

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670  
Chapter 11

**REPLY IN SUPPORT OF AMENDED OBJECTION OF ESTATE REPRESENTATIVE TO PROOFS OF CLAIM FILED BY NEW BRUNSWICK SOUTHERN RAILWAY COMPANY LIMITED AND MAINE NORTHERN RAILWAY COMPANY ON THE BASIS THAT CERTAIN OF SUCH CLAIMS ARE DUPLICATIVE OF OTHERS, AND SUCH OTHERS ARE IMPROPERLY ASSERTED AS ADMINISTRATIVE AND/OR PRIORITY CLAIMS, IN AN INACCURATE AMOUNT, AND SUBJECT TO DISALLOWANCE UNDER BANKRUPTCY CODE SECTION 502(d)**

Robert J. Keach, the estate representative (the “Estate Representative”) of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (“MMA” or the “Debtor”), hereby submits this reply (the “Reply”) in support of his amended objection to the claims of the MN/NB Railways [D.E. 2313] (the “Amended Objection”).<sup>1</sup> In support of this Reply, the Estate Representative states as follows:

**ADDITIONAL BACKGROUND**

1. Since the filing of the Amended Objection and in accordance with the Amended JPO (as modified by the Order Extending JPO Deadlines, as defined below), the Parties conducted depositions and exchanged additional documents. In particular:

- (a) On or about March 17, 2017, the Parties produced documents in response to each other’s document requests propounded in connection with the factual issues identified in the Amended JPO (the “Stage II Factual Issues”);
- (b) On March 21, 2017, the MN/NB Railways deposed the Estate Representative and his financial advisor, Mr. Fred Caruso, in connection with discovery related to the Stage II Factual Issues;

---

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed in the Amended Objection.

- (c) On March 23, 2017, the Estate Representative deposed MN/NB Railways witnesses Messrs. Hansen, Simpson and Ellis in connection with discovery related to the Stage II Factual Issues (together with the depositions described in paragraph 1(b), the “March 2017 Depositions”);<sup>2</sup>
- (d) On March 31, 2017, the Parties filed a joint motion to continue certain deadlines contained in the Amended JPO [D.E. 2331] (the “Joint Motion to Extend”), and attached supplemental document requests stemming from facts discovered at the March 2017 Depositions (the “Supplemental Document Requests”); and
- (e) In accordance with the order granting the Joint Motion to Extend [D.E. 2335] (the “Order Extending JPO Deadlines”), the Parties (i) produced documents in response to the Supplemental Document Requests on or around April 20, 2017 and (ii) exchanged marked exhibits and witness lists on or around May 11, 2017.<sup>3</sup>

2. At the evidentiary hearing on November 20, 2015 which preceded issuance of this Court’s oral ruling the “February 2016 Oral Ruling”<sup>4</sup> and entry of the Initial Order (the “November 2015 Hearing”), Mr. Hansen had identified Irving Exhibits 12 and 13 (collectively, the “Invoices”) as invoices issued by NB Railway and MN Railway, respectively, which substantiated the amounts asserted in those entities’ proofs of claim. *See* Tr. of Hr’g (Bankr. D. Me. Nov. 20, 2015) (attached hereto as Exhibit E and marked in accordance with the Amended JPO as ER 23, the “Nov. 2015 Tr.”) at 69:9-70:8. Mr. Hansen further testified at the November 2015 Hearing as to the accuracy of the amounts and dates set forth in the Invoices, and that the Invoices had been generated in the ordinary course of the MN/NB Railways’ business. *See* Nov. 2015 Tr. at 70:9-24. On the basis of Mr. Hansen’s testimony authenticating the Invoices,

---

<sup>2</sup> A true and correct copy of (a) the transcript of the March 2017 Deposition of Mr. Hansen, including the errata sheet thereto, is attached hereto as Exhibit A (the “Hansen Tr.”), marked in accordance with the Amended JPO as ER 24; (b) the transcript of the March 2017 Deposition of Mr. Ellis is attached hereto as Exhibit B (the “Ellis Tr.”), marked in accordance with the Amended JPO as ER 25; and (c) the transcript of the March 2017 Deposition of Mr. Simpson is attached hereto as Exhibit C (the “Simpson Tr.”), marked in accordance with the Amended JPO as ER 26. For the convenience of the Court, an appendix to this Reply precedes the exhibits thereto, and indexes the exhibits to this Reply.

<sup>3</sup> To the extent the exhibits to this Reply were exchanged in connection with discovery of the Stage II Factual Issues, they are also marked in accordance with the Amended JPO.

<sup>4</sup> The transcript is attached hereto as Exhibit D; the minute entry reflecting the Court’s oral ruling is found at D.E. 1947.

this Court admitted the Invoices into evidence. *See* Nov. 2015 Tr. at 71:2-19. Yet in his March 2017 Deposition, Mr. Hansen testified, among other things, that he was “not involved in the preparation of the Proof of Claim and [had no] knowledge of the components of the Proof of Claim . . . .” *See* Hansen Tr. at 34:2-6.

3. In his March 2017 Deposition, Mr. Ellis testified, among other things, that the “special security arrangement” described in the Trustee’s Stage I Reply at ¶ 8 and the Trustee’s Post-Trial Brief at ¶¶11-15,<sup>5</sup> had continued through the time of the Derailment. *See* Ellis Tr. at 57:21-58:2.

4. Mr. Ellis also testified that MMA collected certain receivables on behalf of NB Railway and its affiliate Eastern Maine Railway Company (“EMR”)<sup>6</sup> and remitted that portion of the receivables earned by NB Railway and EMR to NB Railway. *See* Ellis Tr. at 29:2-30:3. Mr. Ellis further testified that EMR kept separate books and records from NB Railway, *see id.* at 58:6-12, had certain liabilities separate from NB Railway, *see id.* at 60:23-61:8, and that EMR would have paid taxes for freight that it billed to NB Railway (with respect to which NB Railway remitted freight charges received from MMA to EMR), *see id.* at 59:25-60:17. Mr. Ellis estimated that approximately 50% of the revenue that NB Railway received from MMA was treated as taxable income for EMR. *See id.* at 60:18-22; *see also* KPMG Transfer Pricing Study 2013, attached hereto as Exhibit G and marked in accordance with the Amended JPO as ER 12 (reflecting that EMR was allocated approximately 56.8% of the MMA freight revenue

---

<sup>5</sup> “Trustee’s Stage I Reply” means the *Trustee’s Reply in Support of Objection to Proofs of Claim Filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company on the Basis that Certain of Such Claims Are Duplicative of Others, and Such Others are Improperly Asserted as Administrative and/or Priority Claims* [D.E. 1878]. “Trustee’s Post-Trial Brief” means the *Trustee’s Post-Trial Brief in Support of Objection to Proofs of Claim Filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company on the Basis that Certain of Such Claims Are Duplicative of Others, and Such Others are Improperly Asserted as Administrative and/or Priority Claims* [D.E. 1911].

<sup>6</sup> NB Railway and EMR are each wholly owned by a common parent. *See* Subsidiaries Diagram for The New Brunswick Railway Company (“NB Org Chart”), attached hereto as Exhibit F and marked in accordance with the Amended JPO as ER 6.

that MMA remitted to NB Railway). Mr. Ellis testified that to his knowledge, EMR had not assigned any of its rights under the Interchange Agreement<sup>7</sup> to NB Railway, nor had EMR authorized NB Railway to pursue or file claims on its behalf. *See* Ellis Tr. at 37:7-38:13.

5. Mr. Ellis further testified that certain line items in the Invoices labeled “FSC” were on account of “fuel surcharges,” and that certain of those charges had been incurred during 2012 and January and February of 2013. *See* Ellis Tr. at 16:18-18:13; *see also* Backup for Unbilled FSC in 2012 and 2013 (the “FSC Backup”), attached hereto as Exhibit H and marked in accordance with the Amended JPO as ER 11. The chart below summarizes the discrepancy demonstrated by the FSC Backup:

Invoice #	NB Railway Invoice Amount	Amount Incurred Within Sixth Months Before Petition Date
60820	CDN 133,246.06	CDN 0.00
60821	CDN 67,396.20	CDN 53,092.53
<b>TOTAL</b>	<b>CDN 200,642.26</b>	<b>CDN 53,092.53</b>

6. At his March 2017 Deposition, Mr. Simpson testified, among other things, that before sending separate demand letters on behalf of EMR and NB Railway to MMA in regard to overdue payments in August of 2013,<sup>8</sup> Mr. Simpson had consulted with counsel. *See* Simpson Tr. at 21.

<sup>7</sup> The “Interchange Agreement” means the Interchange Agreement at Brownville Junction Yard effective January 9, 2003, which was admitted into evidence at the November 2015 Hearing as Trustee’s Exhibit S.

<sup>8</sup> The Letter from Ian Simpson of Eastern Maine Railway Company to Montreal, Maine & Atlantic Railway Ltd. re: Commercial Agreement – Overdue Payments dated August 2, 2013 (the “August 2013 EMR Letter”) was admitted at the November 2015 Hearing as Trustee’s Exhibit T, and is attached hereto as Exhibit I. The Letter from Ian Simpson of New Brunswick Southern Railway Company Limited to Montreal, Maine & Atlantic Railway Ltd. re: Commercial Agreement – Overdue Payments dated August 2, 2013 (the “August 2013 NBSR Letter”) was admitted at the November 2015 Hearing as Trustee’s Exhibit U, and is attached hereto as Exhibit J.

**REPLY**

**A. The Court Should Reconsider Its Interlocutory Order Based on Recantation of Certain Key Testimony and on New Testimony Undermining Certain of the Court's Conclusions.**

7. Three important facts came to light during discovery related to the Stage II Factual Issues which contradict certain of the factual findings and legal conclusions reached in the February 2016 Oral Ruling and the Initial Order. First, Mr. Hansen appears to have had no ability to authenticate the Invoices that substantiated the Asserted 1171(b) Claims. Second, the “swap arrangement,” which the Court acknowledged might have given it cause to except the Asserted 1171(b) Claims from priority status had that arrangement remained in effect, indeed remained in effect through the Derailment. Third, certain substantial sums itemized in the Invoices substantiating the Asserted 1171(b) Claims were incurred outside the six months prior to the Petition Date.

8. Interlocutory orders remain open to trial court reconsideration, and do not constitute the law of the case. Union Mut. Life Ins. Co. v. Chrysler Corp., 793 F.2d 1, 15 (1st Cir. 1986) (citing 1B James W. Moore et al., Moore’s Federal Practice ¶ 0.404[4.1], at 124 n. 4 (“[U]ntil entry of judgment, [interlocutory orders] remain subject to change at any time.”)); Nieves-Luciano v. Hernández-Torres, 397 F.3d 1, 4 (1st Cir. 2005) (citing Geffon v. Micrion Corp., 249 F.3d 29, 38 (1st Cir. 2001) (“Interlocutory orders . . . remain open to trial court reconsideration until the entry of judgment.”) (internal quotations omitted). Accordingly, this Court retains the power to reconsider the findings of fact and conclusions of law made in its February 2016 Oral Ruling and interlocutory Initial Order, and to revoke the admission of the Invoices substantiating the Asserted 1171(b) Claims based on the testimony of Mr. Karl Hansen. *See id.* For the reasons set forth below, the Court should amend the Initial Order to (a) disallow the Asserted 1171(b) Claims on the basis of insufficient documentation

substantiating claims that differ from the Debtor’s books and records, (b) find that the existence of the continued swap arrangement excepted the Asserted 1171(b) Claims from priority status under Bankruptcy Code section 1171(b), and (c) modify the factual finding regarding the timing of the incurrence of certain of the Asserted 1171(b) Claims related to fuel surcharges.

*i. The Admission into Evidence of the Invoices Substantiating the Amounts Asserted in the Asserted 1171(b) Claims Should Be Revoked Based on Mr. Hansen’s Recantation of His Testimony Authenticating Those Invoices.*

9. As set forth above, Mr. Hansen testified as to the accuracy and the method of preparation of the Invoices, and they were admitted into evidence on that basis. *See* Nov. 2015 Tr. at 69:9-70:8; 70:9-24; 71:2-19. Yet less than a year and a half later, at his March 2017 Deposition, he disavowed all knowledge of the Invoices which he had authenticated and the proofs of claim which they substantiated, and indeed admitted that he had no idea who prepared the Invoices. *See* Hansen Tr. at 34:2-6, 24:19-25:2. A chart comparing his testimony on those two occasions follows:

<b>Subject Matter</b>	<b>November 2015 Hearing Testimony</b>	<b>March 2017 Deposition Testimony</b>
<b>Accuracy of Invoices</b>	<p><i>Considering Irving Exhibit 12 (an Invoice):</i></p> <p><b>Q:</b> Do [the invoices] accurately reflect the amounts owed by MMA to the Irving railroads?  <b>A:</b> Yes, they do.</p> <p><b>Q:</b> And do the dates shown accurately reflect the dates invoiced were issued by the Irving railroads to MMA?  <b>A:</b> Yes.</p> <p>...</p> <p><b>Q:</b> Do the invoices accurately reflect the dates freight and other services were provided to the MMA by the Irving railroads?  <b>A:</b> Yes, it does.</p> <p><i>See</i> Nov. 2015 Tr. at 70:12-24.</p>	<p><i>Referring to the Invoices:</i></p> <p><b>Q:</b> . . . you were not involved in the preparation of the Proof of Claim and you don’t have knowledge of the components of the Proof of Claim that we put in front of you. Is that your testimony?  <b>A:</b> That’s correct.</p> <p><i>See</i> Hansen Tr. at 34:2-6.</p>

Subject Matter	November 2015 Hearing Testimony	March 2017 Deposition Testimony
<p><b>Role in Invoice Preparation and Verification</b></p>	<p><b>Q:</b> Okay. Now were these particular statements prepared in the ordinary course of the business of the Irving railroads?  <b>A:</b> Yes, they are.                      ...  <b>Q:</b> And the attached invoices, were those taken from the business records of the Irving railroads?  <b>A:</b> Yes, they were.                       See Nov. 2015 Tr. at 70:9-11, 18-20.</p>	<p><b>Q:</b> So just so I understand your question [sic], somebody on your staff would actually prepare that invoice for the railroad pursuant to the shared services agreement. Correct?  <b>A:</b> No, that's not correct.  <b>Q:</b> All right. So then I misunderstood you. So, who physically, what person, would generate the invoice and send it out?  <b>A:</b> Oh, I'd have no idea what person.                       See Hansen Tr. at 24:19-25:2.</p> <hr/> <p><b>Q:</b> And so, is it fair to also then say that with respect to the amounts shown on the last page of the Proof of Claim, the exhibit, that you personally did not independently verify the accuracy of these numbers? Is that correct?  <b>A:</b> That is correct.  <b>Q:</b> And to the best of your knowledge, no one on the team that you supervised independently verified the accuracy of these numbers; is that correct?  <b>A:</b> That would be correct.  <b>Q:</b> And as you sit here today, you have no personal knowledge of whether or not these numbers are accurate in either of these Proofs of Claim, correct?  <b>A:</b> That would be correct.                       See Hansen Tr. at 51:8-21.</p>

10. The testimony of the MN/NB Railways' authenticating witness recanted, there is no basis in the record to authenticate the Invoices for their admission into evidence. And without the Invoices, the MN/NB Railways lack substantiation for the amounts asserted in the Asserted 1171(b) Claims. Having failed to substantiate the amounts of the Asserted 1171(b) Claims in the face of the Estate Representative's challenge thereto, the Estate Representative's assertions as to the amounts reflected on MMA's books as owing to the MN/NB Railways should stand. See Amended Objection, ¶¶ 46-48; Union Mut. Life Ins., 793 F.2d at 15; Nieves-Luciano, 397 F.3d at 4.

ii. ***The Initial Order Should Be Modified to Reflect the Fact that the “Swap Arrangement” Continued Even After the Increase in Oil Haulage.***

11. In the February 2016 Oral Ruling, the Court found that “[h]ad the claimant railroads been dealing with MMA in the manner in which [they] did prior to the oil shipments, 2012, this case would have been easier for me. And the trustee’s argument would have been more powerful for me. ***When the oil started shipping, however, that arrangement changed.***” Tr. of Hr’g (Bankr. D. Me. Feb. 5, 2016) (the “Feb. 2016 Tr.”) (emphasis added).

12. Testimony at the March 2017 Depositions demonstrated that, contrary to the Court’s factual finding that the arrangement changed after the advent of increased oil traffic, the “manner” in which “the claimant railroads had been dealing with MMA” *remained unchanged throughout their business relationship*, even after oil traffic increased—up through the Derailment. *See* Ellis Tr. at 57:21-58:2. Subsequent facts therefore refute the Court’s finding that the MN/NB Railways changed their manner of conducting business with MMA upon the advent of increased oil traffic, contravening the Court’s conclusion that no “special security arrangement” existed, *see* February 2016 Oral Ruling at 20:8-22, which would have exempted the entire amount of the Asserted 1171(b) Claims from priority under Bankruptcy Code section 1171(b). *See* Trustee’s Stage I Reply at 5-6; Trustee’s Post-Trial Brief at 8-11.

13. The Court should amend the Initial Order accordingly to find that the “special security arrangement” described in the February 2016 Oral Ruling, the Trustee’s Stage I Reply and the Trustee’s Post-Trial Brief continued throughout the Parties’ business relationship right through the Derailment, and therefore conclude that the entire amount of the Asserted 1171(b) Claims are not entitled to priority status under Bankruptcy Code section 1171(b). *See* Union Mut. Life Ins., 793 F.2d at 15; Nieves-Luciano, 397 F.3d at 4.



iii. ***The Initial Order Should Be Modified to Carve Out the Fuel Surcharges That Were Incurred Outside Six Months Before the Petition Date.***

14. To qualify as a “six-month claim” under Bankruptcy Code section 1171(b), a claim must, among other things, have arisen within the six months of the filing of the petition. See In re Boston & Maine Corp., 634 F.2d 1359, 1378-79 (1st Cir. 1980); see also February 2016 Oral Ruling at 14:9-19, Amended Objection, ¶ 38. The Initial Order found, *inter alia*, that “the Asserted 1171(b) Claims were incurred within six months prior to the commencement of this case . . . .” Initial Order at 2. But the March 2017 Depositions revealed that certain charges itemized on the Invoices alleged to substantiate NB Railway’s Asserted 1171(b) Claim were for “fuel surcharges” incurred prior to six months before the Petition Date. See Ellis Tr. at 16:18-18:11. Documents produced in response to the admissions at the March 2017 Depositions provided detail as to when the various fuel surcharges were actually incurred. See generally FSC Backup. In particular, of the CDN 200,642.26 asserted to be entitled to six-month priority status on account of fuel surcharges, only CDN 53,092.53 was incurred during the six months before the Petition Date. See *id.*; see also *supra* at 4 (summarizing FSC Backup).

15. Those fuel surcharges that were incurred outside the window prescribed by Bankruptcy Code section 1171(b) are not entitled to priority thereunder, and the Initial Order should be reformed accordingly. See Union Mut. Life Ins., 793 F.2d at 15; Nieves-Luciano, 397 F.3d at 4.

**NB Railway’s Obligations Were Owed by MMA Canada, Not MMA.**

16. NB Railway filed a proof of claim against MMA in the chapter 11 case and against MMA Canada in the CCAA Case.<sup>9</sup> As set forth in the Amended Objection, MMA’s books and records reflect no amounts owing to NB Railway. See Amended Obj. ¶ 48. While MMA Canada’s books do reflect certain amounts owing to NB Railway, MMA Canada’s

---

<sup>9</sup> The proof of claim filed by NB Railway in the CCAA Case is attached hereto as Exhibit K.

liability to NB Railway was resolved in connection with treatment of NB Railway's claim under the CCAA Plan.<sup>10</sup>

17. Indeed, in an email from MMA employee Donald Gardner to Mr. Ellis (the "Gardner Email," produced by the MN/NB Railways and attached hereto as Exhibit L, marked in accordance with the Amended JPO as ER 20), Mr. Gardner had attached excerpts from MMA's and MMA Canada's trial balance sheets, demonstrating that NB Railway's claims were reflected on *MMA Canada's* books. *See* Ex. K at 4. Mr. Ellis testified at his March 2017 Deposition that at the time that Mr. Gardner had sent the Gardner Email, Mr. Ellis would have reviewed and confirmed the accuracy of the amounts owed based on those attached excerpts. *See* Ellis Tr. at 51:25-53:11. And at Mr. Hansen's March 2017 Deposition, he testified that he had no basis to question the characterization of NB Railway's claim in the attachment to the Gardner Email. *See* Hansen Tr. at 60:3-63:13. NB Railway was thus on notice of MMA's and MMA Canada's classification of obligations to NB Railway on the books of MMA Canada, and took no steps to challenge that classification.

18. Instead, NB Railway (properly) filed a proof of claim in MMA Canada's CCAA Case.<sup>11</sup> *See* Ex. K. The CCAA Plan was sanctioned by the CCAA Court substantially contemporaneously with confirmation of the Plan. As set forth in the Sanction Order,<sup>12</sup> the CCAA Plan was unanimously accepted at a meeting of the creditors held in Lac-Mégantic on June 9, 2015. *See* Sanction Order, ¶ 1. The Sanction Order is entitled to deference from this

---

<sup>10</sup> The CCAA Plan provided no recovery for holders of commercial claims. *See* Plan, Ex. 1 (CCAA Plan), § 4.2. And treatment of commercial claims under the U.S. Plan was confined to holders of claims against the U.S. Debtor. *See* Plan § 3.13 (defining Class 13 as all "Allowed General Unsecured Claims of any kind or any nature against the Debtor"), § 1.49 (defining "Debtor" as "Montreal Maine & Atlantic Railway, Ltd.>").

<sup>11</sup> Notably, MN Railway, whose obligations *were* recorded on MMA's books, did *not* file a proof of claim in MMA Canada's CCAA Case.

