was corrected.

109. Upon information and belief, CPR, given its extensive dealings with the World Fuel Defendants and its access to all MSDS forms and other relevant documentation, had reasonable grounds to suspect that the classification of the crude oil shipment was incorrect; CPR had an affirmative duty to not carry the shipment or to stop the shipment until the classification was correct.

110. Upon information and belief, SMBC knew, or should have known, that its DOT-111 tank cars were highly prone to failure and leakage even in collisions at low speed, were inadequate and unsafe for transporting crude oil produced from the Bakken Formation, and, therefore, had an affirmative duty to provide properly designed and reinforced tank cars that would have prevented the Derailment or reduced the damages resulting therefrom.

COUNT I
(Negligence – The Shipping Defendants)

111. The Trustee repeats and realleges, as if set forth at length herein, each and every allegation of paragraphs 1 through 108 of this Second Amended Complaint.

112. The Shipping Defendants owed a duty to MMAR and to the public at large to operate their businesses in a safe manner, to take reasonable measures to avoid or mitigate the dangers associated with the transportation of their crude oil cargo, and to exercise reasonable care to ensure that MMAR could operate the Train in a safe manner and thereby prevent a derailment or minimize the damage that would result in the event of a derailment.

113. Such duties included, but were not limited: (i) to not place the crude oil for shipment until the classification was correct; (ii) to not ship, or to stop the shipment of the crude

oil until the classification was correct; (iii) to ensure that MMAR was informed of the highly dangerous nature of the Train's cargo by, among, other things, ensuring that the crude oil shipment was properly identified, classified, and labelled as a highly flammable liquid with high danger; and (iv) to provide safe and appropriate packaging for the crude oil cargo, including providing properly designed and reinforced tank cars and/or other buffer rail cars that would have prevented the Derailment or reduced the damages resulting therefrom.

114. The Shipping Defendants breached those duties by their wrongful acts and/or omissions.

115. The Shipping Defendants breaches of those duties include, but are not limited to, the following:

- a. Despite their knowledge that crude oil produced from the Bakken Formation is often explosive and can self-ignite at low ambient temperatures, the Shipping Defendants failed to conduct any investigation and analysis, conducted a flawed investigation and analysis, or failed to ensure that some other responsible party had conducted a proper investigation and analysis of the crude oil cargo to enable it to be properly classified, identified, labelled, and packaged for shipment.
- b. Despite their knowledge that the tank cars carrying their shipment of crude oil contained a mixture of crude oil from eleven different suppliers, the Shipping Defendants failed to conduct any investigation and analysis, conducted a flawed investigation and analysis, or failed to ensure that some other responsible party had conducted a proper investigation and analysis of the crude oil cargo to enable it to be properly classified,

identified, labelled, and packaged for shipment.

- c. Despite their knowledge that the crude oil suppliers and delivery trucks from whom the Shipping Defendants had obtained the crude oil had provided conflicting product classification and identification designations for the crude oil -- including a number of MSDSs that had assigned Packing Group I, indicating high danger and Packing Group II, indicating moderate danger designations and two that had indicated it was necessary to determine the crude oil's flash point to accurately classify the packing group -- the World Fuel Defendants, in violation of applicable regulations, assigned the entire crude oil shipment a Packing Group III designation, indicating a high flash point and initial boiling point and, hence, a low danger, and the remaining the Shipping Defendants failed to challenge such classification despite reasonable grounds to suspect such classification was wrong.
- d. The Shipping Defendants allowed the entire shipment of crude oil to be shipped in DOT-111 tank cars under a Packing Group III designation, when, in fact, it should have been assigned a Packing Group I designation and shipped in safer cars.
- e. The Shipping Defendants failed to withhold the shipment initially and failed to halt the shipment of the goods until the classification was correct.
- f. Despite their awareness of the well-known rupture risk of the DOT-111 tank cars, the Shipping Defendants provided to MMAR used DOT-111 tank cars, which had not been retrofitted to properly and safely transport

such flammable petroleum products, and failed to provide to MMAR the proper classification and identification of the crude oil cargo that would have enabled MMAR to implement appropriate safety procedures and protocols.

