

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**MOTION FOR EXPEDITED HEARING, SHORTENED RESPONSE PERIOD
AND LIMITED NOTICE WITH RESPECT TO TRUSTEE'S OBJECTION TO
PROOFS OF CLAIM FILED BY NEW BRUNSWICK SOUTHERN RAILWAY
COMPANY LIMITED AND MAINE NORTHERN RAILWAY COMPANY
LIMITED ON THE BASIS THAT CERTAIN OF SUCH CLAIMS ARE
DUPLICATIVE OF OTHERS, AND SUCH OTHERS ARE IMPROPERLY
ASSERTED AS ADMINISTRATIVE AND/OR PRIORITY CLAIMS**

Robert J. Keach, the chapter 11 trustee (the "Trustee") in the above-captioned case, hereby moves this Court for an expedited hearing, shortened response period and approval of limited notice (the "Motion to Expedite") with respect to the *Trustee's Objection to Proofs of Claim Filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company Limited on the Basis that Certain of Such Claims Are Duplicative of Others, and Such Others Are Improperly Asserted As Administrative and/or Priority Claims* (the "Claim Objection").¹ In support of the Motion to Expedite, the Trustee states as follows:

JURISDICTION

1. The district court has original, but not exclusive, jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157 and Rule 83.6 of the district court's local rules, the district court has authority to refer and has referred this chapter 11 case to the bankruptcy court.

¹ Capitalized terms used but not defined in this Motion to Expedite shall have the meanings ascribed to such terms in the Claim Objection.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has constitutional authority to enter final judgment in this proceeding.

3. Venue over this chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue over this proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

4. The bases for the relief sought in the Motion to Expedite and the Claim Objection are section 1172(b) of the Bankruptcy Code, Bankruptcy Rule 3007 and Local Rules 3007-1 and 9013(i).

BACKGROUND

5. On August 7, 2013 (the "Petition Date"), Montreal Maine & Atlantic Railway, Ltd., the above-captioned debtor (the "Debtor"), filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On August 21, 2013, the United States Trustee appointed Robert J. Keach to serve in the Debtor's chapter 11 case pursuant to 11 U.S.C. § 1163.

6. On March 31, 2015, Robert J. Keach, the Trustee filed the *Trustee's Plan of Liquidation Dated March 31, 2015* [D.E. 1384] and the *Disclosure Statement for the Trustee's Plan of Liquidation Dated March 31, 2015* [D.E. No. 1385] (the "Disclosure Statement").

7. After the filing of the Disclosure Statement, the MN/NB Railways objected to the Disclosure Statement, in effect, objecting to treatment of their Asserted 1171(b) Claims under the Plan and disclosure of the Trustee's objection to the MN/NB Railways' proposed classification of such claim. [D.E. 1460, 1519].

8. On July 17, 2015, over the objection of the MN/NB Railways, this Court entered an order approving a modified version of the Disclosure Statement, which included language describing the dispute between the Trustee and MN/NB Railways over the Asserted 1171(b) Claims. *See Order (I) Approving Proposed Disclosure Statement; (II) Establishing Notice,*

Solicitation and Voting Procedures; (III) Scheduling Confirmation Hearing; and (IV) Establishing Notice and Objection Procedures for Confirmation of the Plan [D.E. 1544] (the “Disclosure Statement Order”).

9. On September 10, 2015, the MN/NB Railways objected to Confirmation of the Plan, asserting, among other things, that the Plan improperly treated their Asserted 1171(b) Claims. [D.E. 1656].

10. On October 9, 2015, the Trustee announced that he had reached resolution with the MN/NB Railways on their objection to confirmation of the Plan, and the Bankruptcy Court subsequently confirmed the *Trustee’s Revised First Amended Plan of Liquidation Dated July 15, 2015 (as Amended October 8, 2015)* [D.E. 1801] (the “Confirmation Order,” and the plan confirmed thereby and attached thereto, the “Plan”). The Confirmation Order provides, in pertinent part:

In resolution of the MN/NB Objection [to confirmation of the Plan], any 1171(b) Claims of the MN/NB Railways shall be paid in full, in Cash, on the later of the Initial Distribution date or thirty (30) days after the date such Claims become Allowed Claims. In the event the Bankruptcy Court has not determined, prior to the Initial Distribution Date, the existence of and/or the amount of any Allowed 1171(b) Claims of the MN/NB Railways, if any, as of such date, the Trustee shall set aside, and not distribute pending further order of the Bankruptcy Court making such determination, \$2,139,063.56 to secure any payment, to the extent required, with respect to such Allowed 1171(b) Claims, when and if determined.²

Confirmation Order, ¶ 85. As of the date of this Objection, the Initial Distribution Date has not yet occurred.

² Capitalized terms used but not defined in this provision of the Confirmation Order shall have the meanings ascribed to such terms in the Confirmation Order or the Plan, as applicable.

RELIEF REQUESTED

11. By this Motion to Expedite, the Trustee requests that the Court: (a) schedule a hearing on the Claim Objection on November 17, 2015 (the “Requested Hearing”); (b) set a shortened response deadline of November 12, 2015; and (c) approve service of the Motion to Expedite and the Claim Objection in the manner set forth herein.