<sup>12</sup> The "Sanction Order" means the order of the CCAA Court sanctioning the CCAA Plan, entered by the CCAA Court on July 13, 2015 and included with the *Chapter 11 Trustee's Report on CCAA Proceedings* [D.E. 1524].

court under principles of comity and pursuant to the Cross-Border Protocol.<sup>13</sup> As NB Railway's avenue for recovery has already been adjudicated, none rests against MMA.<sup>14</sup> NB Railway's Asserted 1171(b) Claim should thus be disallowed in its entirety.

**C. Those Amounts Included in NB Railway's Proof of Claim That Are Attributable to Services Performed by EMR Must be Disallowed.**

19. Even if not disallowed in its entirety as set forth above, the majority of the amount asserted in NB Railway's Asserted 1171(b) Claim is illegitimately asserted by NB Railway on behalf of its affiliate EMR, the actual owner of the claim, and thus should be reduced to such extent.

20. NB Railway and EMR are separate legal entities. *See* NB Org Chart; *compare* August 2013 EMR Letter *with* August 2013 NBSR Letter. Yet Mr. Ellis's March 2017 Deposition revealed that substantial amounts sought in NB Railway's Asserted 1171(b) Claim were actually incurred by, and were to be remitted to, EMR for services provided by, and travel over the tracks of, EMR. *See* Ellis Tr. at 60:18-22. Consistently, documents produced by the MN/NB Railways after the March 2017 Depositions indicated that approximately 56.8% of the amounts included in NB Railway's Asserted 1171(b) Claim were incurred by EMR (to the extent valid at all). *See* KPMG Transfer Pricing Study 2013 (reflecting that of the CDN 7,419,067 in 2013 revenue from MMA attributable to EMR and NB Railway, CDN 4,214,866 was attributable to EMR, or about 56.8%). When a default allegedly occurred, EMR sent a separate demand letter to MMA to collect the amounts due to it; it did not rely on its sister

---

<sup>13</sup> The "Cross-Border Protocol" means the *Order Adopting Cross-Border Insolvency Protocol* [D.E. 168].

<sup>14</sup> Even if there existed a mechanism to allow claims asserted against MMA Canada against the U.S. debtor, the claim would not enjoy priority status under Bankruptcy Code section 1171(b) because there is no similar protection under CCAA law, and U.S. law would not govern the allowance of a claim against a Canadian entity. *See* Walter Energy Canada Holdings, Inc. (Re), 2017 BCSC 709 (Can.) (finding that the law of the place of incorporation governs claim allowance), attached hereto as Exhibit M.

railroad to assert or collect its claim. *See* August 2013 EMR Letter. That action would make no sense—indeed it would be fraudulent—if EMR were not the owner of the claim asserted.

21. Fed. R. Bankr. P. 3001(b) provides, in pertinent part, that “a proof of claim shall be executed by [1] the creditor or [2] the creditor’s authorized agent . . . .” Fed. R. Bankr. P. 3001(b). Under Rule 3001(b), a “‘creditor’ is an entity that has a claim against a debtor that arose at the time of or before entry of the order for relief . . . . A ‘claim’ is a right to payment.” In re Melillo, 392 B.R. 1, 5 (B.A.P. 1st Cir. 2008) (internal quotations omitted) (finding that appellant failed to establish claim ownership, and therefore failed to prove it was a creditor entitled to file a proof of claim). If an entity is not a “creditor,” Bankruptcy 3001(b) requires express language creating an authorized agency relationship, with specific authority to file a proof of claim on the principal’s behalf. *See In re North Bay Gen. Hosp., Inc.*, 404 B.R. 443, 466-67 (Bankr. S.D. Tex. 2009) (finding the language in the plan in the debtor’s first bankruptcy proceeding, which allowed the purported agent to “pursue and enforce the rights of the Class 6 Creditors under the Plan under the Bankruptcy Code and other applicable laws,” too general to constitute “express authorization” to file proofs of claim on their behalf in the debtor’s second bankruptcy proceeding); Manville Forest Products Corp., 89 B.R. 358, 376 (Bankr. S.D.N.Y. 1988) (“[E]ach individual claimant or transferee of an unfiled claim must file a proof of claim or expressly authorize an agent to do so on its behalf . . . .”) (emphasis added); Mission Towers v. Grace, No. 01-01139 (JKF), 2007 WL 4333817, at \*5 (D. Del. Dec. 6, 2007) (class counsel not authorized to file proofs of claim on behalf of individual class members absent express authorization).

22. With respect to the amount asserted in NB Railway’s Asserted 1171(b) Claim that is attributable to EMR’s haulage, EMR is the “creditor” for purposes of Bankruptcy Rule 3001(b); NB Railway is not. *See Melillo*, 392 B.R. at 5. Nor has NB Railway submitted any

evidence that it was explicitly authorized to file a proof of claim on EMR's behalf. *See* North Bay Gen. Hosp., 404 B.R. at 466-67; Manville, 89 B.R. at 376; Mission Towers, 2007 WL 4333817, at \*5. Indeed, Mr. Ellis testified that he was not aware of any such authorization or agency arrangement. *See* Ellis Tr. at 37:7-38:13. Therefore, NB Railway lacked authority to file a proof of claim on EMR's behalf, and cannot otherwise seek to recover amounts owed to a separate legal entity.

23. Moreover, despite the fact that, after consulting with counsel, Mr. Simpson sent MMA *separate letters* in August of 2013 on behalf of EMR and NB Railway indicating overdue balances, *compare* August 2013 EMR Letter *with* August 2013 NBSR Letter, EMR did not file a separate proof of claim against MMA (or against MMA Canada in the CCAA Case). The bar date has passed, *see* Bar Date Order<sup>15</sup> (setting June 13, 2014 as the deadline to file proofs of claim), and unlike NB Railway and MN Railway, EMR failed to timely file a proof of claim. EMR is thus now precluded from asserting a claim against the estate. *See* Aboody v. U.S. (In re Aboody), 223 B.R. 36, 38 (B.A.P. 1st Cir. 1998) (the purpose of a claims bar date is “to provide the debtor and its creditors with finality and to ensure the swift distribution” of assets of the estate) (quoting Mercado-Boneta v. Administracion del Fondo de Compensacion Al Paciente through the Ins. Com'r of Puerto Rico, 125 F.3d 9, 17 (1st Cir. 1997)); In re Brooks, 370 B.R. 194, 203 (Bankr. C.D. Ill. 2007) (a claims bar date is “necessary to the efficient functioning of the bankruptcy system”).

24. The total amount asserted in NB Railway's PoC is \$2,164,471.30. 56.8% of that amount equates to \$1,229,419.70. The amount of NB Railway's proof of claim should be

---

<sup>15</sup> The “Bar Date Order” means the *Order Pursuant to 11 U.S.C. Sections 105(a) and 502(b)(9), Fed. R. Bankr. P. 3002 and 3003(c)(3), and D. Me. LBR 3003-1 Establishing Deadline for Filing Proofs of Claim and Procedures Relating Thereto and Approving Form and Manner of Notice Thereof* [D.E. 783]. A similar order was entered in the CCAA Case.

reduced to account for amounts properly attributable to services provided by EMR, which equates to a reduction from \$2,164,471.30 by \$1,229,419.70 to \$935,051.60.

### CONCLUSION

25. In sum, based on the new evidence adduced in connection with discovery of Stage II Factual Issues, the Invoices substantiating the amounts set forth in the Asserted 1171(b) Claims were unauthenticated, and because they were necessary evidence to the MN/NB Railways' carrying their burden of proof, the entire amount of the Asserted 1171(b) Claims should be disallowed. In addition, because the March 2017 Depositions and the documents produced in response to the Supplemental Document Requests demonstrated that the special security arrangement described in the Estate Representative's earlier papers continued through the Derailment (and did not stop in connection with increased oil traffic), that special security arrangement excepted the entire amount of the Asserted 1171(b) Claims from priority status under Bankruptcy section 1171(b). In any event, the March 2017 Depositions and documents produced in response to the Supplemental Document Requests demonstrated that CDN 147,549.73 of the amount asserted in NB Railway's Invoices was incurred outside the six months before the Petition Date. For all these reasons, the Initial Order should be vacated, or at least modified to conform to the evidence subsequently discovered.

26. In addition, the entire amount asserted in NB Railway's Asserted 1171(b) Claim should be disallowed against MMA and the chapter 11 estate because it was properly asserted against MMA Canada in the CCAA Case, and treated under the CCAA Plan. Finally, even if not disallowed *in toto*, all amounts asserted in NB Railway's Asserted 1171(b) Claim attributable to services performed by EMR should be disallowed, as NB Railway lacks authority to assert claims on EMR's behalf, and EMR has missed the bar date.

**WHEREFORE**, for the reasons set forth herein and in the Amended Objection, the Estate Representative requests that the Court enter a final order, substantially in the form annexed hereto: (i) sustaining the Amended Objection, as supplemented by this Reply; (ii) disallowing the Duplicate Claims in their entireties and expunging the same from the Debtor's claims register; (iii) disallowing the Asserted 1171(b) Claims as priority claims under Bankruptcy Code section 1171(b); (iv) determining the amount of (a) MMA's claim against MN Railway, (b) MN Railway's claim against MMA, (c) MMA's claim against NB Railway, and (d) NB Railway's claim against MMA; (v) determining on a final basis what portion (if any) of the MN/NB Railways' claims are entitled to priority under Bankruptcy Code section 1171(b); and (vi) granting such other and further relief as may be just.

Dated: May 16, 2017

**ROBERT J. KEACH,  
ESTATE REPRESENTATIVE FOR THE  
POST-EFFECTIVE DATE ESTATE OF  
MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.**

/s/ Robert J. Keach

Robert J. Keach  
Lindsay K. Zahradka (admitted *pro hac vice*)  
BERNSTEIN, SHUR, SAWYER & NELSON, P.A.  
100 Middle Street, P.O. Box 9729  
Portland, ME 04104  
Telephone: (207) 774-1200  
Facsimile: (207) 774-1127

**APPENDIX OF EXHIBITS TO REPLY**

Ex.	Description	Reply P. Reference	Marked Ex. No <sup>16</sup> .
A	Deposition Transcript of Karl Hansen dated March 23, 2017	2, 3, 6, 7, 10	ER 24
B	Deposition Transcript of Ryan Ellis dated March 23, 2017	2-4, 8-11, 13	ER 25
C	Deposition Transcript of Ian Simpson dated March 23, 2017	2, 4	ER 26
D	February 2016 Oral Ruling	2, 5, 8, 9	N/A <sup>17</sup>
E	Transcript of November 20, 2015 Hearing at U.S. Bankruptcy Court for the District of Maine	2, 3, 6-7	ER 23
F	New Brunswick Southern Railway Company Subsidiaries Charts	3, 11	ER 6
G	KPMG Transfer Pricing Study 2013	3, 11	ER 12
H	Backup for the “Unbilled FSC” in 2012 and 2013	4, 9	ER 11
I	August 2013 EMR Letter	4, 11, 13	<b>Trustee T</b>
J	August 2013 NBSR Letter	4, 11, 13	<b>Trustee U</b>
K	Proof of Claim Filed by NB Railway in the CCAA Case	9, 10	N/A
L	D. Gardner e-mail chain with Ryan Ellis dated May 3, 2013 re: Cash Swap with attachment	10	ER 20
M	<u>Walter Energy Canada Holdings, Inc. (Re), 2017 BCSC 709 (Can)</u>	11	N/A

<sup>16</sup> Exhibits in bold were admitted into evidence at the November 2015 Hearing. Exhibits preceded by “ER” were marked and exchanged with the MN/NB Railways in accordance with the Amended JPO, but have not yet been admitted into evidence. Pursuant to the Amended JPO, if no objection is received by the MN/NB Railways by fourteen days after the marked exhibits were exchanged with the MN/NB Railways on May 11, 2017 (or May 25, 2017), the exhibits will be received in evidence without further authentication. See Amended JPO, ¶ 19.

<sup>17</sup> The Court can take judicial notice of its own oral ruling.





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

---

**In re:**

**MONTREAL, MAINE & ATLANTIC**

Bk No. 13-10670

**RAILWAY, LTD.**

Chapter 11

Debtor

---

**DEPOSITION OF KARL HANSEN**

Held at J.D. Irving, Limited, 300 Union Street  
in the City of Saint John, County of St. John,  
Province of New Brunswick, Canada, the 23rd day  
of March A.D. 2017, before court reporter  
Kathryn A. Burke.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**A P P E A R A N C E S**

**Robert J. Keach, Esq.** and  
**Lindsay K. Zahradka, Esq.** (admitted *pro hac vice*)  
Bernstein, Shur, Sawyer & Nelson, P.A. (via videoconference)  
100 Middle Street, West Tower, Portland, Maine 04101  
Telephone: (207) 774-1200, Facsimile: (207) 774-1127  
E-mail: rkeach@bernsteinshur.com, lzahradka@bernsteinshur.com

Counsel for Robert J. Keach, Estate Representative of the  
Post-Effective Date Estate of Montreal, Maine & Atlantic  
Railway Ltd.

**Alan R. Lepene, Esq.**, Thompson Hine, 3900 Key Center  
127 Public Square, Cleveland, Ohio 44114-1291  
Telephone: (216) 566-5520, Facsimile: (216) 566-5800  
E-mail: alan.lepene@thompsonhine.com

Counsel for the Maine Northern Railway Company Limited  
and New Brunswick Southern Railway Company Limited

**I N D E X**

Page

**WITNESS: KARL HANSEN**

Examination-in-Chief by Mr. Keach 4

**EXHIBITS**

T-1	Notice of Deposition of Karl Hansen pursuant to Rule 30(b)(6).	8
T-2	Proof of Claim by NB Southern Railway.	15
T-3	Proof of Claim by Maine Northern Railway.	15
T-4	Invoices in Support of the Proof of Claim of New Brunswick Southern Railway Company Limited (8-page excerpt attached hereto).	27
T-5	Commercial Agreement between MMA, EMR and NBSR, dated January 9, 2003.	34
T-6	Demand Letter to MMA from Ian Simpson on behalf of NB Southern Railway, dated August 2, 2013.	39
T-7	Demand Letter to MMA from Ian Simpson on behalf of Eastern Maine Railway, dated August 2, 2013.	39
T-8	E-mail exchange between Ryan Ellis and Donald Gardner, Jr.	54

1 6 Q. Do you recall how many times?

2 A. Half a dozen.

3 7 Q. Okay. And were those in Canadian

4 proceedings, American, or both?

5 A. Primarily Canadian.

6 8 Q. Have you ever testified in court before?

7 A. Yes.

8 9 Q. In the United States or just in Canada?

9 A. Both.

10 10 Q. Well, then, you know the drill by and large,

11 but let me just repeat a few rules for our benefit, so that

12 this will go smoothly. I'm going to ask you a series of

13 questions. You, of course, know that you are under oath,

14 correct?

15 A. Correct.

16 11 Q. You should let me finish my question before

17 you start your answer. It's very important that you

18 understand my questions, so if at any point in time you don't

19 understand my question, I want you to tell me that; otherwise,

20 we're going to presume that when you answer the question, that

21 you understood it. Can we operate on that basis?

22 A. Yes.

23 12 Q. Similarly, and particularly given that we're

24 doing this by videoconference and we've already experienced

25 some of the technological glitches that can happen, it's also

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

(10:15 a.m.)

**ON THIS** Twenty-third day of March in the Year of

Our Lord Two Thousand Seventeen Did Personally Come and Appear

**KARL HANSEN**, Who, having been duly sworn, doth

depose and say as follows:

**EXAMINATION-IN-CHIEF BY MR. KEACH:**

1 Q. Could you state your full name for the

2 record, sir?

3 A. Karl Joseph Hansen.

4 Q. And by whom are you employed, Mr. Hansen?

5 A. I'm not, I'm retired.

6 Q. Prior to your retirement, by whom were you

7 employed?

8 A. J.D. Irving, Limited.

9 Q. And what was your title at the time of

10 retirement?

11 A. General Manager and Director of Corporate

12 Credit.

13 Q. And we're going to get into the relationship

14 between J.D. Irving and some of the parties to this proceeding

15 in a minute, but let me go through some ground rules first. I

16 know you were deposed before, because I did it, but let me ask

17 you, other than that time, had you ever been deposed before?

18 A. Yes.

1 very important that you hear my question clearly. Again, if

2 you don't hear my question clearly because my voice drops or

3 because of technology or whatever, I need to have you tell me

4 that; and again, if you answer the question, we're going to

5 presume that you heard it clearly. Can we operate on that

6 basis?

7 A. Yes.

8 13 Q. From time to time, I'm also going to have

9 documents shown to you by your counsel. These are documents

10 that we've exchanged in advance. I want you to take as much

11 time looking over those documents as you need to in order to

12 answer the questions; and again, if I'm asking you questions

13 about a document and you answer the question, we're going to

14 presume that you've had as much time as you need to review

15 that document. Can we operate on that basis?

16 A. Yes.

17 14 Q. You know, this deposition will take a little

18 while. If you need to take a break for any reason, I want you

19 to let me know that; and again, if you don't ask me, we're

20 going to presume you don't need a break. Can we operate on

21 that basis as well?

22 A. Yes.

23 15 Q. Lastly, you certainly have an opportunity at

24 an appropriate time during the inquiry to consult with your

25 counsel as need be. Those consultations will likely take

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 place outside the room, and if you need to do that or if you  
2 think you need to do that for any reason, I need to have you  
3 tell me that in advance and we'll make arrangements for that;  
4 and again, if you don't ask for a session with your counsel  
5 and you answer a question, we're going to presume that you did  
6 not need a consultation with counsel prior to answering the  
7 question. Can we operate on that basis?

8 A. Yes.

9 16 Q. Mr. Hansen, is there any, you know, physical  
10 condition or are you taking any medication or any other reason  
11 why you are not able to understand questions and answer them  
12 clearly today?

13 A. No.

14 17 Q. You're feeling all right.

15 A. Yeah.

16 **MR. KEACH:** I'm going to ask that the reporter --  
17 and, Alan, you should have a copy of this -- just mark Mr.  
18 Hansen's Notice of Deposition. And my suggestion for the  
19 protocol, since we'll probably use a lot of the same exhibits  
20 in the three depositions today, why don't we just start with  
21 Trustee 1 and we'll go from there.

22 **MR. LEPENE:** That's fine. And I'm going to give  
23 the court reporter the notice of Mr. Hansen's deposition and  
24 we can mark that as Trustee Exhibit 1. Can we use "T", Bob,  
25 instead of --

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 22 Q. Did you meet with anybody else?

2 A. No.

3 23 Q. Did you talk to anybody else at J.D. Irving  
4 or any of its affiliated companies about your deposition  
5 today?

6 A. No.

7 24 Q. Did you review any documents?

8 A. No.

9 25 Q. All right, let's get -- and again, I told you  
10 we'd revisit this subject, and appreciating that you've been  
11 deposed before and we've covered some of this ground, I'll  
12 apologize in advance if we've done this before, but we do need  
13 a complete record. You mentioned that you are -- you were,  
14 prior to your retirement, employed by J.D. Irving, Limited; is  
15 that correct?

16 A. That is correct.

17 26 Q. What is the relationship of J.D. Irving,  
18 Limited to New Brunswick Southern Railroad?

19 A. J.D. Irving, Limited owns New Brunswick  
20 Southern Railway Limited.

21 27 Q. Is it the direct owner or are there companies  
22 -- if I had an organizational chart in front of me, would  
23 there be companies between J.D. Irving, Limited and New  
24 Brunswick Southern?

25 A. I would not know that.

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

8

1 **MR. KEACH:** "T" is -- yeah, "T"'s fine --

2 **MR. LEPENE:** T-1.

3 **MR. KEACH:** -- it will be faster.

4 **MR. LEPENE:** We'll do T-1.

5 --- *Exhibit T-1 marked.*

6 18 Q. **BY MR. KEACH:** Mr. Hansen, I'm going to --  
7 you've just been shown the Notice of Deposition that arranged  
8 for your appearance this morning, and let me ask you first,  
9 have you ever seen this before?

10 A. No.

11 19 Q. Let me just indicate that this is simply the  
12 legal notice that brings you here today for your deposition.  
13 And again, just some -- a few preliminaries. Did you do any  
14 preparation for the deposition today?

15 A. No.

16 20 Q. Did you speak with anybody about your  
17 deposition?

18 **MR. LEPENE:** Other than counsel?

19 **MR. KEACH:** Well, he can identify that he spoke  
20 with counsel. But if it's counsel, I don't want you to tell  
21 me, obviously, anything that was said, just whether you met  
22 with counsel or not.

23 A. I met with counsel, yes.

24 21 Q. And by counsel, you mean Mr. Lepene, correct?

25 A. Correct.

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

10

1 28 Q. And what is the relationship between J.D.  
2 Irving, Limited and Eastern Maine Railway?

3 A. They're related railways.

4 29 Q. Let me ask again, and I know we're dealing  
5 with multiple entities, but my question was: What's the  
6 relationship between J.D. Irving, Limited and Eastern Maine  
7 Railway?

8 A. They own it as well.

9 30 Q. Right. And again, what is the relationship  
10 between J.D. Irving, Limited and Maine Northern Railway?

11 A. They own it.

12 31 Q. And is it fair to describe Eastern Maine  
13 Railway and New Brunswick Southern Railway and Maine Northern  
14 Railway as sister companies?

15 **MR. LEPENE:** If you know.

16 A. I don't know.

17 32 Q. **BY MR. KEACH:** Again, if I had an org. chart  
18 in front of me, I know we'd have Irving Limited -- Irving --  
19 J.D. Irving, Limited at the top, and at some place in the org.  
20 chart there would be the three -- the three railroads. Are  
21 they on the same level of the organizational chart, as far as  
22 you know?