116. But for the Shipping Defendants' negligent and careless acts and omissions, MMAR would have taken steps that would have prevented the Derailment and its resulting injury to MMAR and others, and/or the shipment would not have occurred at all, or would only have occurred in suitable tank cars.

117. As a direct and proximate result of one or more of the above negligent acts and/or omissions of the Shipping Defendants, MMAR suffered injuries arising out of the Derailment.

118. MMAR's injuries that were proximately caused by the Shipping Defendants include: (i) incurring substantial costs and expenses in defending against the claims made in the Illinois Cases, the Canadian Class Action, and the Clean-Up Proceeding; (ii) the risk of significant liabilities with respect to the Illinois Cases, the Canadian Class Action, and the Clean-Up Proceeding; and (iii) the destruction of its business and the devaluation of its assets.

COUNT II
(Negligence – SMBC)

119. The Trustee repeats and realleges, as if set forth at length herein, each and every allegation of paragraphs 1 through 118 of this Second Amended Complaint.

120. SMBC owed a duty to MMAR and to the public at large to operate its business in a safe manner, to take reasonable measures to avoid or mitigate the dangers associated with the transportation of crude oil by means of their tank cars, and to exercise reasonable care to ensure that MMAR could operate the Train in a safe manner and thereby prevent a derailment or minimize the damage that would result in the event of a derailment.

121. Such duties included, but were not limited to, providing safe and appropriate packaging for the crude oil cargo, including providing properly designed and reinforced tank cars that would have prevented the Derailment or reduced the damages resulting therefrom.

122. SMBC breached those duties by their wrongful acts and/or omissions.

123. SMBC's breaches of those duties include, but are not limited to, the following:

- a. Despite their knowledge that crude oil produced from the Bakken Formation is often explosive and can self-ignite at low ambient temperatures, SMBC knowingly provided DOT-111 tank cars for shipment of the crude oil when it knew or should have known that crude oil from the Bakken Formation should have been shipped in safer cars.
- b. Despite its awareness of the well-known rupture risk of the DOT-111 tank cars, SMBC provided the Shipping Defendants with DOT-111 tank cars, which had not been retrofitted to properly and safely transport such flammable petroleum products.

124. But for SMBC's negligent and careless acts and omissions, MMAR would have taken steps that would have prevented the Derailment and its resulting injury to MMAR and others, and/or the shipment would not have occurred at all, or would only have occurred in suitable tank cars

125. As a direct and proximate result of one or more of the above negligent acts and/or omissions by SMBC, MMAR suffered injuries arising out of the Derailment.

126. MMAR's injuries that were proximately caused by SMBC include: (i) incurring substantial costs and expenses in defending against the claims made in the Illinois Cases, the Canadian Class Action, and the Canadian Class Action, and the Clean-Up Proceeding; (ii) the

risk of significant liabilities with respect to the Illinois Cases, the Canadian Class Action, and the Clean-Up Proceedings; and (iii) the destruction of its business and devaluation of its assets.

COUNT III
(Disallowance of Claims)

127. The Trustee repeats and realleges, as if set forth at length herein, each and every allegation of paragraphs 1 through 127 of this Complaint.

128. CPR filed proof of (“POC”) 92-2 in MMAR’s Chapter 11 case (the “CPR POC”); the claims evidenced by the CPR POC allegedly arise, in part, from the Derailment.

129. Upon information and belief, WF Canada and PTS are affiliates of, or are affiliated with, the World Fuel Defendants.

130. The Objection Defendants, PTS, and WF Canada, have each filed a proof of claim in MMAR’s chapter 11 case: PTS filed POC No. 28 and WF Canada POC No. 30.

131. Additionally, WFSI filed a proof of claim, POC No. 32; WFSC filed a proof of claim, POC No. 31; and Western Petroleum filed a proof of claim, POC No. 29.