BASIS FOR RELIEF

12. Absent a request for an expedited hearing, a movant seeking the type of relief set forth in the Claim Objection must provide thirty days’ notice of the deadline to respond to the Claim Objection, which response deadline must be at least three (3) business days prior to the hearing set for the Claim Objection. *See* Local Rule 3007-1. For all relief other than entry of an order disallowing a claim, a party need provide a maximum of only twenty-eight days’ notice of the hearing on the motion seeking such relief. *See* Local Rule 9013(d)(5).

13. The Trustee requests a hearing on the Claim Objection on twenty-eight days’ notice to avoid unnecessarily withholding distributions from the Debtor’s other creditors for the sole benefit of the MN/NB Railways, in the event that the Asserted 1171(b) Claims are disallowed as priority claims and allowed only as general unsecured claims (which the Trustee submits they should be, as set forth in the Claim Objection). In the event the Claim Objection is not heard on the modestly expedited basis requested, the Trustee will be forced, in accordance with the Confirmation Order, to escrow funds the Trustee believes are not properly allocable to the MN/NB Railways, to the detriment of parties in interest who would otherwise benefit from distribution of those funds.

14. Because (a) the MN/NB Railways were alerted to the Trustee’s objection to the proper classification of the Asserted 1171(b) Claims as early as the filing of the Disclosure

Statement in March of this year, (b) proper disclosure of such dispute was litigated in connection with approval of the Disclosure Statement, and (c) protection of the MN/NB Railways' ability to recover should they prevail on the dispute was agreed upon in connection with confirmation of the Plan, the MN/NB Railways have been on notice of the substance of the Claim Objection for more than six months. In addition, as the date of the Claim Objection is twenty-eight days prior to the date of the Requested Hearing, the relief requested herein is a modest—approximately five-day—limitation on the notice otherwise required by the Local Rules.

15. Accordingly, the Trustee requests that a hearing on the Claim Objection be scheduled on November 17, 2015 (with a response deadline of November 12, 2015) to allow expedited consideration of the relief sought by the Trustee in the Claim Objection and timely distribution of assets under the Plan to those entitled to same.

NOTICE

16. Notice of this Motion to Expedite and the Claim Objection was served on the following parties on the date and in the manner set forth in the certificate of service: (a) Debtor's counsel; (b) U.S. Trustee; (c) counsel to the Official Committee of Victims; and (d) counsel to MN/NB Railways. The Trustee submits that no other or further notice need be provided. In light of the nature of the relief requested in the Claim Objection and the Motion to Expedite, the Trustee submits that such notice is adequate and appropriate.

CONCLUSION

WHEREFORE, the Trustee respectfully requests that this Court enter an Order: (a) granting the Motion to Expedite; (b) finding that service of the Motion to Expedite and the Claim Objection in the manner described herein was sufficient under the circumstances of the relief sought; (c) setting a hearing on the Claim Objection on November 17, 2015; (d) setting a

shortened response deadline with respect to the Claim Objection of November 12, 2015; and (e) granting such other and further relief as the Court deems just and equitable under the circumstances.

Dated: October 19, 2015

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

By his attorneys:

/s/ Lindsay K. Zahradka _____

D. Sam Anderson, Esq.

Lindsay K. Zahradka, Esq. (admitted *pro hac vice*)

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**ORDER GRANTING MOTION FOR EXPEDITED HEARING, SHORTENED
RESPONSE PERIOD AND LIMITED NOTICE WITH RESPECT TO TRUSTEE'S
OBJECTION TO PROOFS OF CLAIM FILED BY NEW BRUNSWICK SOUTHERN
RAILWAY COMPANY LIMITED AND MAINE NORTHERN RAILWAY
COMPANY LIMITED ON THE BASIS THAT CERTAIN OF SUCH CLAIMS ARE
DUPLICATIVE OF OTHERS, AND SUCH OTHERS ARE IMPROPERLY
ASSERTED AS ADMINISTRATIVE AND/OR PRIORITY CLAIMS**

This matter having come before the Court on the *Motion for Expedited Hearing and Shortened Objection Period with Respect to Trustee's Objection to Proofs of Claim Filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company Limited on the Basis that Certain of Such Claims Are Duplicative of Others, and Such Others Are Improperly Asserted As Administrative and/or Priority Claims* (the "Motion to Expedite") filed by Robert J. Keach (the "Trustee"), the chapter 11 trustee in the above-captioned case, and upon consideration of all responses to the Motion to Expedite (if any), it is hereby **ORDERED**, **ADJUDGED** and **DECREED** as follows:

1. The Motion to Expedite is granted.
2. Notice and service of the Motion to Expedite and the Claim Objection was sufficient in light of the nature of the relief requested.
3. An expedited hearing on the Application is set for **November 17, 2015 at 9:00 a.m.** and the deadline to object to the Applications is **5:00 p.m. (ET) on November 12, 2015.**

Dated:

The Honorable Peter G. Cary
U. S. Bankruptcy Judge for the District of Maine