23 A. I don't know.

24 **MR. LEPENE:** I mean, Bob, if it would help, we can  
25 provide an organizational chart. We don't have any problem

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 providing you with that information.  
2 **MR. KEACH:** Yeah, why don't you do that between  
3 depositions and we can bring that up maybe with Mr. Simpson  
4 just to get it on record, Alan.  
5 **MR. LEPENE:** That's fine.  
6 **MR. KEACH:** But I won't interrupt Mr. Hansen's  
7 deposition, since he's not directly familiar with the  
8 structure.  
9 33 Q. In your role working for J.D. Irving, did you  
10 handle any accounting functions for each of the railroads that  
11 I just mentioned?  
12 A. No.  
13 34 Q. Did anybody who worked for you handle any  
14 accounting functions for those three railroads?  
15 A. You have to define "accounting".  
16 35 Q. All right. Well, let me just ask you, what  
17 functions did you or people working directly for you at J.D.  
18 Irving perform in connection with the three railroads?  
19 A. The credit services.  
20 36 Q. And describe for me what you mean by credit  
21 services.  
22 A. The granting of credit, the collection of  
23 funds, the setting up of credit accounts and monitoring  
24 people's indebtedness to the Irving organization.  
25 37 Q. Did you and your group at J.D. Irving collect  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 A. That is correct.  
2 44 Q. Does J.D. Irving, Limited have interests in  
3 any paper companies?  
4 A. Yes.  
5 45 Q. Which paper companies does it have an  
6 interest in?  
7 A. Irving Paper, Irving Pulp & Paper, Lake  
8 Utopia Paper.  
9 46 Q. And were any of those paper companies  
10 customers of Montreal, Maine & Atlantic or Montreal, Maine &  
11 Atlantic Canada?  
12 A. They were -- Irving Paper was a customer of  
13 Montreal -- MMA.  
14 47 Q. Meaning Montreal, Maine & Atlantic Railway  
15 Ltd.?  
16 A. Yes.  
17 48 Q. This seems an appropriate time to introduce a  
18 convention, so why don't I do this. Because this is the way  
19 it's referred to in some of the documents we're going to look  
20 at today, if I'm referring to the U.S. parent entity railroad,  
21 we'll refer to that as MMA; if I'm referring to the Canadian  
22 subsidiary, we'll refer to that as MCC. Can we go forward on  
23 that basis?  
24 A. Sure. Who's MCC?  
25 49 Q. MCC would be Montreal, Maine & Atlantic  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

12

1 accounts receivable for New Brunswick Southern Railway?  
2 A. Yes.  
3 38 Q. And did you and the people who worked for you  
4 at J.D. Irving collect accounts receivable for Eastern Maine  
5 Railway?  
6 A. That I don't know. I'd have to check.  
7 39 Q. Did you and people who worked for you at J.D.  
8 Irving collect accounts receivable for Maine Northern Railway?  
9 A. Same answer: I'd have to check, I don't  
10 know.  
11 40 Q. Who would you have to check with to know if  
12 that is true?  
13 A. I would have to check with the people that  
14 are presently here in my old team, to see if we provide that  
15 function.  
16 41 Q. But you're certain you provided it for New  
17 Brunswick Southern Railway, just not with respect to the other  
18 two?  
19 A. That's correct.  
20 42 Q. And were all of the people that you're  
21 referring to as members of your team prior to your retirement,  
22 were those people employees of J.D. Irving, Limited?  
23 A. Yes.  
24 43 Q. None of those parties were employees of the  
25 individual railroads that we've talked about?  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

14

1 Canada, which is the railway that operated in Canada and was  
2 a subsidiary of MMA US.  
3 A. Okay.  
4 50 Q. Were you aware that MMA had a Canadian  
5 subsidiary when you were working for J.D. Irving, Limited?  
6 A. No, I was not.  
7 51 Q. You were not aware of that.  
8 A. That's correct.  
9 52 Q. Mr. Hansen, were you involved in the  
10 preparation of the Proofs of Claim filed by New Brunswick  
11 Southern in the United States Chapter 11 case?  
12 A. Not really, no.  
13 53 Q. But were you involved at all?  
14 A. I don't think I was.  
15 54 Q. Were you involved at all in the filing of a  
16 Proof of Claim by New Brunswick Southern in the CCAA  
17 proceeding of MCC?  
18 A. Who -- repeat the question, please.  
19 55 Q. Just by way of background, let me ask you a  
20 couple of questions. Are you aware that MCC, the Canadian  
21 subsidiary of MMA that I just described, filed for bankruptcy  
22 proceedings in Canada?  
23 A. Well, not to that extent, no. But I'm aware  
24 that MMA filed for bankruptcy. That's the extent of my  
25 awareness.  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 56 Q. You're not aware that MCC, the Canadian  
2 subsidiary, filed separate and distinct bankruptcy proceedings  
3 in Canada.  
4 A. No.  
5 57 Q. And to the best of your knowledge -- and  
6 again, I'm summarizing your testimony and you correct me if  
7 I'm wrong -- to the best of your knowledge, you did not  
8 participate in the filing of Proofs of Claim for any of the  
9 railroads in those Canadian bankruptcy proceedings.  
10 A. To the best of my knowledge, I wasn't.  
11 **MR. KEACH:** All right. Alan, I want to mark the  
12 two Proofs of Claim, so why don't we mark New Brunswick  
13 Southern T-2 and Maine Northern Railway T-3.  
14 **MR. LEPENE:** Give me one second. We have a number  
15 of documents that were, I guess, faxed here, so we'll dig  
16 those out. And I see that your express package just arrived.  
17 That's going to make it easier, I think.  
18 **MR. KEACH:** Yeah, that's all the documents --  
19 **MR. LEPENE:** Okay, so you want to mark the Maine  
20 Northern -- which do you want to mark as 2?  
21 **MR. KEACH:** New Brunswick Southern. And Northern  
22 will be 3.  
23 **MR. LEPENE:** Okay, so we'll mark that as T-2 and  
24 we'll mark this as T-3.  
25 --- Exhibits T-2 and T-3 marked.  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 A. No.  
2 61 Q. On the front of the Proof of Claim you see  
3 there is an amount of 2,164,471.30. Do you see that?  
4 A. Yes.  
5 62 Q. And if you go to the last page of the Proof  
6 of Claim, which is a spreadsheet --  
7 A. Yes.  
8 63 Q. -- then you see that there's a total at the  
9 bottom of 2-million-571, I think it's 819.91. Do you see  
10 that?  
11 A. Yeah.  
12 64 Q. Do you know why those two numbers are  
13 different?  
14 A. The number on the front page, 2,164, is in  
15 U.S. dollars, the number on the last page of 2,571 is in  
16 Canadian dollars.  
17 65 Q. Okay, now, how is it that you -- and how is  
18 it that you know that?  
19 A. Well, because this is filed in the United  
20 States, which is U.S., and all the receivables on our end here  
21 were in Canadian, so the logic would tell me that if you  
22 convert Canadian to U.S., it's going to be less U.S. dollars  
23 than Canadian dollars, and the number looks reasonable.  
24 66 Q. Okay. And to just make sure I understood you  
25 correctly, the receivables records that you had and that are  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

16

1 **MR. KEACH:** So, Mr. Hansen, you're just being  
2 shown what we've marked in advance as Exhibits T-2 and T-3,  
3 which are Proofs of Claim; in the case of T-2, filed in the  
4 Chapter 11 case in the U.S. by New Brunswick Southern Railway;  
5 and in the case of T-3, a Proof of Claim filed in the Chapter  
6 11 case in the U.S. by Maine Northern Railway. Please take a  
7 look at those as much as you need to. I'm going to ask you a  
8 few questions about them.  
9 **MR. LEPENE:** He's going to ask questions, so take  
10 your time and just review them.  
11 **MR. KEACH:** Mr. Hansen, we're in no rush; you take  
12 as much time as you need.  
13 --- Pause in the proceedings.  
14 **MR. KEACH:** Are you ready, Mr. Hansen?  
15 A. Yes.  
16 58 Q. All right. Let's start with T-2, which is  
17 the Proof of Claim filed by New Brunswick Southern Railway  
18 Company. Let me first ask you, prior to Mr. Lepene just  
19 handing you this, have you seen this document before?  
20 A. No.  
21 59 Q. And having looked at it, does it refresh your  
22 recollection as to whether you were involved in any way in its  
23 preparation?  
24 A. No, I was not involved in its preparation.  
25 60 Q. Do you know who was?  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

18

1 reflected in the spreadsheet that is the last page of T-2,  
2 those numbers are all Canadian dollars, correct?  
3 A. Correct.  
4 67 Q. Were you involved in making the conversion  
5 that generated the amount on page 1?  
6 A. No, I was not.  
7 68 Q. Was anybody operating under your supervision  
8 involved in that conversion?  
9 A. No, they weren't.  
10 69 Q. Do you know who would have done that?  
11 A. The accounting department for the railway.  
12 70 Q. For New Brunswick Southern Railway?  
13 A. Yes.  
14 71 Q. And does New Brunswick Southern Railway have  
15 a separate accounting department?  
16 A. They have a shared services with J.D. Irving,  
17 Limited, but they would have an overall comptroller at NB  
18 Southern Railway.  
19 72 Q. Right. Well, let's just explore the shared  
20 services arrangement for a second, so we know who has what  
21 function. When you say there's a shared services arrangement,  
22 you mean that there's an agreement under which J.D. Irving  
23 personnel perform certain accounting functions for New  
24 Brunswick Southern Railway, correct?  
25 A. Correct.  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 73 Q. And the people who did those things worked  
 2 under your supervision when you worked for J.D. Irving,  
 3 correct?  
 4 A. Not all of them, no.  
 5 74 Q. Well, the ones that you previously described,  
 6 though, right?  
 7 A. The credit functions, yes.  
 8 75 Q. And including accounts receivable collection.  
 9 A. Yes.  
 10 76 Q. Did Eastern Maine Railway have a similar  
 11 shared services arrangement with J.D. Irving?  
 12 A. I don't know. I would assume so, but I don't  
 13 know.  
 14 77 Q. Did Maine Northern Railroad have a shared  
 15 services agreement with J.D. Irving?  
 16 A. Same answer: I don't know. I would assume  
 17 they did, but I don't know.  
 18 78 Q. Okay. But you said that individual -- that  
 19 each of the railways had an individual comptroller; is that  
 20 correct?  
 21 A. No, I didn't say that.  
 22 79 Q. All right. I don't want to put words in your  
 23 mouth. So you said there would be an accounting function at  
 24 New Brunswick Southern Railway that may have done the  
 25 conversion we're talking about. What accounting function  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

1 **MR. LEPENE:** Oh, are you talking about Ryan Ellis?  
 2 A. Ryan Ellis.  
 3 86 Q. **BY MR. KEACH:** And do you know how long Mr.  
 4 Ellis served in that position prior to your retirement?  
 5 A. Quite a few years, but exact time, no, I  
 6 don't know.  
 7 87 Q. To the best of your knowledge, would Mr.  
 8 Ellis have been responsible for the preparation of T-2, the  
 9 Proof of Claim for New Brunswick Southern?  
 10 A. I don't know. I would assume so, but I don't  
 11 know.  
 12 88 Q. I'm going to ask you to turn to -- if you go  
 13 by the court marking at the top, this will be page 5 of 6 on  
 14 T-2.  
 15 A. Okay.  
 16 89 Q. And you see that there's a number, it says  
 17 #7, and there's an explanation for what's attached to this  
 18 document?  
 19 A. Okay, yes.  
 20 90 Q. Right. And then there's a reference to a  
 21 list of agreements that provides the legal basis for the  
 22 amounts asserted in the Proof of Claim. Do you see that list  
 23 of agreements?  
 24 A. I do.  
 25 91 Q. And first is a Commercial Agreement, *dated*  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

20

1 existed at the New Brunswick Southern Railway level?  
 2 A. Could you repeat the question, please?  
 3 80 Q. Sure. What accounting personnel did New  
 4 Brunswick Southern employ directly as opposed to utilizing  
 5 J.D. Irving personnel through the shared services arrangement?  
 6 A. They had a comptroller on premise with -- on  
 7 the premises of the New Brunswick Southern Railway.  
 8 81 Q. Were there any other accounting personnel who  
 9 worked under that comptroller?  
 10 A. That I don't know.  
 11 82 Q. Did Eastern Maine Railway have a comptroller  
 12 as well?  
 13 A. No.  
 14 83 Q. Did the same person who was the comptroller  
 15 for New Brunswick Southern also function as a comptroller for  
 16 Eastern Railway?  
 17 A. Yes.  
 18 84 Q. And did the same person who was the  
 19 comptroller for New Brunswick Southern also operate as the  
 20 comptroller for Maine Northern Railway?  
 21 A. Yes.  
 22 85 Q. At the time of your retirement, who was that  
 23 comptroller?  
 24 A. What was that fellow's name. You're going to  
 25 be interviewing him at one o'clock. What's his name?  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

22

1 *January 9, 2003, among the Debtor -- that would be MMA -- NBSR*  
 2 *-- that would be New Brunswick Southern Railroad -- and*  
 3 *Eastern Maine Railway, which is abbreviated as EMR, with the*  
 4 *following exhibits. Do you see that reference?*  
 5 A. I do.  
 6 92 Q. Are you familiar with that Commercial  
 7 Agreement, Mr. Hansen?  
 8 A. No, I'm not.  
 9 93 Q. Have you ever seen it or read it before?  
 10 A. I've -- to my knowledge, I've never read it  
 11 or seen it.  
 12 94 Q. Okay. And it then refers to -- and we'll  
 13 just go down to the first dot under 1; it refers to an  
 14 Interchange Agreement. Do you see that?  
 15 A. I see that.  
 16 95 Q. Are you familiar with that document?  
 17 A. No, I am not.  
 18 96 Q. And then it refers to an EMR/NBS Rates, which  
 19 I assume refers to a rate schedule. Are you familiar with  
 20 that document?  
 21 A. No, I am not.  
 22 97 Q. All right. Then it refers to a Blocking  
 23 Agreement. Do you see that?  
 24 A. Yes.  
 25 98 Q. Are you familiar with that document?  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com



1 A. No, I'm not familiar with it.  
2 99 Q. All right. And then it refers to a Rate  
3 Agreements Form. Are you familiar with that form?  
4 A. I'm not -- no, I don't know about it.  
5 100 Q. And then there's a reference to a Contracts  
6 and Rate Agreement -- or, actually plural -- Contracts and  
7 Rate Agreements. Do you know what those are?  
8 A. I do not.  
9 101 Q. And I therefore assume, similarly, as to  
10 numbers 2 and 3, the Interchange Agreement and the Blocking  
11 Agreement, is it your testimony that you have not seen and are  
12 not familiar with those two documents?  
13 A. That is correct.  
14 102 Q. Mr. Hansen, are you generally familiar with  
15 the operations of the railroads?  
16 A. No, I am not.  
17 103 Q. You don't know how they operate or where they  
18 operate?  
19 A. That is correct.  
20 104 Q. Let's talk a little bit about information  
21 flow within the companies and under the shared services  
22 agreement. How would you become aware, or the people working  
23 under you become aware -- and when I say "you," I mean you and  
24 your staff -- how would you become aware of the fact that one  
25 of the railroads had an account receivable that needed to be  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 send it out?  
2 A. Oh, I'd have no idea what person. What I'm  
3 saying is, is that there's a group of people here that are  
4 called Shared Services --  
5 109 Q. Right.  
6 A. -- and NB Southern Railway would -- would  
7 ship products through the railway, the paperwork for that  
8 shipment would be sent to this group in Shared Services, who  
9 would in turn do up an invoice and send it to the customer.  
10 110 Q. All right. So, the people at -- employees of  
11 New Brunswick Southern, just in your example, would send  
12 paperwork to people employed by J.D. Irving, Limited under the  
13 shared services agreement, and based on that paperwork,  
14 somebody employed by J.D. Irving, Limited under the shared  
15 services agreement would generate and send the invoice. Is  
16 that correct?  
17 A. Well, that's my understanding, yes.  
18 111 Q. Do you know what the particular paperwork was  
19 that flowed from -- and we'll just use New Brunswick Southern  
20 as an example -- from New Brunswick Southern to the Shared  
21 Services people, what particular paperwork they received that  
22 triggered the sending of an invoice?  
23 A. No, I would not.  
24 112 Q. And once the invoice was sent out by the J.D.  
25 Irving employees under the shared services agreement, would  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

24

1 collected?  
2 A. Well, I have a -- well, the Irvings have a  
3 computer system that interfaces with all the companies, and  
4 from my end, my accounting or my computer system interfaces  
5 with their accounting system, so I can see their accounts  
6 receivable and I would know that a certain customer owed money  
7 and how old it was, and so on and so forth. And under my  
8 position when I was here, no Irving organization could set an  
9 account up unless myself or my group approved it, so we became  
10 aware of who the customers were from the start.  
11 105 Q. So you had to -- you had to approve the  
12 initial credit relationship before it could happen.  
13 A. Correct.  
14 106 Q. Who sent out the invoices? So, if New  
15 Brunswick Southern was invoicing any third party for goods and  
16 services rendered, who would generate and send that invoice?  
17 A. Well, it would be generated by the Shared  
18 Services under the instructions of NBSR.  
19 107 Q. So just so I understand your question [sic],  
20 somebody on your staff would actually prepare that invoice for  
21 the railroad pursuant to the shared services agreement.  
22 Correct?  
23 A. No, that's not correct.  
24 108 Q. All right. So then I misunderstood you. So,  
25 who physically, what person, would generate the invoice and  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

26

1 the management of that invoice and the account generated by  
2 that thereafter be handled exclusively by the Shared Services  
3 people?  
4 A. No. Once the invoice got -- once the  
5 document got invoiced to the customer and the invoice got on  
6 the accounts receivable, their job is done and my department  
7 would then pick it up from that stage to collect the money.  
8 113 Q. Right. But your department was also under  
9 the shared services agreement, correct?  
10 A. No.  
11 114 Q. You were not -- you were not New Brunswick  
12 Southern employees, you were J.D. Irving employees, correct?  
13 A. Yeah, J.D. Irving employees, yeah.  
14 115 Q. But once the invoice was generated, your team  
15 would then handle the monitoring and collection of that  
16 invoice, correct?  
17 A. That is correct.  
18 116 Q. Is it fair to say that your team had to  
19 understand what the invoice was for in order to collect it?  
20 A. Not necessarily.  
21 117 Q. Did you have to have some understanding of  
22 the basis for the invoice?  
23 A. It's not necessary.  
24 **MR. KEACH:** All right. Well, let's look at some  
25 invoices, so that we can sort of understand this process a bit  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com



1 better. Alan, in that pile there should be -- that we sent  
2 you -- these get bound together -- it was Irving 12; it's the  
3 invoices in support of the Proof of Claim of New Brunswick  
4 Southern Railway.  
5 **MR. LEPENE:** Sure.  
6 **MR. KEACH:** And it has all the invoices attached.  
7 Do you see that?  
8 **MR. LEPENE:** Yeah, it's the big book.  
9 **MR. KEACH:** Yeah.  
10 **MR. LEPENE:** Now, you want this marked -- these  
11 are actually --  
12 **MR. KEACH:** Yeah, let's mark it --  
13 **MR. LEPENE:** These are --  
14 **MR. KEACH:** Let's mark it as --  
15 **MR. LEPENE:** These are my copies that I brought.  
16 You didn't ship us copies of these, I don't think, did you?  
17 **MS. ZAHRADKA:** No, we didn't, Alan, we had  
18 requested that you would bring copies of --  
19 **MR. LEPENE:** Right.  
20 **MR. KEACH:** Yeah, let's mark it -- let's go ahead  
21 and mark it as T-4 and then we'll just use one of the copies.  
22 **MR. LEPENE:** Okay. So we'll mark that as T-4.  
23 --- *Exhibit T-4 marked.*  
24 **MR. LEPENE:** And before we start with that, could  
25 we take a short break?

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 various parties to the document?  
2 A. Somewhat.  
3 121 Q. All right. Well, we'll get into that in a  
4 moment, then. While we're on the -- while we have the Proofs  
5 of Claim -- the -- excuse me -- the invoices in front of us,  
6 if you turn -- I think it's probably in one of the first  
7 inside pages. On my document, it's actually the second page,  
8 you know, behind the cover sheet; there's a spreadsheet. Do  
9 you see that?  
10 A. That document?  
11 122 Q. That lists --  
12 A. Yes.  
13 123 Q. And it lists all of the invoices that make up  
14 the Proof of Claim. Do you see that?  
15 A. Yes, I do.  
16 124 Q. Okay. Now, Mr. Hansen, you recall that you  
17 testified in this proceeding in Bankruptcy Court, correct?  
18 A. Yes, that is correct.  
19 125 Q. Right. And I am referring now not to your  
20 deposition but to your testimony actually at the hearing  
21 before the bankruptcy judge, and I'm going to read from the  
22 transcript of that proceeding, just so that I can set up a  
23 question about this particular spreadsheet. My question to  
24 you at the time was:

*Now, of the total amount of NBRS, New*  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

28

1 **MR. KEACH:** Sure.  
2 --- Recess taken 10:52 a.m.  
3 --- Upon resuming at 11:00 a.m.:  
4 **MR. LEPENE:** Bob, I just want to clarify one  
5 aspect, because I think Mr. Hansen was confused with respect  
6 to the reference in the Proof of Claim to the Commercial  
7 Agreement and you asked about his familiarity with that, and I  
8 think he may have misspoken in terms of saying that he wasn't  
9 familiar with that agreement. So, if you want to just explore  
10 that, I just want the record to be clear here with respect to  
11 that, because, again, I think he did misspeak.  
12 **MR. KEACH:** Okay. All right. Well, we're back on  
13 the record, correct?  
14 **MR. LEPENE:** We are.  
15 **MR. KEACH:** Mr. Hansen, you've heard the statement  
16 that was just made by counsel.  
17 118 Q. Do you wish to correct your testimony with  
18 respect to your familiarity with the Commercial Agreement,  
19 so-called?  
20 A. Yes. I've seen that document before.  
21 119 Q. All right. And when did -- when have you  
22 seen it before?  
23 A. That I'm not sure.  
24 120 Q. And are you familiar with the document enough  
25 to know what obligations arise out of that document from the

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

30

1 *Brunswick Southern's, Proof of Claim,*  
2 *approximately how much is owed for*  
3 *freight services provided in connection*  
4 *with oil shipments that were made within*  
5 *six months of MMA's bankruptcy?*  
6 And your answer was: *Approximately 1.5 million.* Do you  
7 recall that?  
8 A. That is correct.  
9 126 Q. Looking at this spreadsheet, can you point  
10 out to me which of the invoices make up the 1.5 million that  
11 you're referring to? Approximately 1.5 million.  
12 A. Well, I don't --  
13 **MR. LEPENE:** So, do you want him to look at the --  
14 **MR. KEACH:** I want him to -- I think he can do it  
15 -- I think he can do it by the spreadsheet, but I'm even  
16 willing to offer some help, if you'd like.  
17 **MR. LEPENE:** Yeah, in terms of each line item?  
18 You want him to review --  
19 **MR. KEACH:** Yeah.  
20 **MR. LEPENE:** -- each line item?  
21 127 Q. **BY MR. KEACH:** I think if you look in the --  
22 A. That says crude, that's says crude.  
23 128 Q. If you look in the -- if you look in the  
24 reference, there's one that says CRUDE FSC MAY. Do you see  
25 that?