132. These POCs, Nos. 28, 29, 30, 31, and 32, are referred to in this Second Amended Complaint as the “World Fuel POCs.” The World Fuel POC’s evidence claims that allegedly arise out of the Derailment.

133. MMAR is not liable to the Defendants or the Objection Defendants for any amount, whether based on contract, tort, subrogation, indemnification, contribution, reimbursement, or otherwise. Liability for the claims set forth in the CPR POC and the World Fuel POCs is denied based on the Defendants’ actions or inactions, as described in the preceding paragraphs of this Second Amended Complaint. Alternatively, the amount owed by the relevant Defendants to MMAR vastly exceeds the amount, if any, that MMAR owes to the relevant Defendants.

134. The claims described in the CPR POC and the World Fuel POCs are unenforceable and should be disallowed pursuant to 11 U.S.C. § 502(a)(1).

WHEREFORE, Robert J. Keach, in his capacity as the trustee of Montreal, Maine & Atlantic Railway, Ltd., respectfully requests that this Court: (i) enter judgment in favor of the bankruptcy estate and against Defendants SMBC, CPR, Irving, World Fuel Services Corporation, World Fuel Services, Inc., and Western Petroleum Company, jointly and/or severally, in an amount to be determined at trial; and (ii) disallow and expunge the CPR POC and the World Fuel POCs in their entirety, pursuant to 11 U.S.C. § 502(a)(1).

Dated: April 15, 2015

ROBERT J. KEACH, solely in his capacity
as the chapter 11 trustee of Montreal, Maine
& Atlantic Railway, Ltd.

/s/ Timothy J. McKeon

Paul McDonald

Timothy J. McKeon

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

In re:

MONTREAL, MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670
Chapter 11

ROBERT J. KEACH, solely in his capacity as
the chapter 11 trustee for MONTREAL,
MAINE & ATLANTIC RAILWAY, LTD.,

Plaintiff

v.

WORLD FUEL SERVICES CORPORATION,
WORLD FUEL SERVICES, INC.,
WESTERN PETROLEUM COMPANY,
WORLD FUEL SERVICES, CANADA, INC.,
AND PETROLEUM TRANSPORT
SOLUTIONS, LLC, CANADIAN PACIFIC
RAILWAY COMPANY, AND IRVING OIL
LIMITED

Defendants.

Adversary Proceeding No. 14-1001

**ORDER GRANTING MOTION FOR LEAVE TO
FILE SECOND AMENDED COMPLAINT**

This matter having come before the Court on the Motion for Leave to File Second Amended Complaint (the "Motion"), filed by Robert J. Keach, solely in his capacity as the chapter 11 trustee (the "Trustee") of Montreal, Maine & Atlantic Railway, Ltd., the plaintiff in the above-captioned adversary proceeding; and sufficient notice of the Motion having been given; and the Court having reviewed and considered the Motion, and objections to the Motion, if any, having been resolved or overruled; and after due deliberation and sufficient cause

appearing thereof, the Court hereby **ORDERS**, **ADJUDGES** and **DECREES** as follows:¹

1. The Motion is granted in its entirety.
2. The Trustee shall file and served the Second Amended Complaint substantially in the form attached as Exhibit A to the Motion.

Dated: _____, 2015

The Honorable Peter G. Cary
United States Bankruptcy Judge for the
District of Maine

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE**

In re:

MONTREAL, MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670

Chapter 11

ROBERT J. KEACH, solely in his capacity as
the chapter 11 trustee for MONTREAL,
MAINE & ATLANTIC RAILWAY, LTD.,

Plaintiff

v.

WORLD FUEL SERVICES CORPORATION,
WORLD FUEL SERVICES, INC.,
WESTERN PETROLEUM COMPANY,
WORLD FUEL SERVICES, CANADA, INC.,
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1. The Motion is granted in its entirety.
2. The Trustee shall file and served the Second Amended Complaint substantially in the form attached as Exhibit A to the Motion.

Dated: _____, 2015

The Honorable Peter G. Cary
United States Bankruptcy Judge for the
District of Maine

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.