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 A. Yes.  
2 129 Q. Would that be part of that, of the 1.5?  
3 **MR. LEPENE:** If you know.  
4 A. I don't know.  
5 130 Q. **BY MR. KEACH:** All right. Would the CRU --  
6 would the one after that, CRUDE MAY, is that part of it?  
7 A. There -- it looks like it, but there again, I  
8 -- I -- you know, I don't know without looking at further  
9 documents, I guess.  
10 131 Q. Well, let me back up, then. When you  
11 answered that question in your testimony, on what basis did  
12 you estimate it at 1.5 million?  
13 A. Well, the crude shipments that we were doing  
14 at the time were approximately \$500,000 for the -- for a --  
15 for a month's shipment, and there was basically three months  
16 that we weren't paid; that comes up to \$1.5 million.  
17 132 Q. And if I -- I'm going to -- again, I'll try  
18 to help this along a little bit. If I represented to you --  
19 and I'm going to just give you the references of -- and I'm  
20 going to give you the specific references I'm referring to.  
21 But Crude FSC May and CRUDE MAY and the two -- the  
22 2012 FSC UNBILLED and 2013 UNBILLED FSC and MMACRU, which is  
23 the references 100880 and MMACRU -- and that refers to crude,  
24 correct, C-R-U?  
25 A. It looks that way.  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 things that say "crude" on it, I don't know what the number  
2 is. Are you telling me what the number is? Have you --  
3 139 Q. Well, I'm also happy to take a break and let  
4 you get a calculator, if you'd like.  
5 **MR. LEPENE:** I mean, the document speaks for  
6 itself, Bob, and --  
7 **MR. KEACH:** Well, but what I'm asking him is, are  
8 those the --  
9 140 Q. Are those the items that made up your  
10 estimate? And if you don't know, you don't know.  
11 A. I told you how I made up my estimate, and I  
12 don't know -- my estimate was -- was based on my recollection  
13 of shipments being \$500,000 a month, there were three months  
14 weren't paid, that ups -- that adds up to \$1.5 million. It  
15 could be more, could be less.  
16 141 Q. All right. Did you -- the schedule that  
17 we're looking at, did you have any role in preparing it?  
18 A. No, I did not.  
19 142 Q. So, when you testified in court as to the  
20 estimate as to what component of the Proof of Claim consisted  
21 of the oil shipments, other than the three-times-500  
22 calculation that you did, was there any other basis for your  
23 testimony?  
24 A. No.  
25 143 Q. And were you -- and your testimony today  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

32

1 133 Q. It says MMA CRUDE over to the left under  
2 Remark, correct?  
3 A. Over in the remarks. Remarks --  
4 134 Q. First column.  
5 A. Okay, MMA CRUDE, yeah, okay.  
6 135 Q. All right. And so again, if I add up -- do  
7 you have a calculator with you, by the way?  
8 A. No, I do not.  
9 136 Q. If you add up all the references to MMA crude  
10 and include the two unbilled FSC that I just referred to, that  
11 total is 1,571,297.  
12 A. Okay.  
13 137 Q. Are there any of those references that you  
14 would not include to get to the 1.5?  
15 **MR. LEPENE:** I'm going to object to the form of  
16 the question. He doesn't have a calculator, so --  
17 **MR. KEACH:** All right.  
18 138 Q. I'll be -- I'm not asking you to confirm the  
19 number, I'm just saying, assume that that's the number --  
20 well, let me back up again. Would it be fair, in order to  
21 determine those parts of the Proof of Claim that are related  
22 to crude shipments, to look at the remarks and identify those  
23 places where's there a specific reference to crude? Would  
24 those be the references that would make up that number?  
25 A. Well, without adding up each one of those  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

34

1 is -- and I assume it was also true at the time you  
2 testified -- that you did not -- you were not involved in the  
3 preparation of the Proof of Claim and you don't have knowledge  
4 of the components of the Proof of Claim that we put in front  
5 of you. Is that your testimony?  
6 A. That's correct.  
7 **MR. KEACH:** Alan, in that package we sent you, you  
8 should have the Commercial Agreement.  
9 **MR. LEPENE:** I'm sure we do.  
10 **MR. KEACH:** And this will be 5?  
11 **MR. LEPENE:** Yes.  
12 **MR. KEACH:** T-5?  
13 **MR. LEPENE:** T-5.  
14 --- *Exhibit T-5 marked.*  
15 **MR. LEPENE:** Bob, is there any specific section  
16 you want him to review before you ask questions, so that we  
17 can move --  
18 **MR. KEACH:** No, I just wanted to -- I'm going to  
19 ask him general questions first and then I will ask him some  
20 other questions, Alan, but we can -- he can certainly take  
21 time to look at those more carefully as we go through them.  
22 **MR. LEPENE:** Okay, that's fine.  
23 **MR. KEACH:** Mr. Hansen, this goes to the  
24 correction to your testimony that Mr. Lepene mentioned  
25 earlier.  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 144 Q. We have placed in front of you, marked as  
2 Exhibit T-5, a document entitled Commercial Agreement *made*  
3 *this 9th day of January, 2003*. Do you have that in front of  
4 you?  
5 A. I do.  
6 145 Q. And let me ask you again, have you seen this  
7 document before?  
8 A. Yes, I have.  
9 146 Q. And are you familiar with it?  
10 A. Somewhat.  
11 147 Q. And what are the circumstances under which  
12 you became somewhat familiar with the document?  
13 A. I became aware of the document around the  
14 time of the accident.  
15 148 Q. "The accident" meaning the July 6th, 2013  
16 derailment in Lac-Mégantic?  
17 A. Correct.  
18 149 Q. And what about -- well, why did you become  
19 familiar with the document at that time?  
20 A. Because NB Southern were owed money by MMA  
21 and we weren't being paid, so I asked to see the document, to  
22 see what -- what was in there that would be helpful in trying  
23 to collect this money.  
24 150 Q. Right. And did you review the document at  
25 that time?

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 A. 12.1 B, section 12.  
2 156 Q. Okay. Is there any other section that you  
3 would refer to with respect to payment terms?  
4 A. Under the same section, C; it refers to if  
5 they don't pay within the 21 days, then they've got a further  
6 seven days before they're in default.  
7 157 Q. Do you know how the Commercial Agreement and  
8 the agreements attached to it created obligations from MMA or  
9 MCC to any of the railroads, the Irving railroads?  
10 **MR. LEPENE:** I'm going to object to the form of  
11 the question, but you can answer.  
12 A. Well, I don't understand the question.  
13 **MR. KEACH:** Let me break it into pieces.  
14 158 Q. Under this collection of agreements, what was  
15 Eastern Maine Railway Company doing for or in connection with  
16 MMA?  
17 A. Well, it's my understanding that Eastern  
18 Maine Railway weren't doing anything for MMA; they were doing  
19 work for NB Southern.  
20 159 Q. But let me just sort of describe the movement  
21 of the traffic and you tell me if I'm wrong here. There --  
22 A. Well, first of all, I should -- before you  
23 ask the question, I should point out, I'm not a railway man,  
24 so if you want to get into technical questions about how a  
25 railway runs, you're talking to the wrong guy.

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

36

1 A. Somewhat.  
2 151 Q. All right. And did you find anything in the  
3 document that would be helpful to you in collecting the money  
4 that you believed was owed by MMA?  
5 A. Basically, no.  
6 152 Q. Did you talk to anybody at that time about  
7 the document?  
8 A. I believe, at the time, I asked to get a copy  
9 from Ian Simpson.  
10 153 Q. Did you talk to Mr. Simpson about whether  
11 there was anything in the document that would help you collect  
12 the money?  
13 A. No, other than I asked him and he referred me  
14 to the payment terms that were in the document.  
15 154 Q. And which payment terms were those? Can you  
16 show me in the document where those are?  
17 A. It's under section 12 Reports and Settlement,  
18 12.1 B. *Payments due under this section shall be made within*  
19 *20 days from receipt of this invoice [...].*  
20 **MR. LEPENE:** I think it's 21 days.  
21 **THE WITNESS:** What did I say?  
22 **MR. LEPENE:** You said 20.  
23 **THE WITNESS:** Twenty-one days.  
24 155 Q. **BY MR. KEACH:** So your reference is to 12.1  
25 B, correct?

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

38

1 160 Q. Well, just turn -- let's turn to what is  
2 Exhibit 1 -- Exhibit A, excuse me, to the Commercial  
3 Agreement --  
4 A. Where's that?  
5 161 Q. -- the so-called Inter -- which is the  
6 so-called Interchange Agreement. Do you see that?  
7 **MR. LEPENE:** Keep going.  
8 **MR. KEACH:** No, it's actually the first one, Alan.  
9 It's A.  
10 **MR. LEPENE:** Okay. We went too fast.  
11 **MR. KEACH:** Interchange Agreement.  
12 **MR. LEPENE:** Yeah, we went -- hold on. Right  
13 here.  
14 **THE WITNESS:** Where? Oh, it's that one? Okay.  
15 162 Q. **BY MR. KEACH:** Do you understand what the  
16 duties of Eastern Maine Railway Company or Maine, Montreal  
17 [*sic*] & Atlantic Railway Ltd., MMA, were under this agreement?  
18 **MR. LEPENE:** And "this agreement" being the  
19 Interchange Agreement.  
20 **MR. KEACH:** The Interchange Agreement, right.  
21 A. Well, quickly reading portions of this  
22 agreement, it -- I would assume that -- that EMR or -- would  
23 -- would interchange, or pick up, the cars at a certain point  
24 and transport them to another point.  
25 163 Q. Right. And, specifically, that they would

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 pick them up at Brownville Junction, right?  
2 A. I guess it says that here, yes.  
3 164 Q. And EMR would take the -- would move that  
4 freight from Brownville Junction to some other point, where  
5 then NBSR would move the train from that point forward; is  
6 that your understanding?  
7 A. That is correct.  
8 165 Q. And one of the obligations that arises out of  
9 this Interchange Agreement is that Maine, Montreal [*sic*] &  
10 Atlantic Railway would owe Eastern Maine for that interchange,  
11 correct?  
12 **MR. LEPENE:** Object to the form of the question.  
13 **MR. KEACH:** You can answer, Mr. Hansen, if you  
14 know.  
15 A. Well, I don't know.  
16 166 Q. Do you know who would know?  
17 A. The folks at -- at NB Southern: Ian Simpson  
18 and Ryan Ellis.  
19 **MR. KEACH:** Alan, in that group of documents there  
20 are two letters, one on NB Southern letterhead and one on  
21 Eastern Maine Railway letterhead. They're both dated August  
22 2nd and they're from Mr. Simpson.  
23 **MR. LEPENE:** Yeah, let me find them. Okay, so the  
24 one from NB Southern, you want marked as -- what number are  
25 we at? T-6.

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 171 Q. Who would normally write letters of this  
2 type?  
3 A. Probably the Legal Department.  
4 172 Q. But you think you would have seen this  
5 document in your capacity as handling collection of accounts  
6 receivable, correct?  
7 A. More than likely, yes.  
8 173 Q. I'm going to show you what's been marked as  
9 T-7, which is the letter dated the same day, August 2nd, 2013,  
10 on Eastern Maine Railway Company letterhead, again signed by  
11 Mr. Simpson. Do you see that?  
12 A. I see that, yes.  
13 174 Q. And again, I assume, in your function as  
14 handling collection of accounts receivable, you would have  
15 seen this document as well?  
16 A. That is correct.  
17 175 Q. All right. And this refers to obligations  
18 owed by MMA to Eastern Maine Railway arising out of the  
19 Commercial Agreement, does it not?  
20 **MR. LEPENE:** Objection to the form of the  
21 question.  
22 **MR. KEACH:** You can answer, Mr. Hansen, if you  
23 understand.  
24 A. I don't understand, no.  
25 176 Q. Do you understand this to be a collection

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

40

1 **MR. KEACH:** T-6. And then the one from --  
2 **MR. LEPENE:** And then the Eastern Maine will be  
3 T-7?  
4 **MR. KEACH:** Seven, yeah.  
5 --- Exhibits T-6 and T-7 marked.  
6 **MR. KEACH:** Why don't you go ahead and read both  
7 of those. Take your time, take your time.  
8 --- Pause in the proceedings.  
9 **MR. LEPENE:** Bob, he's read them.  
10 **MR. KEACH:** All right.  
11 167 Q. Referring to Exhibit T-6, which is a letter  
12 from Mr. Simpson to Montreal, Maine & Atlantic Railway Ltd.,  
13 dated August 2nd, 2013, Mr. Hansen, have you seen this  
14 document before?  
15 A. Probably, yes.  
16 168 Q. And you say probably because your -- you and  
17 your staff were involved in the collection of overdue  
18 accounts, correct?  
19 A. Correct.  
20 169 Q. Would someone under your supervision have  
21 written this letter for Mr. Simpson's signature?  
22 A. No.  
23 170 Q. Who would have written the letter? Or do you  
24 -- or, if you know, who actually did write the letter?  
25 A. I have no idea.

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

42

1 letter on behalf of Eastern Maine Railway Company?  
2 A. That is correct.  
3 177 Q. What is it that Eastern Maine Railway Company  
4 is attempting to collect?  
5 **MR. LEPENE:** And again, I'm going to object to the  
6 form of the question.  
7 **MR. KEACH:** You can answer, Mr. Hansen.  
8 A. I really don't know.  
9 178 Q. From your reading of the document, is Eastern  
10 Maine trying to collect obligations arising out of the  
11 Commercial Agreement?  
12 **MR. LEPENE:** Objection to the form of the  
13 question.  
14 A. There again, I don't know. I'm not a lawyer  
15 and I don't know what they're getting at.  
16 179 Q. **BY MR. KEACH:** Who would have discussed with  
17 Mr. Simpson the need to send such a letter; would it have been  
18 someone -- you or someone from your group?  
19 A. No.  
20 180 Q. Who would have, if it was not someone from  
21 you -- or, was not you or someone from your group?  
22 A. I would have no idea.  
23 181 Q. Well, you were responsible for the collection  
24 of overdue accounts, correct?  
25 A. That is correct.

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 182 Q. All right. And when a demand letter needed  
 2 to be sent because your collection efforts were otherwise  
 3 unsuccessful -- well, back that up. Let me just strike that.  
 4 When your collection efforts were unsuccessful within your  
 5 group, were there steps to be taken to take those collection  
 6 efforts to a different level?  
 7 A. That is correct.  
 8 183 Q. And what were those steps?  
 9 A. Well, those steps, it would come to my  
 10 attention, I would then get involved; if I was unsuccessful,  
 11 then I would then turn it over to the internal Legal  
 12 Department, who then --  
 13 **MR. LEPENE:** And I just want to caution the  
 14 witness, any discussions with the Legal Department would be  
 15 subject to privilege.  
 16 A. Now, as a result of the accident, the normal  
 17 process of how we would collect would have changed.  
 18 184 Q. **BY MR. KEACH:** And how did it change, as you  
 19 understood it?  
 20 A. Well, it changed to the point that it was  
 21 automatically returned -- turned over to the Legal Department  
 22 because of the situation.  
 23 185 Q. So, from the date of the Lac-Mégantic  
 24 derailment forward, all collection activities were handled by  
 25 the Legal Department as opposed to your team?  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

1 letter?  
 2 A. I have no idea.  
 3 191 Q. Do you know if it's an amount separate and  
 4 distinct from the amount set forth in the New Brunswick  
 5 Southern Railway Proof of Claim?  
 6 A. I have no idea.  
 7 192 Q. Do you know if the amounts he was trying to  
 8 collect are within the amount of the Proof of Claim filed by  
 9 New Brunswick Southern?  
 10 A. I have no idea.  
 11 193 Q. Given your knowledge of the organization, who  
 12 would have an idea about that?  
 13 A. I guess the person that wrote the letter.  
 14 194 Q. And would anybody else?  
 15 A. I would have no idea.  
 16 **MR. KEACH:** All right, let's go back to that big  
 17 book of invoices, if we can.  
 18 **MR. LEPENE:** Yes. T-4.  
 19 **MR. KEACH:** T-4, correct. I'm going to apologize  
 20 to you in advance, Mr. Hansen, because, unfortunately, we had  
 21 to produce this document as it was produced and it's not  
 22 paginated. But I'm going to ask you to leaf through until you  
 23 get to an invoice that deals with unbilled FSC in 2012, and  
 24 the amount of that invoice is 133,246.06 and it's --  
 25 **MR. LEPENE:** How far into the document, Bob, do  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

1 A. Shortly after.  
 2 186 Q. And why was that?  
 3 A. Well, because we were dealing with a company  
 4 that no longer was operational, they had no funds, and, from  
 5 my estimation, there was -- there was no one to collect from  
 6 on a normal course, nothing -- nothing I could do personally.  
 7 187 Q. In your understanding, then, Montreal, Maine  
 8 & Atlantic Railway Ltd. was not operating after the  
 9 Lac-Mégantic derailment?  
 10 A. I had no idea, but I assumed they weren't.  
 11 188 Q. Was the amount that Mr. Simpson was trying to  
 12 collect for Eastern Maine Railway Company in the August 2nd,  
 13 2013 letter segregated on the books of J.D. Irving or Eastern  
 14 Maine, to your knowledge?  
 15 **MR. LEPENE:** Objection to the form. You can  
 16 answer if you're able to.  
 17 A. Well . . .  
 18 189 Q. **BY MR. KEACH:** The answer was no?  
 19 A. Well, I don't know, I'm just trying to think  
 20 here. My only customer that I'm aware of is MMA. I have --  
 21 my recollection is I never saw any receivables on any books of  
 22 Eastern Maine.  
 23 190 Q. All right. But again, Mr. Simpson wrote a  
 24 letter for Eastern Maine to collect some money. Do you know  
 25 how much money Mr. Simpson was trying to collect through that  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

1 you have any idea?  
 2 **MR. KEACH:** I'd say it's about halfway in, Alan,  
 3 maybe a third of the way in, something like that. Not even  
 4 that far. Probably a quarter of the way in. It also has a --  
 5 there's a hand -- you know, on the facing page, which is the  
 6 same invoice, there's handwriting at the top that says *Arron K*  
 7 *email 606330*.  
 8 **MR. LEPENE:** 606330?  
 9 **MR. KEACH:** Right. But if you just flip through  
 10 it, you'll see two invoices facing each other, both for  
 11 unbilled fuel surcharges in 2012.  
 12 **MR. LEPENE:** All right, give us a minute or two.  
 13 **MR. KEACH:** Yeah, you know, and unfortunately, you  
 14 know, as I said, this is how you filed it. We could have, I  
 15 suppose, paginated it, but . . .  
 16 **MR. LEPENE:** What did you say --  
 17 **THE WITNESS:** The amount's a hundred-and-some  
 18 thousand.  
 19 **MR. LEPENE:** You said a hundred-and-some thousand?  
 20 **MR. KEACH:** Yeah, 133,246.06.  
 21 **MR. LEPENE:** One-thirty-three. We've found it --  
 22 133,246.06.  
 23 **MR. KEACH:** Right.  
 24 **MR. LEPENE:** Got it.  
 25 **MR. KEACH:** All right.  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com



1 195 Q. First, Mr. Hansen, do you know what the fuel  
2 surcharge represents, what it is?  
3 A. Not really, no.  
4 196 Q. I mean, do you know why NBSR would be billing  
5 MMA for a fuel surcharge?  
6 A. No.  
7 197 Q. This invoice refers to unbilled fuel  
8 surcharges from 2012 and then there's a reference to backup  
9 attached, but it doesn't look like there's any backup  
10 attached. Do you know what the reference is to 2012? Do you  
11 know what that means?  
12 A. Well, not really, other than the fact that  
13 obviously they didn't bill fuel charges to them in 2012.  
14 198 Q. So this would have been fuel -- well, do you  
15 know if this is fuel that's supplied by NBSR to MMA?  
16 A. I would have no idea.  
17 199 Q. Or is there some kind of additional amount  
18 that's added to the bill because of some fuel cost-related  
19 item?  
20 A. I would have no idea.  
21 200 Q. Can you tell from either of these documents  
22 when this fuel was actually used or sold to MMA?  
23 A. I would have no idea.  
24 201 Q. But presumably sometime in 2012, correct?  
25 A. That's what it says, yes.  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

48

1 202 Q. But other than what this says, you have no  
2 idea as to when this obligation might have been incurred?  
3 A. That is correct.  
4 203 Q. And you don't know what the fuel surcharge  
5 is?  
6 A. That is correct.  
7 **MR. KEACH:** Just to keep this simple, just flip  
8 forward about three pages until you get to invoice number  
9 100848, Alan. It won't be an invoice kind of page, it will  
10 just be a printed page. It'll say Canadian Funds, Invoice  
11 Number 100848 --  
12 **MR. LEPENE:** We've found it.  
13 **MR. KEACH:** -- Switching Settlement Statement.  
14 **MR. LEPENE:** We have it.  
15 204 Q. **BY MR. KEACH:** Mr. Hansen, are you familiar  
16 with this form?  
17 A. No, I am not.  
18 205 Q. Do you know who generates this document  
19 within the Irving Group of Companies?  
20 A. Not really, no.  
21 206 Q. Do you know what the McAdam Subdivision is?  
22 A. McAdam Subdivision. No, never heard tell of  
23 it.  
24 207 Q. And what about the St. Stephen Subdivision?  
25 A. Never heard tell of that, either.  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 208 Q. Do you know what services are being billed  
2 for when the invoice is labelled Switching Settlement  
3 Statement?  
4 A. I have no idea.  
5 **MR. KEACH:** Alan, in that same pile there should  
6 be copies of the document -- the e-mail you sent yesterday and  
7 the attachment to that e-mail, which was forwarding the e-mail  
8 chain between Don Gardner and Ryan Ellis.  
9 **MR. LEPENE:** That's going to be in the package --  
10 **MR. KEACH:** That we sent. Did you put them in  
11 there as well?  
12 **MS. ZAHRADKA:** No. Alan --  
13 **MR. KEACH:** You said you'd have a copy of it with  
14 you, sorry.  
15 **MR. LEPENE:** Did you e-mail a copy --  
16 **MS. ZAHRADKA:** This is --  
17 **MR. LEPENE:** Yeah, the one I sent yesterday, yes.  
18 **MR. KEACH:** Yeah, and you said you'd have a hard  
19 copy of it with you.  
20 **MR. LEPENE:** Yeah, and I'm going to apologize  
21 right now. In all of the excitement, I have failed to do  
22 that. We can get that printed. You didn't fax that today, I  
23 assume, what I sent you yesterday.  
24 **MR. KEACH:** No, no, we were actually counting on  
25 the fact that you would have it. So we can take a minute and  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

50

1 you can print it out, if you want.  
2 **MR. LEPENE:** Do you want to do that now, or do you  
3 want to continue and come back to that? What's your  
4 preference?  
5 **MR. KEACH:** No, I'm actually probably going to  
6 conclude with that with this witness.  
7 **MR. LEPENE:** Then give us -- let me e-mail it over  
8 to the folks here and -- I apologize -- we'll get that printed  
9 for you.  
10 **MR. KEACH:** No worries.  
11 **MR. LEPENE:** Let's take a five-minute break and  
12 I'll take care of that.  
13 **MR. KEACH:** Yeah, that's fine. Thanks.  
14 --- Recess taken 11:40 a.m.  
15 --- Upon resuming at 11:49 a.m.:  
16 **MR. KEACH:** Alan, we can do a few other things  
17 while we're waiting for that, if you want --  
18 **MR. LEPENE:** Okay.  
19 **MR. KEACH:** -- with this witness, so we're not  
20 taking too much time. In the meantime, we'll have the staff  
21 connect and get a full copy.  
22 209 Q. Mr. Hansen, I want to go back to T-2 and T-3,  
23 which are the two Proofs of Claim. Can you get those in front  
24 of you?  
25 A. Okay.  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 210 Q. And I just want to make sure the record's  
2 clear here. My understanding of your testimony is that you  
3 did not have any involvement in preparing these Proofs of  
4 Claim and no one working for you on your team was involved in  
5 preparing these Proofs of Claim. Is that correct?  
6 A. To the best of my knowledge, that would be  
7 correct.  
8 211 Q. All right. And so, is it fair to also then  
9 say that with respect to the amounts shown on the last page of  
10 the Proof of Claim, the exhibit, that you personally did not  
11 independently verify the accuracy of these numbers? Is that  
12 correct?  
13 A. That is correct.  
14 212 Q. And to the best of your knowledge, no one on  
15 the team that you supervised independently verified the  
16 accuracy of these numbers; is that correct?  
17 A. That would be correct.  
18 213 Q. And as you sit here today, you have no  
19 personal knowledge of whether or not these numbers are  
20 accurate in either of these Proofs of Claim, correct?  
21 A. That would be correct.  
22 214 Q. All right. While we're waiting for this copy  
23 to be made, I want to revisit some of your testimony from your  
24 earlier deposition in this case, and also your trial testimony.  
25 You described an arrangement in your prior testimony under  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 cheques simultaneously, correct?  
2 A. That is correct.  
3 218 Q. Were there ever any instances where it  
4 operated differently, where there was an offset of amounts due  
5 from the paper companies to MMA in satisfaction of an amount  
6 owed by MMA to the Irving railroads?  
7 A. There was one, yes.  
8 219 Q. All right. And when did that occur?  
9 A. That occurred after the accident, when --  
10 when MMA were unable to pay anything they owed us; at that  
11 time, I did an offset.  
12 220 Q. You offset amounts owed by MMA to the paper  
13 companies to satisfy -- I mean, excuse me, you offset amounts  
14 owed by the paper companies to MMA against amounts that you  
15 believed that MMA owed the Irving railroads.  
16 A. That's correct.  
17 221 Q. And the paper companies and the railroads are  
18 not the same corporate entity, are they?  
19 A. That's correct.  
20 222 Q. They're separate and distinct legal entities?  
21 A. That's correct.  
22 223 Q. And did anybody at MMA give you permission to  
23 do that set-off?  
24 A. No.  
25 224 Q. You've also mentioned earlier that you had an  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

52

1 which you would hold money due from certain of the Irving  
2 paper companies to MMA or MCC pending receipt of payment from  
3 MMA or MCC for amounts due to the Irving railroads. Do you  
4 recall that testimony?  
5 A. I recall the testimony, but I don't recall  
6 any M -- MCC.  
7 215 Q. All right. Well, let me ask you to describe  
8 how you handled that at least three-way or three-party  
9 arrangement. Can you describe for me exactly what it is that  
10 you did?  
11 A. Who are the three parties?  
12 216 Q. Well, describe for me the methodology under  
13 which you held money due from the paper companies to MMA while  
14 waiting for amounts to be paid by MMA to the Irving railroads.  
15 Exactly how did that work?  
16 A. Well, that worked under a swap -- I made a  
17 swap arrangement/agreement with MMA that when the Irving  
18 organization were about to pay MMA, they would have to, at the  
19 same time, pay what they owed to NB Southern, and we did that  
20 by way of a swap. We physically gave them cheques for the  
21 amount of monies that we owed them, and they physically, at  
22 the same time, gave cheques back to us what they owed NB  
23 Southern. That's how it worked.  
24 217 Q. All right, so there was no accounting set-off  
25 that you accomplished, there was just a physical exchange of  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

54

1 agreement to do this swap arrangement, where you actually just  
2 physically simultaneously exchanged the cheques. Was that  
3 agreement reduced to writing in any way?  
4 A. Not that I'm aware of.  
5 225 Q. Who did you have the agreement with?  
6 A. Don Gardner.  
7 226 Q. And what was the basis of your understanding  
8 that you had such an agreement?  
9 A. Well, I denied credit to MMA. I found them  
10 to be not creditworthy and I refused to open an account for  
11 them. I wasn't taking any credit risk, so they either did the  
12 business through a swap or -- or not.  
13 227 Q. So it wasn't so much an agreement as a  
14 unilateral condition that you imposed as a condition to doing  
15 business, correct?  
16 A. Correct.  
17 **MR. KEACH:** All right. Alan, let's wait until we  
18 get the document.  
19 **MR. LEPENE:** All right. It's been sent, I assume.  
20 **MR. KEACH:** Yes.  
21 **MR. LEPENE:** It has arrived.  
22 **THE WITNESS:** It's here.  
23 **MR. LEPENE:** Okay. As we speak. All right, so --  
24 **MR. KEACH:** We're going to mark that as T-8?  
25 **MR. LEPENE:** We're going to mark this as T-8, and  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 this does have, I believe, all the entire e-mail string.  
2 **MR. KEACH:** Including the exhibit?  
3 **MR. LEPENE:** And it has the exhibit attached.  
4 **MR. KEACH:** Great, thanks.  
5 **MR. LEPENE:** It's all one document. We're going  
6 to make it one document.  
7 **MR. KEACH:** Right, yeah, just make it all one  
8 document. It would be the e-mail and the attachment.  
9 **MR. LEPENE:** That's it. And I have taken off the  
10 -- my e-mail message to Lindsay yesterday that transmitted it.  
11 **MR. KEACH:** Okay. All right, thank you.  
12 --- *Exhibit T-8 marked.*  
13 **MR. KEACH:** Mr. Hansen, I want you to look through  
14 this e-mail chain, if you would. And if it helps you, if you  
15 go to the back of the document just before the exhibit, as  
16 these things work, the oldest e-mail is at the end and you'll  
17 work back to the beginning, right? So, if you want to go  
18 chronologically, you'll start at the back and come forward.  
19 **THE WITNESS:** Okay, the back is just that.  
20 **MR. LEPENE:** Yeah, no, he's saying turn to the  
21 e-mail chain, so read up and then go to the next page.  
22 --- *Pause in the proceedings.*  
23 **THE WITNESS:** Okay.  
24 **MR. KEACH:** All right.  
25 228 Q. Let me first ask you, have you ever seen this  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 Gardner e-mail that's May 3rd, 10:26 a.m. Do you see that?  
2 A. I do.  
3 234 Q. Mr. Ellis says to Mr. Gardner:  
4 *I have approx. \$650,000 approved and*  
5 *ready to go from my end. Please confirm*  
6 *how much you will be paying and [we'll]*  
7 *get this swap started.*  
8 Do you know what Mr. Ellis is referring to when he refers to  
9 the \$650,000?  
10 A. Well, it would be --  
11 235 Q. Might that be -- I'm sorry, go ahead.  
12 A. That would be monies owed to MMA by, more  
13 than likely, the Irving Paper.  
14 236 Q. Okay. In other words, in essence, to use  
15 your example again, you would be holding cheques of that  
16 amount payable to MMA and waiting for an offsetting payment by  
17 MMA in order to release them, correct?  
18 A. Correct.  
19 237 Q. And if we progress up the chain, Mr. Gardner  
20 writes to Mr. Ellis: *I have 449,000 out of here.* And he  
21 breaks it down between NBSR and MNR and talks about when the  
22 oil will come. I assume you understand that to mean Mr.  
23 Gardner saying he could make payments of 449 against the 650.  
24 Correct?  
25 A. Correct.  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

56

1 e-mail chain before?  
2 A. I don't think so.  
3 229 Q. And referring specifically to what was, when  
4 it was an e-mail, the attachment, which are the two  
5 spreadsheets, one on top of the other, have you seen that  
6 before?  
7 **MR. LEPENE:** The last page.  
8 A. Not to my recollection, I don't remember  
9 seeing it.  
10 230 Q. **BY MR. KEACH:** All right. When these swaps  
11 that you've described occurred, did you personally supervise  
12 them?  
13 A. No, I did not. I set the system up and then  
14 it worked from there.  
15 231 Q. All right. Each of these -- the subject for  
16 the first e-mail, from Mr. Gardner to Mr. Ellis, dated April  
17 26, 2013, is -- the subject is Cash Swap, and it appears to be  
18 Mr. Gardner requesting of Mr. Ellis that they, quote, *put*  
19 *together -- put another swap together early in the week.* Do  
20 you see that?  
21 A. Yeah.  
22 232 Q. Is that the swap that you previously referred  
23 to; in other words, the exchange of cheques?  
24 A. That's correct.  
25 233 Q. And then if you go to the Ryan Ellis to Don  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

58

1 238 Q. And then the next e-mail is an e-mail from  
2 Mr. Ryan [*sic*] to Mr. Gardner asking for a listing of what's  
3 included in the 449. Do you see that?  
4 A. Yeah, okay.  
5 239 Q. All right.  
6 A. Yeah.  
7 240 Q. And then Mr. Gardner writes back to Mr. Ryan  
8 [*sic*] that *We are -- quote:*  
9 *-- upside down by \$250,000 with the*  
10 *paper payments. But I will send the*  
11 *full oil payment and then pay the items*  
12 *checked off on the attached once I*  
13 *receive the \$650,000.*  
14 And if you go look at the attachment, there's a number of  
15 items that have check marks next to them, right?  
16 A. Okay.  
17 241 Q. So, was it your understanding that Mr.  
18 Gardner was asking for essentially a partial swap to be done?  
19 A. Well, not really, no. The way --  
20 242 Q. Well --  
21 A. The swap didn't have to be equal.  
22 243 Q. Okay.  
23 A. So, if I was looking for -- if he come -- if  
24 Don Gardner got a hold of me and said, Karl, the most money I  
25 have here I can pay right now is 450,000, but you owe me  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com



1 650,000, I -- more than likely, I wouldn't have a problem  
2 paying him everything I owed for his 450, because in my view,  
3 we were always doing business and we would always be in  
4 control.  
5 244 Q. Do you know if this swap actually occurred?  
6 A. I don't know, no.  
7 245 Q. But this would be typical of the kind of swap  
8 transaction that you were talking about, correct?  
9 A. This would be typical of the arrangement  
10 going back and forth, yes.  
11 246 Q. Right. And this one, if it -- assuming it  
12 concluded, would have happened in May of 2013, it looks like?  
13 A. It looks that way.  
14 247 Q. Right. Do you know if there were similar  
15 swap transactions between May of 2013 and the date of the Lac-  
16 Mégantic derailment?  
17 A. I don't know. I'd have to check.  
18 248 Q. And what would you have to check to see if  
19 that was the case?  
20 A. Well, I'd have to ask the people that are  
21 here to go look and see if there was any swap arrangements  
22 done in that time frame.  
23 249 Q. And do know who by -- I mean, by name, do you  
24 know who you would ask?  
25 A. Joanne Kelter.

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 Railway next to it, right?  
2 A. Yeah.  
3 257 Q. So those would be amounts that were owed to  
4 Maine Northern Railway?  
5 A. Well, this would --  
6 258 Q. Would that be correct?  
7 A. This would be amounts owed to Maine Northern  
8 Railway? It says -- the report says accounts payable.  
9 259 Q. Right.  
10 A. It doesn't say accounts receivable.  
11 260 Q. Right, accounts payable; in other words, this  
12 is an MMA document.  
13 A. Yes, saying --  
14 261 Q. So account payable by MMA is an amount owed  
15 by MMA, right?  
16 A. MMA owes somebody.  
17 262 Q. Right.  
18 A. Right, okay.  
19 263 Q. And who it owes is Maine Northern Railway,  
20 right, in the top one?  
21 A. Okay, yeah.  
22 264 Q. Right?  
23 A. Yeah.  
24 265 Q. And then in the bottom one, again if you look  
25 at that same reference, it's amounts owed to New Brunswick

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

60

1 250 Q. And she's a J.D. Irving employee?  
2 A. Yes.  
3 251 Q. Looking at the exhibit that's attached, which  
4 are the Accounts Payable Aged Invoice Reports, the two stacked  
5 on top of each other, the -- you see that, correct?  
6 A. Yeah.  
7 252 Q. In the history of the swap relationship that  
8 you set up, had you seen this presentation of accounts before?  
9 A. Probably.  
10 253 Q. And this was something that Mr. Gardner sent  
11 to you or that you prepared for Mr. Gardner?  
12 A. No, this would be them sending this to us.  
13 254 Q. Right. And this would be -- this is  
14 essentially a summary of the amounts that are owed to the  
15 Irving railroads, correct?  
16 A. Well, if it's an accounts payable coming from  
17 Montreal and Maine, that would be monies they would owe NB  
18 Southern, would it not?  
19 255 Q. Right. And so, if you look at -- again, if  
20 you just look at this document and you look at the header of  
21 the account, see where it says MAI5311 Maine Northern Railway?  
22 Do you see that? On the top one?  
23 A. I'm looking at the top one, and if I look at  
24 -- MAI5311, yeah.

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Karl Hansen, taken March 23, 2017

62

1 Southern, correct?  
2 A. Montreal -- New Brunswick Southern, okay.  
3 266 Q. Right. And in the times that you saw this  
4 particular presentation of these accounts by MMA, did you ever  
5 have any reason to question the form or the accuracy of any of  
6 these accounts?  
7 **MR. LEPENE:** Objection to the form of the  
8 question.  
9 A. Can I answer?  
10 **MR. LEPENE:** Yes, you can answer.  
11 A. The reference to Maine Northern Railway and  
12 NB Southern Railway and -- on the form is irrelevant to me.  
13 As far as I'm concerned, I was owed a bunch of money by MMA.  
14 That was my only customer. How they wanted to present it to  
15 me made no difference. I was interested in getting paid the  
16 money and I didn't care where it came from.  
17 **MR. KEACH:** Understood, but you -- my question's  
18 slightly different than that.  
19 267 Q. Did you have any basis to question their  
20 presentation as being accurate or inaccurate?  
21 A. Well, we would check it to see if their  
22 numbers were relatively similar to ours, and if they were  
23 close, then that would be fine.  
24 268 Q. And in the circumstances that you can recall  
25 when you checked them, were they accurate?

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 **MR. LEPENE:** In terms of the numbers, you're  
2 talking about?  
3 **MR. KEACH:** Yeah, we'll start there.  
4 A. Yeah, as far as how much was owed, yeah. I  
5 guess, yes.

6 269 Q. Did you ever have any other reason to  
7 question the presentation by Mr. Gardner of amounts owed?

8 A. Yeah, there's times that invoices were left  
9 off his analysis. And vice versa; there was times that  
10 invoices were left off on our side. You know, human error.

11 270 Q. Right. Other than that, did you have any  
12 basis to question the presentation?

13 A. No.

14 271 Q. Mr. Hansen, Mr. Lepene was kind enough to  
15 remind us both that you needed to correct your testimony as  
16 to the Commercial Agreement and we wanted to give you an  
17 opportunity to do that. I want to make sure that -- for the  
18 purpose of this record, is there any other aspect of your  
19 testimony that you want to correct or change?

20 A. Well, I'm not aware of it. As I say, I've,  
21 you know, been out of this whole process now for a few years,  
22 so, you know, certain things get a little fussy -- fuzzy when  
23 you're away from things for that long. But to my knowledge,  
24 unless you folks can tell me otherwise, being my lawyer and  
25 you folks . . .

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

---

Deposition of Karl Hansen, taken March 23, 2017

64

1 272 Q. All right. But just so the record's clear,  
2 when -- today, if there was something that you didn't remember  
3 or that was a little fuzzy, you told us that, right?

4 A. Best I can recollect, yeah.

5 **MR. KEACH:** All right. Alan, I have nothing  
6 further for Mr. Hansen.

7 **MR. LEPENE:** All right. Thank you. And he'll  
8 read his deposition.

9 *(And further deponent saith naught.)*

10 *(Deposition adjourned 12:10 p.m.)*

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

<p><b>\$</b></p> <p><b>\$250,000</b> [1] - 58:9  <b>\$500,000</b> [2] - 31:14, 33:13  <b>\$650,000</b> [3] - 57:4, 57:9, 58:13</p>	<p>35:14, 35:15, 43:16  53:9  <b>accomplished</b> [1] - 52:25  <b>accounting</b>" [1] - 11:15  <b>accuracy</b> [3] - 51:11, 51:16, 62:5  <b>activities</b> [1] - 43:24  <b>adds</b> [1] - 33:14  <b>advance</b> [5] - 6:10, 7:3, 9:12, 16:2, 45:20  <b>affiliated</b> [1] - 9:4  <b>Aged</b> [1] - 60:4  <b>Alan</b> [15] - 50:16  <b>Alan</b> [15] - 7:17, 11:4, 15:11, 27:1, 27:17, 34:7, 34:20, 38:8, 39:19, 46:2, 48:9, 49:5, 49:12, 54:17, 64:5  <b>American</b> [1] - 5:4  <b>amount's</b> [1] - 46:17  <b>analysis</b> [1] - 63:9  <b>answering</b> [1] - 7:6  <b>apologize</b> [4] - 9:12, 45:19, 49:20, 50:8  <b>appreciating</b> [1] - 9:10  <b>appropriate</b> [2] - 6:24, 13:17  <b>approve</b> [1] - 24:11  <b>approved</b> [2] - 24:9, 57:4  <b>approx</b> [1] - 57:4  <b>arise</b> [1] - 28:25  <b>arises</b> [1] - 39:8  <b>arranged</b> [1] - 8:7  <b>arrangement/ agreement</b> [1] - 52:17  <b>Arron</b> [1] - 46:6  <b>aspect</b> [2] - 28:5, 63:18  <b>asserted</b> [1] - 21:22  <b>Atlantic</b> [8] - 13:10, 13:11, 13:14, 13:25, 38:17, 39:10, 40:12, 44:8  <b>attempting</b> [1] - 42:4  <b>automatically</b> [1] - 43:21  <b>awareness</b> [1] - 14:25</p>	<p><b>bankruptcy</b> [6]  14:21, 14:24, 15:2, 15:9, 29:21, 30:5  <b>big</b> [2] - 27:8, 45:16  <b>billed</b> [1] - 49:1  <b>billing</b> [1] - 47:4  <b>Blocking</b> [2] - 22:22, 23:10  <b>bound</b> [1] - 27:2  <b>breaks</b> [1] - 57:21  <b>brings</b> [1] - 8:12  <b>Brownville</b> [2] - 39:1, 39:4  <b>bunch</b> [1] - 62:13</p>	<p><b>consist</b> [1] - 33:20  <b>consult</b> [1] - 6:24  <b>consultation</b> [1] - 7:6  <b>consultations</b> [1] - 6:25  <b>convention</b> [1] - 13:18  <b>conversion</b> [3] - 18:4, 18:8, 19:25  <b>convert</b> [1] - 17:22  <b>correction</b> [1] - 34:24  <b>cost-related</b> [1] - 47:18  <b>counting</b> [1] - 49:24  <b>creditworthy</b> [1] - 54:10  <b>CRU</b> [2] - 31:5, 31:24  <b>crude</b> [8] - 30:22, 31:13, 31:23, 32:9, 32:22, 32:23, 33:1  <b>CRUE</b> [5] - 30:24, 31:6, 31:21, 32:1, 32:5  <b>Crude</b> [1] - 31:21</p>	<p><b>Eastern</b> [1] - 20:16  <b>Eastern Maine</b> [6] - 39:10, 40:2, 42:9, 44:13, 44:22, 44:24  <b>Eastern Maine Railway</b> [16] - 10:2, 10:6, 10:12, 12:4, 19:10, 20:11, 22:3, 37:15, 37:17, 38:16, 39:21, 41:10, 41:18, 42:1, 42:3, 44:12  <b>efforts</b> [3] - 43:2, 43:4, 43:6  <b>Ellis</b> [12] - 21:1, 21:2, 21:4, 21:8, 39:18, 49:8, 56:16, 56:18, 56:25, 57:3, 57:8, 57:20  <b>email</b> [1] - 46:7  <b>employ</b> [1] - 20:4  <b>employed</b> [5] - 4:11, 4:14, 9:14, 25:12, 25:14  <b>EMR</b> [3] - 22:3, 38:22, 39:3  <b>EMR/NBS</b> [1] - 22:18  <b>error</b> [1] - 63:10  <b>exact</b> [1] - 21:5  <b>exchange</b> [2] - 52:25, 56:23  <b>exchanged</b> [2] - 6:10, 54:2  <b>excitement</b> [1] - 49:21  <b>exclusively</b> [1] - 26:2  <b>existed</b> [1] - 20:1  <b>experienced</b> [1] - 5:24  <b>explore</b> [2] - 18:19, 28:9  <b>express</b> [1] - 15:16</p>	<p><b>fuel</b> [10] - 46:11, 47:1, 47:5, 47:7, 47:13, 47:14, 47:15, 47:18, 47:22, 48:4  <b>function</b> [6] - 12:15, 18:21, 19:23, 19:25, 20:15, 41:13  <b>functions</b> [5] - 11:10, 11:14, 11:17, 18:23, 19:7  <b>fussy</b> [1] - 63:22  <b>fuzzy</b> [2] - 63:22, 64:3</p>
<p><b>1</b></p> <p><b>1,571,297</b> [1] - 32:11  <b>1.5</b> [8] - 30:6, 30:10, 30:11, 31:2, 31:12, 31:16, 32:14, 33:14  <b>100848</b> [2] - 48:9, 48:11  <b>100880</b> [1] - 31:23  <b>10:15</b> [1] - 4:1  <b>10:26</b> [1] - 57:1  <b>10:52</b> [1] - 28:2  <b>11:00</b> [1] - 28:3  <b>11:40</b> [1] - 50:14  <b>11:49</b> [1] - 50:15  <b>12.1</b> [3] - 36:18, 36:24, 37:1  <b>12:10</b> [1] - 64:10  <b>133,246.06</b> [3] - 45:24, 46:20, 46:22</p>	<p><b>C</b></p> <p><b>calculator</b> [3] - 32:7, 32:16, 33:4  <b>capacity</b> [1] - 41:5  <b>care</b> [2] - 50:12, 62:16  <b>carefully</b> [1] - 34:21  <b>cars</b> [1] - 38:23  <b>caution</b> [1] - 43:13  <b>CCAA</b> [1] - 14:16  <b>chain</b> [5] - 49:8, 55:14, 55:21, 56:1, 57:19  <b>Chapter</b> [3] - 14:11, 16:4, 16:5  <b>chart</b> [5] - 9:22, 10:17, 10:20, 10:21, 10:25  <b>checked</b> [2] - 58:12, 62:25  <b>chronologically</b> [1] - 55:18  <b>collect</b> [15] - 11:25, 12:4, 12:8, 26:7, 26:19, 35:23, 36:11, 42:4, 42:10, 43:17, 44:5, 44:12, 44:24, 44:25, 45:8  <b>collected</b> [1] - 24:1  <b>collecting</b> [1] - 36:3  <b>collection</b> [13] - 11:22, 19:8, 26:15, 37:14, 40:17, 41:5, 41:14, 41:25, 42:23, 43:2, 43:4, 43:5, 43:24  <b>component</b> [1] - 33:20  <b>components</b> [1] - 34:4  <b>comptroller</b> [10] - 18:17, 19:19, 20:6, 20:9, 20:11, 20:14, 20:15, 20:19, 20:20, 20:23  <b>conclude</b> [1] - 50:6  <b>concluded</b> [1] - 59:12  <b>confused</b> [1] - 28:5  <b>connect</b> [1] - 50:21  <b>connection</b> [3] - 11:18, 30:3, 37:15</p>	<p><b>D</b></p> <p><b>Debtor</b> [1] - 22:1  <b>default</b> [1] - 37:6  <b>define</b> [1] - 11:15  <b>demand</b> [1] - 43:1  <b>denied</b> [1] - 54:9  <b>deponent</b> [1] - 64:9  <b>depose</b> [1] - 4:6  <b>deposed</b> [3] - 4:23, 4:24, 9:11  <b>deposition</b> [10] - 6:17, 7:23, 8:12, 8:14, 8:17, 9:4, 11:7, 29:20, 51:24, 64:8  <b>Deposition</b> [3] - 7:18, 8:7, 64:10  <b>depositions</b> [2] - 7:20, 11:3  <b>derailment</b> [4] - 35:16, 43:24, 44:9, 59:16  <b>differently</b> [1] - 53:4  <b>dig</b> [1] - 15:15  <b>distinct</b> [3] - 15:2, 45:4, 53:20  <b>dot</b> [1] - 22:13  <b>doth</b> [1] - 4:5  <b>dozen</b> [1] - 5:2  <b>drops</b> [1] - 6:2  <b>duly</b> [1] - 4:5  <b>duties</b> [1] - 38:16</p>	<p><b>F</b></p> <p><b>facing</b> [2] - 46:5, 46:10  <b>failed</b> [1] - 49:21  <b>familiarity</b> [2] - 28:7, 28:18  <b>fast</b> [1] - 38:10  <b>faster</b> [1] - 8:3  <b>fellow's</b> [1] - 20:24  <b>five-minute</b> [1] - 50:11  <b>flip</b> [2] - 46:9, 48:7  <b>flowed</b> [1] - 25:19  <b>folks</b> [4] - 39:17, 50:8, 63:24, 63:25  <b>forwarding</b> [1] - 49:7  <b>frame</b> [1] - 59:22  <b>freight</b> [2] - 30:3, 39:4  <b>FSC</b> [6] - 30:24, 31:21, 31:22, 32:10, 45:23</p>	<p><b>G</b></p> <p><b>Gardner</b> [15] - 49:8, 54:6, 56:16, 56:18, 57:1, 57:3, 57:19, 57:23, 58:2, 58:7, 58:18, 58:24, 60:10, 60:11, 63:7  <b>generate</b> [3] - 24:16, 24:25, 25:15  <b>generated</b> [4] - 18:5, 24:17, 26:1, 26:14  <b>generates</b> [1] - 48:18  <b>glitches</b> [1] - 5:25  <b>granting</b> [1] - 11:22</p>	
<p><b>2</b></p> <p><b>2,164</b> [1] - 17:14  <b>2,164,471.30</b> [1] - 17:3  <b>2,571</b> [1] - 17:15  <b>2-million-571</b> [1] - 17:9</p>	<p><b>agreement</b> [1] - 52:17  <b>Arion</b> [1] - 46:6  <b>aspect</b> [2] - 28:5, 63:18  <b>asserted</b> [1] - 21:22  <b>Atlantic</b> [8] - 13:10, 13:11, 13:14, 13:25, 38:17, 39:10, 40:12, 44:8  <b>attempting</b> [1] - 42:4  <b>automatically</b> [1] - 43:21  <b>awareness</b> [1] - 14:25</p>	<p><b>E</b></p> <p><b>easier</b> [1] - 15:17</p>	<p><b>H</b></p> <p><b>halfway</b> [1] - 46:2  <b>handing</b> [1] - 16:19  <b>handle</b> [3] - 11:10, 11:13, 26:15  <b>handled</b> [3] - 26:2, 43:24, 52:8  <b>handling</b> [2] - 41:5, 41:14  <b>Hansen</b> [25] - 4:10, 4:11, 7:9, 8:6, 14:9, 16:1, 16:11, 16:14, 22:7, 23:14, 28:5, 28:15, 29:16, 34:23, 39:13, 40:13, 41:22, 42:7, 45:20, 47:1, 48:15, 50:22, 55:13, 63:14, 64:6  <b>Hansen's</b> [3] - 7:18, 7:23, 11:6  <b>happy</b> [1] - 33:3  <b>header</b> [1] - 60:20  <b>helpful</b> [2] - 35:22, 36:3  <b>helps</b> [1] - 55:14  <b>history</b> [1] - 60:7  <b>human</b> [1] - 63:10  <b>hundred-and-some</b> [2] - 46:17, 46:19</p>	<p><b>I</b></p> <p><b>imposed</b> [1] - 54:14</p>	
<p><b>6</b></p> <p><b>606330</b> [2] - 46:7, 46:8  <b>650</b> [1] - 57:23  <b>650,000</b> [1] - 59:1</p>	<p><b>arrangement/ agreement</b> [1] - 52:17  <b>Arion</b> [1] - 46:6  <b>aspect</b> [2] - 28:5, 63:18  <b>asserted</b> [1] - 21:22  <b>Atlantic</b> [8] - 13:10, 13:11, 13:14, 13:25, 38:17, 39:10, 40:12, 44:8  <b>attempting</b> [1] - 42:4  <b>automatically</b> [1] - 43:21  <b>awareness</b> [1] - 14:25</p>	<p><b>conclusion</b> [1] - 50:6  <b>concluded</b> [1] - 59:12  <b>confused</b> [1] - 28:5  <b>connect</b> [1] - 50:21  <b>connection</b> [3] - 11:18, 30:3, 37:15</p>	<p><b>I</b></p> <p><b>imposed</b> [1] - 54:14</p>	<p><b>I</b></p>	
<p><b>8</b></p> <p><b>819.91</b> [1] - 17:9</p>	<p><b>B</b></p> <p><b>background</b> [1] - 14:19  <b>backup</b> [2] - 47:8, 47:9  <b>Bankruptcy</b> [1] - 29:17</p>	<p><b>conclude</b> [1] - 50:6  <b>concluded</b> [1] - 59:12  <b>confused</b> [1] - 28:5  <b>connect</b> [1] - 50:21  <b>connection</b> [3] - 11:18, 30:3, 37:15</p>	<p><b>I</b></p>	<p><b>I</b></p>	
<p><b>A</b></p> <p><b>abbreviated</b> [1] - 22:3  <b>accident</b> [4] -</p>	<p><b>B</b></p> <p><b>background</b> [1] - 14:19  <b>backup</b> [2] - 47:8, 47:9  <b>Bankruptcy</b> [1] - 29:17</p>	<p><b>C</b></p> <p><b>calculator</b> [3] - 32:7, 32:16, 33:4  <b>capacity</b> [1] - 41:5  <b>care</b> [2] - 50:12, 62:16  <b>carefully</b> [1] - 34:21  <b>cars</b> [1] - 38:23  <b>caution</b> [1] - 43:13  <b>CCAA</b> [1] - 14:16  <b>chain</b> [5] - 49:8, 55:14, 55:21, 56:1, 57:19  <b>Chapter</b> [3] - 14:11, 16:4, 16:5  <b>chart</b> [5] - 9:22, 10:17, 10:20, 10:21, 10:25  <b>checked</b> [2] - 58:12, 62:25  <b>chronologically</b> [1] - 55:18  <b>collect</b> [15] - 11:25, 12:4, 12:8, 26:7, 26:19, 35:23, 36:11, 42:4, 42:10, 43:17, 44:5, 44:12, 44:24, 44:25, 45:8  <b>collected</b> [1] - 24:1  <b>collecting</b> [1] - 36:3  <b>collection</b> [13] - 11:22, 19:8, 26:15, 37:14, 40:17, 41:5, 41:14, 41:25, 42:23, 43:2, 43:4, 43:5, 43:24  <b>component</b> [1] - 33:20  <b>components</b> [1] - 34:4  <b>comptroller</b> [10] - 18:17, 19:19, 20:6, 20:9, 20:11, 20:14, 20:15, 20:19, 20:20, 20:23  <b>conclude</b> [1] - 50:6  <b>concluded</b> [1] - 59:12  <b>confused</b> [1] - 28:5  <b>connect</b> [1] - 50:21  <b>connection</b> [3] - 11:18, 30:3, 37:15</p>	<p><b>E</b></p> <p><b>easier</b> [1] - 15:17</p>	<p><b>I</b></p> <p><b>imposed</b> [1] - 54:14</p>	

<p><b>inaccurate</b> [1] - 62:20</p> <p><b>incurred</b> [1] - 48:2</p> <p><b>indebtedness</b> [1] - 11:24</p> <p><b>independently</b> [2] - 51:11, 51:15</p> <p><b>inquiry</b> [1] - 6:24</p> <p><b>instances</b> [1] - 53:3</p> <p><b>instead</b> [1] - 7:25</p> <p><b>Inter</b> [1] - 38:5</p> <p><b>Interchange</b> [7] - 22:14, 23:10, 38:6, 38:11, 38:19, 38:20, 39:9</p> <p><b>interchange</b> [2] - 38:23, 39:10</p> <p><b>interfaces</b> [2] - 24:3, 24:4</p> <p><b>internal</b> [1] - 43:11</p> <p><b>interrupt</b> [1] - 11:6</p> <p><b>interviewing</b> [1] - 20:25</p> <p><b>introduce</b> [1] - 13:17</p> <p><b>invoiced</b> [1] - 26:5</p> <p><b>invoicing</b> [1] - 24:15</p> <p><b>irrelevant</b> [1] - 62:12</p> <p><b>Irving</b> [18] - 10:18, 11:24, 13:7, 13:12, 24:8, 27:2, 37:9, 48:19, 52:1, 52:3, 52:14, 52:17, 53:6, 53:15, 57:13, 60:15</p> <p><b>Irving's</b> [1] - 24:2</p> <p><b>it'll</b> [1] - 48:10</p>	<p>27:6, 27:9, 27:12, 27:14, 27:20, 28:1, 28:12, 28:15, 30:14, 30:19, 30:21, 31:5, 32:17, 33:7, 34:7, 34:10, 34:12, 34:18, 34:23, 36:24, 37:13, 38:8, 38:11, 38:15, 38:20, 39:13, 39:19, 40:1, 40:4, 40:6, 40:10, 41:22, 42:7, 42:16, 43:18, 44:18, 45:16, 45:19, 46:2, 46:9, 46:13, 46:20, 46:23, 46:25, 48:7, 48:13, 48:15, 49:5, 49:10, 49:13, 49:18, 49:24, 50:5, 50:10, 50:13, 50:16, 50:19, 54:17, 54:20, 54:24, 55:2, 55:4, 55:7, 55:11, 55:13, 55:24, 56:10, 62:17, 63:3, 64:5</p> <p><b>Kelter</b> [1] - 59:25</p>	<p><b>M</b></p> <p><b>M</b> [1] - 52:6</p> <p><b>MAI5311</b> [2] - 60:21, 60:24</p> <p><b>Maine</b> [11] - 13:10, 13:14, 13:25, 15:19, 19:14, 38:16, 39:9, 40:12, 44:7, 60:17</p> <p><b>Maine Northern Railway</b> [12] - 10:10, 10:13, 12:8, 15:13, 16:6, 20:20, 60:21, 60:25, 61:4, 61:7, 61:19, 62:11</p> <p><b>marks</b> [1] - 58:15</p> <p><b>McAdam</b> [2] - 48:21, 48:22</p> <p><b>MCC</b> [10] - 13:22, 13:24, 13:25, 14:17, 14:20, 15:1, 37:9, 52:2, 52:3, 52:6</p> <p><b>medication</b> [1] - 7:10</p> <p><b>message</b> [1] - 55:10</p> <p><b>methodology</b> [1] - 52:12</p> <p><b>million</b> [6] - 30:6, 30:10, 30:11, 31:12, 31:16, 33:14</p> <p><b>misspeak</b> [1] - 28:11</p> <p><b>misspoken</b> [1] - 28:8</p> <p><b>misunderstood</b> [1] - 24:24</p> <p><b>MMA</b> [44] - 13:13, 13:21, 14:2, 14:4, 14:21, 14:24, 22:1, 32:1, 32:5, 32:9, 35:20, 36:4, 37:8, 37:16, 37:18, 38:17, 41:18, 44:20, 47:5, 47:15, 47:22, 52:2, 52:3, 52:13, 52:14, 52:17, 52:18, 53:5, 53:6, 53:10, 53:12, 53:14, 53:15, 53:22, 54:9, 57:12, 57:16, 57:17, 61:12, 61:14, 61:15, 61:16, 62:4, 62:13</p> <p><b>MMA's</b> [1] - 30:5</p> <p><b>MMACRU</b> [2] - 31:22, 31:23</p> <p><b>MNR</b> [1] - 57:21</p> <p><b>monitoring</b> [2] - 11:23, 26:15</p> <p><b>month's</b> [1] - 31:15</p> <p><b>Montreal</b> [10] - 13:10, 13:13, 13:14, 13:25, 38:16, 39:9, 40:12, 44:7, 60:17</p> <p><b>montreal</b> [1] - 62:2</p> <p><b>mouth</b> [1] - 19:23</p>	<p><b>movement</b> [1] - 37:20</p> <p><b>multiple</b> [1] - 10:5</p> <p><b>Mégantic</b> [4] - 35:16, 43:23, 44:9, 59:16</p> <p><b>N</b></p> <p><b>naught</b> [1] - 64:9</p> <p><b>NB Southern</b> [8] - 35:20, 37:19, 39:17, 39:20, 39:24, 52:19, 52:22, 60:17</p> <p><b>NB Southern Railway</b> [3] - 18:17, 25:6, 62:12</p> <p><b>NBRS</b> [1] - 29:25</p> <p><b>NBSR</b> [6] - 22:1, 24:18, 39:5, 47:4, 47:15, 57:21</p> <p><b>New Brunswick Southern Railway</b> [14] - 9:19, 10:13, 12:1, 12:16, 16:4, 16:17, 18:12, 18:14, 18:23, 19:24, 20:1, 20:7, 27:3, 45:4</p> <p><b>Northern</b> [3] - 15:20, 15:21, 19:14</p>	<p>15:16, 34:7, 49:9</p> <p><b>paginated</b> [2] - 45:22, 46:15</p> <p><b>paperwork</b> [5] - 25:7, 25:12, 25:13, 25:18, 25:21</p> <p><b>partial</b> [1] - 58:18</p> <p><b>participate</b> [1] - 15:8</p> <p><b>Pause</b> [3] - 16:13, 40:8, 55:22</p> <p><b>pending</b> [1] - 52:2</p> <p><b>people's</b> [1] - 11:24</p> <p><b>perform</b> [2] - 11:18, 18:23</p> <p><b>permission</b> [1] - 53:22</p> <p><b>personnel</b> [4] - 18:23, 20:3, 20:5, 20:8</p> <p><b>physically</b> [4] - 24:25, 52:20, 52:21, 54:2</p> <p><b>pieces</b> [1] - 37:13</p> <p><b>placed</b> [1] - 35:1</p> <p><b>plural</b> [1] - 23:6</p> <p><b>portions</b> [1] - 38:21</p> <p><b>preference</b> [1] - 50:4</p> <p><b>preliminaries</b> [1] - 8:13</p> <p><b>premise</b> [1] - 20:6</p> <p><b>preparation</b> [6] - 8:14, 14:10, 16:23, 16:24, 21:8, 34:3</p> <p><b>presently</b> [1] - 12:14</p> <p><b>primarily</b> [1] - 5:5</p> <p><b>print</b> [1] - 50:1</p> <p><b>printed</b> [3] - 48:10, 49:22, 50:8</p> <p><b>privilege</b> [1] - 43:15</p> <p><b>proceeding</b> [4] - 4:21, 14:17, 29:17, 29:22</p> <p><b>progress</b> [1] - 57:19</p> <p><b>Proof</b> [18] - 14:16, 16:5, 16:17, 17:2, 17:5, 21:9, 21:22, 27:3, 28:6, 29:14, 30:1, 32:21, 33:20, 34:3, 34:4, 45:5, 45:8, 51:10</p> <p><b>Proofs</b> [9] - 14:10, 15:8, 15:12, 16:3, 29:4, 50:23, 51:3, 51:5, 51:20</p> <p><b>protocol</b> [1] - 7:19</p> <p><b>pursuant</b> [1] - 24:21</p>	<p>58:8</p> <p><b>R</b></p> <p><b>Railroad</b> [3] - 9:18, 19:14, 22:2</p> <p><b>railroad</b> [2] - 13:20, 24:21</p> <p><b>railroads</b> [16] - 10:20, 11:10, 11:14, 11:18, 12:25, 15:9, 23:15, 23:25, 37:9, 52:3, 52:14, 53:6, 53:15, 53:17, 60:15</p> <p><b>Railway</b> [6] - 13:14, 20:16, 38:17, 39:10, 40:12, 44:8</p> <p><b>railway</b> [5] - 14:1, 18:11, 25:7, 37:23, 37:25</p> <p><b>railways</b> [2] - 10:3, 19:19</p> <p><b>reasonable</b> [1] - 17:23</p> <p><b>receipt</b> [2] - 36:19, 52:2</p> <p><b>record's</b> [2] - 51:1, 64:1</p> <p><b>reduced</b> [1] - 54:3</p> <p><b>reflected</b> [1] - 18:1</p> <p><b>refresh</b> [1] - 16:21</p> <p><b>refused</b> [1] - 54:10</p> <p><b>relatively</b> [1] - 62:22</p> <p><b>release</b> [1] - 57:17</p> <p><b>Remark</b> [1] - 32:2</p> <p><b>remarks</b> [3] - 32:3, 32:22</p> <p><b>remind</b> [1] - 63:15</p> <p><b>rendered</b> [1] - 24:16</p> <p><b>reporter</b> [2] - 7:16, 7:23</p> <p><b>requesting</b> [1] - 56:18</p> <p><b>resuming</b> [2] - 28:3, 50:15</p> <p><b>retired</b> [1] - 4:12</p> <p><b>returned</b> [1] - 43:21</p> <p><b>revisit</b> [2] - 9:10, 51:23</p> <p><b>role</b> [2] - 11:9, 33:17</p> <p><b>runs</b> [1] - 37:25</p> <p><b>rush</b> [1] - 16:11</p> <p><b>Ryan</b> [7] - 21:1, 21:2, 39:18, 49:8, 56:25, 58:2, 58:7</p>
<p><b>J</b></p> <p><b>J.D. Irving</b> [32] - 4:15, 4:21, 9:3, 9:14, 9:17, 9:19, 9:23, 10:1, 10:6, 10:10, 10:19, 11:9, 11:17, 11:25, 12:4, 12:7, 12:22, 13:2, 14:5, 18:16, 18:22, 19:2, 19:11, 19:15, 20:5, 25:12, 25:14, 25:24, 26:12, 26:13, 44:13, 60:1</p> <p><b>Junction</b> [2] - 39:1, 39:4</p>	<p><b>L</b></p> <p><b>labelled</b> [1] - 49:2</p> <p><b>Lac</b> [4] - 35:16, 43:23, 44:9, 59:15</p> <p><b>Lac-Mégantic</b> [3] - 35:16, 43:23, 44:9</p> <p><b>Lake</b> [1] - 13:7</p> <p><b>lastly</b> [1] - 6:23</p> <p><b>leaf</b> [1] - 45:22</p> <p><b>LEPENE</b> [80] - 7:22, 8:2, 8:4, 8:18, 10:15, 10:24, 11:5, 15:14, 15:19, 15:23, 16:9, 21:1, 27:5, 27:8, 27:10, 27:13, 27:15, 27:19, 27:22, 27:24, 28:4, 28:14, 30:13, 30:17, 30:20, 31:3, 32:15, 33:5, 34:9, 34:11, 34:13, 34:15, 34:22, 36:20, 36:22, 37:10, 38:7, 38:10, 38:12, 38:18, 39:12, 39:23, 40:2, 40:9, 41:20, 42:5, 42:12, 43:13, 44:15, 45:18, 45:25, 46:8, 46:12, 46:16, 46:19, 46:21, 46:24, 48:12, 48:14, 49:9, 49:15, 49:17, 49:20, 50:2, 50:7, 50:11, 50:18, 54:19, 54:21, 54:23, 54:25, 55:3, 55:5, 55:9, 55:20, 56:7, 62:7, 62:10, 63:1, 64:7</p> <p><b>Lepene</b> [4] - 8:24, 16:18, 34:24, 63:14</p> <p><b>letterhead</b> [3] - 39:20, 39:21, 41:10</p> <p><b>Lindsay</b> [1] - 55:10</p>	<p><b>M</b></p> <p><b>message</b> [1] - 55:10</p> <p><b>methodology</b> [1] - 52:12</p> <p><b>million</b> [6] - 30:6, 30:10, 30:11, 31:12, 31:16, 33:14</p> <p><b>misspeak</b> [1] - 28:11</p> <p><b>misspoken</b> [1] - 28:8</p> <p><b>misunderstood</b> [1] - 24:24</p> <p><b>MMA</b> [44] - 13:13, 13:21, 14:2, 14:4, 14:21, 14:24, 22:1, 32:1, 32:5, 32:9, 35:20, 36:4, 37:8, 37:16, 37:18, 38:17, 41:18, 44:20, 47:5, 47:15, 47:22, 52:2, 52:3, 52:13, 52:14, 52:17, 52:18, 53:5, 53:6, 53:10, 53:12, 53:14, 53:15, 53:22, 54:9, 57:12, 57:16, 57:17, 61:12, 61:14, 61:15, 61:16, 62:4, 62:13</p> <p><b>MMA's</b> [1] - 30:5</p> <p><b>MMACRU</b> [2] - 31:22, 31:23</p> <p><b>MNR</b> [1] - 57:21</p> <p><b>monitoring</b> [2] - 11:23, 26:15</p> <p><b>month's</b> [1] - 31:15</p> <p><b>Montreal</b> [10] - 13:10, 13:13, 13:14, 13:25, 38:16, 39:9, 40:12, 44:7, 60:17</p> <p><b>montreal</b> [1] - 62:2</p> <p><b>mouth</b> [1] - 19:23</p>	<p><b>O</b></p> <p><b>o'clock</b> [1] - 20:25</p> <p><b>oath</b> [1] - 5:13</p> <p><b>object</b> [4] - 32:15, 37:10, 39:12, 42:5</p> <p><b>objection</b> [4] - 41:20, 42:12, 44:15, 62:7</p> <p><b>obligation</b> [1] - 48:2</p> <p><b>obligations</b> [5] - 28:25, 37:8, 39:8, 41:17, 42:10</p> <p><b>occur</b> [1] - 53:8</p> <p><b>offset</b> [4] - 53:4, 53:11, 53:12, 53:13</p> <p><b>offsetting</b> [1] - 57:16</p> <p><b>oil</b> [4] - 30:4, 33:21, 57:22, 58:11</p> <p><b>oldest</b> [1] - 55:16</p> <p><b>one-thirty-three</b> [1] - 46:21</p> <p><b>operational</b> [1] - 44:4</p> <p><b>org</b> [2] - 10:17, 10:19</p> <p><b>organizational</b> [3] - 9:22, 10:21, 10:25</p> <p><b>overdue</b> [2] - 40:17, 42:24</p> <p><b>P</b></p> <p><b>package</b> [3] -</p>	<p><b>Q</b></p> <p><b>quarter</b> [1] - 46:4</p> <p><b>question's</b> [1] - 62:17</p> <p><b>quote</b> [2] - 56:18,</p>	<p><b>S</b></p> <p><b>saith</b> [1] - 64:9</p> <p><b>seeing</b> [1] - 56:9</p> <p><b>segregated</b> [1] - 44:13</p> <p><b>sending</b> [2] - 25:22, 60:12</p>

<p><b>series</b> [1] - 5:12  <b>served</b> [1] - 21:4  <b>session</b> [1] - 7:4  <b>set-off</b> [2] - 52:24,                      53:23  <b>setting</b> [1] - 11:23  <b>Seventeen</b> [1] - 4:4  <b>shall</b> [1] - 36:18  <b>shared</b> [12] - 18:16,                      18:19, 18:21, 19:11,                      19:14, 20:5, 23:21,                      24:21, 25:13, 25:14,                      25:25, 26:9  <b>Shared</b> [5] - 24:17,                      25:4, 25:8, 25:20,                      26:2  <b>ship</b> [2] - 25:7,                      27:16  <b>shipment</b> [2] -                      25:8, 31:15  <b>shipments</b> [5] -                      30:4, 31:13, 32:22,                      33:13, 33:21  <b>short</b> [1] - 27:25  <b>shortly</b> [1] - 44:1  <b>signature</b> [1] -                      40:21  <b>Simpson</b> [11] -                      11:3, 36:9, 36:10,                      39:17, 39:22, 40:12,                      41:11, 42:17, 44:11,                      44:23, 44:25  <b>Simpson's</b> [1] -                      40:21  <b>simultaneously</b> [2]                      - 53:1, 54:2  <b>slightly</b> [1] - 62:18  <b>smoothly</b> [1] - 5:12  <b>so-called</b> [3] -                      28:19, 38:5, 38:6  <b>somewhat</b> [4] -                      29:2, 35:10, 35:12,                      36:1  <b>Southern</b> [19] -                      9:18, 9:24, 14:11,                      14:16, 15:13, 15:21,                      20:4, 20:15, 20:19,                      21:9, 22:2, 24:15,                      25:11, 25:19, 25:20,                      26:12, 45:9, 62:1,                      62:2  <b>Southern's</b> [1] -                      30:1  <b>speaks</b> [1] - 33:5  <b>spreadsheet</b> [6] -                      17:6, 18:1, 29:8,                      29:23, 30:9, 30:15  <b>spreadsheets</b> [1] -                      56:5  <b>stacked</b> [1] - 60:4  <b>staff</b> [4] - 23:24,                      24:20, 40:17, 50:20  <b>string</b> [1] - 55:1  <b>structure</b> [1] - 11:8  <b>subsidiary</b> [5] -                      13:22, 14:2, 14:5,                      14:21, 15:2  <b>summarizing</b> [1] -                      15:6</p>	<p><b>supervise</b> [1] -                      56:11  <b>supervised</b> [1] -                      51:15  <b>supervision</b> [3] -                      18:7, 19:2, 40:20  <b>supplied</b> [1] - 47:15  <b>surcharge</b> [3] -                      47:2, 47:5, 48:4  <b>surcharges</b> [2] -                      46:11, 47:8  <b>Swap</b> [1] - 56:17  <b>swap</b> [15] - 52:16,                      52:17, 52:20, 54:1,                      54:12, 56:19, 56:22,                      57:7, 58:18, 58:21,                      59:5, 59:7, 59:15,                      59:21, 60:7  <b>swaps</b> [1] - 56:10  <b>Switching</b> [2] -                      48:13, 49:2  <b>sworn</b> [1] - 4:5</p>	<p><b>Twenty-third</b> [1] -                      4:3</p>
<b>U</b>		
<p><b>U.S</b> [7] - 13:20,                      16:4, 16:6, 17:15,                      17:20, 17:22  <b>unable</b> [1] - 53:10  <b>UNBILLED</b> [2] -                      31:22  <b>unbilled</b> [4] -                      32:10, 45:23, 46:11,                      47:7  <b>unfortunately</b> [2] -                      45:20, 46:13  <b>unilateral</b> [1] -                      54:14  <b>unsuccessful</b> [3] -                      43:3, 43:4, 43:10  <b>ups</b> [1] - 33:14  <b>upside</b> [1] - 58:9  <b>US</b> [1] - 14:2  <b>utilizing</b> [1] - 20:4  <b>Utopia</b> [1] - 13:8</p>		
<b>V</b>		
<p><b>verified</b> [1] - 51:15  <b>verify</b> [1] - 51:11  <b>versa</b> [1] - 63:9  <b>vice</b> [1] - 63:9  <b>videoconference</b>                      [1] - 5:24  <b>voice</b> [1] - 6:2</p>		
<b>W</b>		
<p><b>wait</b> [1] - 54:17  <b>waiting</b> [4] - 50:17,                      51:22, 52:14, 57:16  <b>willing</b> [1] - 30:16  <b>wish</b> [1] - 28:17  <b>worries</b> [1] - 50:10</p>		
<b>Z</b>		
<p><b>ZAHRADKA</b> [3] -                      27:17, 49:12, 49:16</p>		



1



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

---

**In re:**

**MONTREAL, MAINE & ATLANTIC**

Bk No. 13-10670

**RAILWAY, LTD.**

Chapter 11

Debtor

---

**DEPOSITION OF RYAN ELLIS**

Held at J.D. Irving, Limited, 300 Union Street  
in the City of Saint John, County of St. John,  
Province of New Brunswick, Canada, the 23rd day  
of March A.D. 2017, before court reporter  
Kathryn A. Burke.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**A P P E A R A N C E S**

**Robert J. Keach, Esq.** and  
**Lindsay K. Zahradka, Esq.** (admitted *pro hac vice*)  
Bernstein, Shur, Sawyer & Nelson, P.A. (via videoconference)  
100 Middle Street, West Tower, Portland, Maine 04101  
Telephone: (207) 774-1200, Facsimile: (207) 774-1127  
E-mail: rkeach@bernsteinshur.com, lzahradka@bernsteinshur.com

Counsel for Robert J. Keach, Estate Representative of the  
Post-Effective Date Estate of Montreal, Maine & Atlantic  
Railway Ltd.

**Alan R. Lepene, Esq.**, Thompson Hine, 3900 Key Center  
127 Public Square, Cleveland, Ohio 44114-1291  
Telephone: (216) 566-5520, Facsimile: (216) 566-5800  
E-mail: alan.lepene@thompsonhine.com

Counsel for the Maine Northern Railway Company Limited  
and New Brunswick Southern Railway Company Limited

Also present: Mr. Ian Simpson, NB Southern Railway

INDEX

Page

WITNESS: RYAN ELLIS

Examination-in-Chief by Mr. Keach 4

EXHIBITS

- T-2 Proof of Claim by NB Southern Railway.
T-3 Proof of Claim by Maine Northern Railway.
T-4 Invoices in Support of the Proof of Claim of New Brunswick Southern Railway Company Limited (8-page excerpt attached hereto).
T-5 Commercial Agreement between MMA, EMR and NBSR, dated January 9, 2003.
T-6 Demand Letter to MMA from Ian Simpson on behalf of NB Southern Railway, dated August 2, 2013.
T-7 Demand Letter to MMA from Ian Simpson on behalf of Eastern Maine Railway, dated August 2, 2013.
T-8 E-mail exchange between Ryan Ellis and Donald Gardner, Jr.
T-9 Notice of Deposition of New Brunswick Southern Railway pursuant to Rule 30(b)(6).
T-10 Notice of Deposition of Maine Northern Railway pursuant to Rule 30(b)(6).
T-11 Interchange Agreement at Brownville Junction between MMA and EMR.
T-12 Track map of Montreal, Maine & Atlantic.
T-13 Blocking Agreement, dated January 9, 2003.

CADY REPORTING SERVICES, INC. - 216.861.9270 www.cadyreporting.com

1 entities, are they not?
2 A. Yes, they are.
3 6 Q. Each is a separate company distinct from the
4 other?
5 A. They are three separate corporations,
6 correct.
7 7 Q. And are they owned by another affiliate of --
8 J.D. Irving affiliate known as, I think, New Brunswick Railway
9 Corp.?
10 A. That's my understanding.
11 8 Q. And how long have you been employed in that
12 capacity as comptroller of the three entities?
13 A. Approximately fifteen years.
14 MR. KEACH: Let's start -- if I could have the
15 reporter, Alan, mark the deposition notice for New Brunswick
16 Southern as T-10, and the deposition notice for Maine Northern
17 as T-11.
18 MR. LEPENE: The court reporter indicates we
19 should be at T-9 and T-10.
20 MR. KEACH: Nine and 10?
21 MR. LEPENE: Yes.
22 MR. KEACH: Okay, my bad. All right.
23 MR. LEPENE: I have the notice for New Brunswick
24 Southern, so that'll be 9, and I'm looking for Maine Northern,
25 so give me a second. I have Maine Northern and that'll be 10.

CADY REPORTING SERVICES, INC. - 216.861.9270 www.cadyreporting.com

(1:00 p.m.)

ON THIS Twenty-third day of March in the Year of Our Lord Two Thousand Seventeen Did Personally Come and Appear RYAN ELLIS, Who, having been duly sworn, doth depose and say as follows:

EXAMINATION-IN-CHIEF BY MR. KEACH:

1 Q. Can you state your full name for the record,
2 please?
3 A. It is Ryan James Ellis.
4 Q. And, Mr. Ellis, by whom are you employed?
5 A. I am employed by New Brunswick Southern
6 Railway.
7 Q. Are you employed by -- also employed by
8 Eastern Maine Railway?
9 A. I am employed by New Brunswick Southern
10 Railway; they would be the company that, I guess, is on my
11 paycheque.
12 Q. Okay. The reason I ask is that Mr. Hansen
13 testified that the same person served as the comptroller for
14 New Brunswick Southern Railway and Eastern Maine Railway and
15 Maine Northern Railway and he identified that person as you.
16 A. Yes, I would serve that -- that role for
17 those companies.
18 Q. Those three railways are distinct corporate

CADY REPORTING SERVICES, INC. - 216.861.9270 www.cadyreporting.com

1 --- Exhibits T-9 and T-10 marked.
2 MR. KEACH: All right. Mr. Ellis, I'm going to
3 ask you to look at both of those exhibits, T-9 and T-10. And
4 let me start with T-9, which is the deposition notice under
5 Rule 30(b)(6) of the Federal Rules of Civil Procedure,
6 directed to New Brunswick Southern Railway Company Limited.
7 9 Q. My first question of you is, have you seen
8 this document before?
9 A. I have.
10 10 Q. When did you first see this document?
11 A. Oh, a month and a half or two months ago.
12 11 Q. And did you review it when you received it?
13 A. I did.
14 12 Q. If you look on page 2, you'll see there a
15 list of subject matters or topics listed as (a) through (f).
16 Do you see that?
17 A. I do, yeah.
18 13 Q. And did you review that section in
19 particular?
20 A. I did.
21 14 Q. Are you qualified to testify -- or, strike
22 that. Do you have knowledge as to each of these categories?
23 A. I believe so, yes.
24 15 Q. Is there any topic listed here about which
25 you do not have personal knowledge or information?

CADY REPORTING SERVICES, INC. - 216.861.9270 www.cadyreporting.com



1 A. No, I don't think so.  
 2 16 Q. Let's look at T-10, and let me ask you, have  
 3 you seen this document before?  
 4 A. Yes, I have.  
 5 17 Q. Did you see it at the same time you saw T-9?  
 6 A. Correct.  
 7 18 Q. And again, turning to the second page and the  
 8 topic areas listed as (a) through (f), do you have personal  
 9 knowledge or information to testify as to each and every one  
 10 of these categories?  
 11 A. Yes, I do.  
 12 19 Q. With respect to both companies and both lists  
 13 of topics, is there anybody within either New Brunswick  
 14 Southern Railway or Maine Northern Railway whose knowledge of  
 15 any of these topics would be superior knowledge to yours?  
 16 A. In relation to, you know, the weekly -- the  
 17 swap system, I would say Karl Hansen and the Corporate Credit  
 18 group would have had a more superior knowledge on those topics  
 19 than I would, but I'm certainly familiar with -- with how the  
 20 structure was set up.  
 21 20 Q. So, is there any other topic where you think  
 22 someone else may have superior.  
 23 A. I guess, in terms of the evolution of the  
 24 increased oil traffic, I suppose Mr. Simpson would have more  
 25 knowledge of that -- of that flow than I would.

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 correct?  
 2 A. I understand that.  
 3 28 Q. All right. I'm going to ask you to let me  
 4 finish my question before you answer and try not to anticipate  
 5 that finish; I'll try to make it clear.  
 6 More importantly, it's very important that you  
 7 understand the questions I'm asking you, and so if you do not  
 8 understand the question, I want you to tell me that; and if  
 9 you don't tell me that you don't understand the question, when  
 10 you answer it, we're going to presume that you did. Can we  
 11 operate on that basis?  
 12 A. I believe so, yes.  
 13 29 Q. Similarly, in terms of -- particularly given  
 14 that we're dealing with a deposition by videoconference, it's  
 15 important that you hear me clearly, and if at any point in  
 16 time you have not heard the question clearly and need to have  
 17 me repeat it or have the reporter read it back, you need to  
 18 tell us that; and again, we're going to operate on the  
 19 presumption that if you don't tell us you need a question read  
 20 back or repeated, that you have heard and understood the  
 21 question. Can we operate on that basis?  
 22 A. Yes, we can.  
 23 30 Q. Over the course of the deposition, I will  
 24 also show you a series of documents, and I want you to take as  
 25 much time as you need to review those documents in order to

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

8

1 21 Q. All right. Is there any other topic where  
 2 you can identify someone with superior knowledge to yours?  
 3 A. No, I think I'm very comfortable with those  
 4 areas.  
 5 22 Q. Okay, you can set those aside for now. Mr.  
 6 Ellis, have you ever had your deposition taken before?  
 7 A. Once, oh, maybe twenty years ago with just a  
 8 small car accident.  
 9 23 Q. So this was a personal matter or a company  
 10 matter?  
 11 A. No, it was a -- it was a personal matter.  
 12 24 Q. And other than that time twenty years ago,  
 13 have you ever had your deposition taken?  
 14 A. I have not.  
 15 25 Q. Have you ever testified in court?  
 16 A. I have not.  
 17 26 Q. Have you ever testified before any kind of  
 18 administrative tribunal or other forum?  
 19 A. I have not.  
 20 27 Q. All right, let me go through some ground  
 21 rules that will hopefully make it easier for us to get through  
 22 this today and, most importantly, make it easier for the court  
 23 reporter to get a good record of what it is that we do. I'm  
 24 going to ask you a series of questions, and you understand  
 25 that, in answering those questions, you're under oath,

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

10

1 answer questions. Again, if I ask you a question about a  
 2 document and you answer the question, we're going to operate  
 3 on the presumption that you have had sufficient time to read  
 4 and understand the document in order to answer the question.  
 5 Can we operate on that basis?  
 6 A. I believe so.  
 7 31 Q. You also may certainly take a break. This is  
 8 not intended to be torture. If you need a break -- at least,  
 9 we're going to try to make it as non-tortuous as we can. If  
 10 you need a break, you need to tell me; and again, if you don't  
 11 tell me you need a break, we're going to presume that you  
 12 don't need one. Can we operate on that basis?  
 13 A. Yes, we can.  
 14 32 Q. Similarly, there are circumstances under  
 15 which you'd be entitled to consult with counsel off the  
 16 record, and if you feel you need to do that, you should ask  
 17 and we'll, if it's an appropriate time, make arrangements for  
 18 that; but again, if you don't ask, we're going to assume that  
 19 you don't need such a conference. Can we operate on that  
 20 basis?  
 21 A. Yes, we can.  
 22 33 Q. Is there any reason as you sit there today,  
 23 either illness, physical condition, medication or otherwise,  
 24 as a consequence of which you could not clearly understand  
 25 questions and answer them today?

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 A. Not that I'm aware of.  
 2 34 Q. Are you taking any medication of any kind  
 3 right now?  
 4 A. I am not.  
 5 35 Q. All right. So let's get back. You said that  
 6 you've been comptroller of the three railroads that we've  
 7 mentioned for approximately fifteen years, did you say?  
 8 A. Yes, that's correct.  
 9 36 Q. And prior to that time, what was your -- what  
 10 was your position with the companies?  
 11 A. Prior to that time -- when I joined the New  
 12 Brunswick Southern Railway, I joined in the position of  
 13 comptroller. Prior to that, I had worked with another Irving  
 14 company, it was Kent Line, and I was employed with them for  
 15 approximately two years.  
 16 37 Q. And what was your position -- what was the  
 17 name of that company again, I'm sorry?  
 18 A. Kent Line.  
 19 38 Q. All right. And what was your position with  
 20 that company?  
 21 A. I was in an accounting position, mostly  
 22 accounts payable.  
 23 39 Q. And prior to your two years with Kent Line,  
 24 by whom were you employed and in what capacity?  
 25 A. Prior to that, I worked part-time at a local  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

1 you were the -- when you were with Shared Services versus  
 2 direct employment?  
 3 A. Not substantially, no.  
 4 46 Q. Was it different in any way that you can  
 5 recall?  
 6 A. The only difference, I guess, in the last  
 7 couple of years it's shifted more into an analytical-type /  
 8 analysis role, less focus on the accounting side.  
 9 47 Q. What kind of analytical work are you doing?  
 10 A. It would be just analysing different  
 11 functions of our operation, looking -- if business  
 12 opportunities -- you know, more of a strategic role, I would  
 13 phrase it as.  
 14 48 Q. Are you generally familiar with the  
 15 operations of New Brunswick Southern Railroad?  
 16 A. I am.  
 17 49 Q. Are you generally familiar with the  
 18 operations of Eastern Maine Railroad?  
 19 A. I am.  
 20 50 Q. And are you generally familiar with the  
 21 operations of Maine Northern Railroad?  
 22 A. I am.  
 23 51 Q. Is there anybody at each of those railroads  
 24 to whom you report?  
 25 A. I would report to Ian Simpson, our general  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

12

1 grocery store. I think it was -- it was the IGA.  
 2 40 Q. All right. Were you a student then?  
 3 A. I was.  
 4 41 Q. And just briefly, we're not going to go all  
 5 the way back to grade school, but what is your educational  
 6 background?  
 7 A. I graduated from the University of New  
 8 Brunswick here in Saint John with a business degree in 2001,  
 9 and I completed my certified accounting designation in 2008.  
 10 42 Q. And the Irving entities that you've described  
 11 are the only employers for whom you have worked?  
 12 A. Yes, the --  
 13 43 Q. Since earning your degree. Excuse me.  
 14 A. Yeah. Sometimes, you know, the comptroller  
 15 role was a shared service role, so I was, I guess, technically  
 16 employed by -- it was Irving Transportation Services and then  
 17 it was JDI Finance and now New Brunswick Southern, but all  
 18 the time at New Brunswick Southern fulfilling that role of  
 19 comptroller.  
 20 44 Q. All right. So, even when you worked for  
 21 those other entities, you were providing the same services to  
 22 the railroads, just through a shared services agreement as  
 23 opposed to direct employment.  
 24 A. That's correct.  
 25 45 Q. And was your role different in any way when  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

14

1 manager.  
 2 52 Q. And Mr. Simpson is the general manager of  
 3 each of those railroads?  
 4 A. He is, correct.  
 5 **MR. KEACH:** All right. Alan, if you could locate  
 6 T-2 and T-3, the two Proofs of Claim.  
 7 **MR. LEPENE:** Yes. That's 2 and that's 3.  
 8 **THE WITNESS:** That's 2 and 3? Mm-hm.  
 9 **MR. KEACH:** Why don't we -- just so the record's  
 10 clear, we'll take these one at a time. Why don't we take T-2  
 11 first.  
 12 53 Q. Mr. Ellis, have you seen this document before  
 13 today?  
 14 A. I have not.  
 15 54 Q. Is it fair to say, then, that you had no role  
 16 in its preparation?  
 17 A. Where it, I guess, is proof of claim, I would  
 18 have prepared all of the financial data, the list of invoices  
 19 and whatnot, and would have sent them to our legal counsel,  
 20 who would have, I assume, prepared this document.  
 21 55 Q. Let's just take it one piece at a time, then.  
 22 If you'd turn to the last page of Exhibit T-2, which consists  
 23 of a list of invoices . . .  
 24 A. Yes, I see that.  
 25 56 Q. All right. Would you have, or somebody under  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

1 your supervision have, prepared this exhibit?  
2 A. That's correct.  
3 57 Q. And do you know whether you prepared it  
4 personally or if someone prepared it for you?  
5 A. I believe I had prepared that personally.  
6 58 Q. And did someone instruct you to do so?  
7 A. I would have been requested by probably legal  
8 counsel to -- to provide them with a list of invoices.  
9 **MR. LEPENE:** And again, I'm just going to caution  
10 the witness that any discussions with legal counsel are  
11 subject to attorney-client privilege, so I just want to  
12 caution the witness in that regard.  
13 **MR. KEACH:** Sure. And let me just second that,  
14 Mr. Ellis. I never want you to give me the content of  
15 discussions that took place between you and your counsel or a  
16 company's counsel. If I ask you whether you spoke to counsel,  
17 you can certainly say yes or no, but you're not to reveal  
18 content. And if we have to get into content, then Mr. Lepene  
19 and I can have a discussion about that. But I would make the  
20 same admonition.  
21 59 Q. Did you ever discuss this schedule of  
22 invoices and amounts due with Mr. Simpson?  
23 A. I'm sure I probably have. I don't  
24 necessarily recall the instance of that, but . . .  
25 60 Q. Can you tell from this list which invoices  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 been for fuel surcharge that had been unbilled up until that  
2 point for the year 2012.  
3 67 Q. And just so that I understand what the  
4 surcharge is, within the scheduled rates for interchange --  
5 there would be a rate for interchange, correct?  
6 A. Correct.  
7 68 Q. Bill of rates?  
8 A. Correct.  
9 69 Q. And this was a surcharge -- in other words,  
10 an add-on to those rates -- to adjust for upward movements in  
11 the cost of fuel?  
12 A. Yes, correct.  
13 70 Q. And if it's 2012 fuel surcharge unbilled, the  
14 shipments that actually -- that are involved would have taken  
15 place in 2012?  
16 A. Correct.  
17 71 Q. Below that, there's 2013 UNBILLED FSC. Do  
18 you see that?  
19 A. I see that.  
20 72 Q. And I assume again that's unbilled fuel  
21 surcharges?  
22 A. Correct.  
23 73 Q. Do you know for what period they would have  
24 been unbilled?  
25 A. Judging by the invoice date -- so the invoice  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

16

1 relate to the shipment of crude oil?  
2 A. Yes, I can.  
3 61 Q. And which of the -- and you can give me the  
4 document number. Which of the documents by number would have  
5 related to the shipment of crude oil?  
6 A. It looks like 60815, 60816, 100880, 400728,  
7 100888, 400740, and I believe that's it.  
8 62 Q. And again, on this document and under  
9 Remarks, those are the ones that have specific reference to  
10 crude, correct?  
11 A. Correct.  
12 63 Q. And then also in the Reference there's either  
13 a reference to crude or to C-R-U?  
14 A. Yes, correct.  
15 64 Q. And are those -- those were codes used within  
16 your accounting system to designate crude oil shipments?  
17 A. They were.  
18 65 Q. Looking specifically in the Reference column  
19 and going -- one, two, three, four, five, six, seven -- eight  
20 lines down, do you see a reference to 2012 FSC UNBILLED?  
21 A. Yes, I do.  
22 66 Q. What does that refer to?  
23 A. That -- that refers to a fuel surcharge,  
24 which is a charge that usually goes up or down depending on  
25 fuel prices, set at a base -- a base rate, and that would have  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

18

1 date was dated June the 14th of 2013 -- it would likely be  
2 from January 1st of 2013 up until that invoice date of June  
3 14th, 2013.  
4 74 Q. And is there any way of breaking that down by  
5 month?  
6 A. We would have to look at the specific invoice  
7 and look at the individual lines -- lines on it. But yes,  
8 there would be a way of breaking that out.  
9 75 Q. But it's likely that some of those shipments  
10 would have taken place in January or February of 2013.  
11 A. Correct.  
12 76 Q. Looking at the bottom of that schedule,  
13 there's a number: 2,571,819.91. Do you see that?  
14 A. I see that.  
15 77 Q. And then going to the first page of T-2, the  
16 amount of the claim is 2,164,471.30?  
17 A. Correct, yes.  
18 78 Q. Can you explain the difference between those  
19 two numbers?  
20 A. So, basically, the 2-million-571 that's on  
21 page -- page 6, the last page, that amount is in Canadian  
22 dollars, and the amount on page -- page 1 is in U.S. dollars,  
23 and so the Canadian amount was converted at a rate, I believe,  
24 established in August of 2013. And then it was also adjusted  
25 for the difference between the set-offs and the settlement  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 that was done with Irving Paper.  
 2 79 Q. It was -- I understand the exchange rate  
 3 part, and let me go to that part first. Did you understand  
 4 that the Proofs of Claim were to be stated in U.S. dollars  
 5 based on an exchange rate -- or, the exchange rate in  
 6 existence as of August 7, 2013 --  
 7 A. That's my understanding.  
 8 80 Q. -- the petition date? Right.  
 9 A. Yeah.  
 10 81 Q. Were you actually shown a copy of the  
 11 document or the order that set that conversion rule?  
 12 A. I don't believe I've seen that document, no.  
 13 82 Q. Okay. But somebody told you that that was  
 14 what the exchange rate should be.  
 15 A. Yes.  
 16 83 Q. Yeah, another ground rule I forgot to tell  
 17 you is that you'll always have to make sure that you provide a  
 18 verbal answer, because the court reporter won't be able to  
 19 pick up whether you nod or shake your head, one way or the  
 20 other, so I'd ask you to make sure you verbalize your  
 21 responses.  
 22 Explain to me the other adjustment you made for  
 23 the set-off with respect to amounts set off by the paper  
 24 companies?  
 25 A. So there was an amount that was set off by --  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

1 was aware of the dollar amount.  
 2 90 Q. The paper companies who held the claims that  
 3 were set off or who had the obligations that were set off,  
 4 those companies are separate legal entities from the  
 5 railroads, correct?  
 6 A. They are.  
 7 91 Q. Did anybody ever tell you what the basis was  
 8 for setting off that amount?  
 9 A. I don't -- I don't believe Mr. Hansen's group  
 10 communicated that to me. My understanding is they are amounts  
 11 that were owing to the Montreal, Maine & Atlantic from the  
 12 Irving Paper group and that's what was used to, I guess,  
 13 calculate the set-off amount.  
 14 92 Q. Did you ever question whether that set-off  
 15 was legal and proper?  
 16 **MR. LEPENE:** Objection. Calls for a legal  
 17 conclusion.  
 18 **MR. KEACH:** Well, actually, it doesn't. I just  
 19 asked him if he ever questioned whether it was legal and  
 20 proper, I'm not asking whether he believed that was right or  
 21 not. So, are you instructing him not to answer, or can he  
 22 answer?  
 23 **MR. LEPENE:** No, he can answer, as long as his  
 24 answer does not relate to a question that was put to his  
 25 attorneys. If it was a question that he placed with his  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

20

1 with the -- with the paper companies, and then there was --  
 2 subsequent to that, there was a settlement done, and I think  
 3 the difference between the set-offs with the paper companies  
 4 and the subsequent settlement that was done, we had reduced  
 5 that amount from our claim.  
 6 84 Q. Was this a settlement that occurred after the  
 7 bankruptcies were filed?  
 8 A. It would have been after the bankruptcies, I  
 9 believe, had been filed.  
 10 85 Q. And the set-off you're referring to occurred  
 11 prior to the bankruptcies, correct?  
 12 A. The set-off, I believe, occurred prior to the  
 13 bankruptcies.  
 14 86 Q. And this was a set-off of amounts due from  
 15 the paper companies to MMA against amounts owed by MMA to the  
 16 Irving railroads?  
 17 A. Correct.  
 18 87 Q. That's what your understanding was?  
 19 A. That's my understanding, correct.  
 20 88 Q. Did you accomplish that set-off, or was that  
 21 done by Mr. Hansen?  
 22 A. That set-off would have been done by Mr.  
 23 Hansen's group.  
 24 89 Q. Did they report that to you once they did it?  
 25 A. They would have likely sent me a copy, so I  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

22

1 attorneys, then no, he cannot answer that.  
 2 **MR. KEACH:** Let me rephrase it to take it out of  
 3 that realm.  
 4 93 Q. Mr Ellis, did you ever personally wonder  
 5 whether or not that set-off was legal and proper?  
 6 **MR. LEPENE:** Objection to --  
 7 **MR. KEACH:** Without assistance from your  
 8 attorneys.  
 9 **MR. LEPENE:** Objection to the form. You're asking  
 10 whether he wondered if that was the case?  
 11 **MR. KEACH:** Yeah, sure, let's start with that  
 12 verb. We can keep picking new verbs, but we'll start with  
 13 that one.  
 14 A. I did not.  
 15 94 Q. Did you ever have any discussion with anybody  
 16 -- and again, I don't want you to give me the substance, but  
 17 did you ever have any discussion with anybody about the  
 18 legality of that set-off?  
 19 A. I did not.  
 20 95 Q. Let's just briefly go to T -- Exhibit T-3.  
 21 Have you seen this document before?  
 22 A. I have not.  
 23 96 Q. Do you know if you assisted in any way in  
 24 preparing that document?  
 25 A. I would have -- similarly to the previous  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

1 document, I would have pulled together the list of invoices  
 2 and stuff that made up the dollar amounts.  
 3 97 Q. And why don't you flip to pages 6 and 7 of  
 4 T-3, which are a list of accounts receivable, it looks like.  
 5 A. Okay.  
 6 98 Q. Was that schedule prepared by you?  
 7 A. It was, yes.  
 8 99 Q. All right, going back to T-2, specifically  
 9 I'd like to focus on page 5, and the page begins -- after the  
 10 court stamping, there's a number -- there's a "number sign" 7.  
 11 Do you see that?  
 12 A. I see that.  
 13 100 Q. Then there's a list of agreements that form  
 14 the legal basis of the Proof of Claim.  
 15 A. I see that.  
 16 101 Q. And, essentially, it's three agreements,  
 17 right: the Commercial Agreement dated January 9, 2003, the  
 18 Interchange Agreement and the Blocking Agreement?  
 19 A. I see those, yes.  
 20 102 Q. And are you familiar with each of those  
 21 agreements?  
 22 A. I'm -- I'm generally familiar. I'm more  
 23 familiar with the -- you know, the Commercial Agreement. The  
 24 Blocking Agreement and the Interchange Agreement, I would not  
 25 be as familiar with those.

CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

1 **MR. LEPENE:** Okay, let me find it.  
 2 108 Q. **BY MR. KEACH:** Mr. Ellis, do you have Exhibit  
 3 T-5 in front of you?  
 4 A. I do.  
 5 109 Q. And you understand this to be the Commercial  
 6 Agreement that we were just referring to?  
 7 A. It is, yes.  
 8 110 Q. Dated January 9, 2003?  
 9 A. Correct.  
 10 111 Q. The parties are Montreal, Maine & Atlantic  
 11 Railway Ltd., Eastern Maine Railway Company and New Brunswick  
 12 Southern Railway Company Limited?  
 13 A. That's correct.  
 14 112 Q. Was it your understanding that this agreement  
 15 came into being to replace a pre-existing agreement between  
 16 Bangor and Aroostook Railroad and the Irving railroads in  
 17 light of the acquisition of the assets of Bangor and Aroostook  
 18 and affiliates by MMA?  
 19 A. That's my general understanding, yes.  
 20 113 Q. In fact, that's reflected more or less in  
 21 paragraph 1.1, correct?  
 22 A. It looks that way, yes.  
 23 114 Q. And in that same paragraph 1.1 there's a  
 24 section that says:

*The parties agree that commencing on*  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

24

1 103 Q. But you have some familiarity with them,  
 2 correct?  
 3 A. I do.  
 4 104 Q. Going back to your earlier testimony, you  
 5 have some familiarity with the operations of the three  
 6 railroads of which you are the comptroller. With respect to  
 7 traffic flowing to Saint John and interchanging with MMA, and  
 8 without reference to any particular shipment or transaction at  
 9 the moment, is it your understanding that MMA interchanged  
 10 traffic with Eastern Maine at Brownville Junction in Maine?  
 11 A. That's correct.  
 12 105 Q. All right. And then that traffic would then  
 13 be carried by Eastern Maine to some point across the border  
 14 and interchanged with New Brunswick Southern, correct?  
 15 A. That's correct.  
 16 106 Q. And New Brunswick Southern would then carry  
 17 that, again assuming it was going to Saint John, take it to  
 18 Saint John. And presumably, I guess, some shipments also went  
 19 to St. Stephen, right?  
 20 A. Correct.  
 21 107 Q. And, generally speaking, that's how you  
 22 understood the flow to work.  
 23 A. That's correct.  
 24 **MR. KEACH:** Why don't we pull out -- Alan, you can  
 25 show him T-5, which is the Commercial Agreement, for now.

CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

26

1 *the Effective Date of the Agreement, the*  
 2 *relationships between MMA and EMR/NBS*  
 3 *shall be governed by the following*  
 4 *Sections, and by the Interchange Agreement*  
 5 *of even date herewith ([defined as] the*  
 6 *'Interchange Agreement') attached hereto*  
 7 *as Exhibit A.*  
 8 Do you see that?  
 9 A. I see that.  
 10 115 Q. And was that your understanding as well:  
 11 that the Commercial Agreement and the Interchange Agreement  
 12 were the governing documents as between MMA and Eastern Maine  
 13 and New Brunswick Southern?  
 14 A. That's my understanding.  
 15 116 Q. Turning to the next page of the Commercial  
 16 Agreement, page 2 -- and I'm not asking you to play lawyer, I  
 17 just want your understanding here -- what's your understanding  
 18 as to what the parties' obligations were under section 2 of  
 19 the Commercial Agreement?  
 20 A. My general understanding of that is that we  
 21 were to provide freight service between Brownville Junction  
 22 and I'll call it Saint John. It doesn't say Saint John, but  
 23 we would -- from Brownville Junction to a spot on our line.  
 24 117 Q. To whatever the end point was on your line  
 25 for the shipment.

CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com



1 A. Correct.  
2 118 Q. Does it also provide that MMA is going to  
3 render the freight bill with respect to that entire shipment;  
4 not only amounts that would be due to MMA, but amounts that  
5 would be due to Eastern Maine and to New Brunswick Southern?

6 **MR. LEPENE:** Objection to the form.  
7 119 Q. **BY MR. KEACH:** Well, let me just read you a  
8 sentence, and you tell me what you understood it to mean. All  
9 right? The last sentence says:

10 *MMA shall continue to render one freight*  
11 *bill, and assess and collect the total*  
12 *amount of freight charges (but not fuel*  
13 *surcharges, demurrage, miscellaneous*  
14 *and/or accessorial charges) and remit*  
15 *the portion pertaining to EMR/NBS*  
16 *transportation services to EMR/NBS in*  
17 *accordance with the procedures in this*  
18 *Agreement.*

19 Do you see that?  
20 A. I see that.

21 120 Q. And did you understand that, in light of the  
22 fact that neither EMR nor NBS was a party to the interline  
23 system, that MMA was going to bill for all components of that  
24 -- of the shipment that was either on MMA's lines or on EMR's  
25 lines or on New Brunswick Southern lines?

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 A. Could you repeat that, please?  
2 126 Q. **BY MR. KEACH:** Sure. Again, just to  
3 summarize -- and I only want your understanding of this. Is  
4 it your understanding that under this provision, when you had  
5 a shipment that MMA interchanged with EMR at Brownville  
6 Junction and then EMR interchanged with NB Southern at a point  
7 across the border, and say that was an oil shipment going to  
8 Saint John, that MMA would render one freight bill to its  
9 customer, it would collect -- for all of those legs -- it  
10 would collect that amount and remit the portion that was not  
11 attributable to MMA's lines to EMR/NBS?

12 A. My understanding is they would remit that  
13 portion to NB Southern, as NB Southern was the company who was  
14 sending the invoice to the MMA.

15 127 Q. And within that NB Southern invoice was  
16 whatever portion was also due to Eastern Maine?

17 A. It would include --  
18 **MR. LEPENE:** Object to the form. Go ahead.  
19 A. It would include the transportation portion  
20 between Brownville and Saint John in the --

21 128 Q. **BY MR. KEACH:** Which was track --  
22 A. -- instance of the oil.

23 129 Q. Right. Which was track owned by Eastern  
24 Maine.

25 A. The track is owned --  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

28

1 A. That MMA would render one freight bill to  
2 their customer --  
3 121 Q. Right.  
4 A. -- which would -- which would be inclusive of  
5 the charges owing to our company.

6 122 Q. And that they would collect that amount from  
7 that customer.

8 A. I assume so.

9 123 Q. "They" being MMA.

10 A. Correct.

11 124 Q. And then MMA would remit EMR's portion to EMR  
12 and NBS's portion to NBS.

13 **MR. LEPENE:** Objection to the form. You can  
14 answer.

15 A. That they would remit -- I guess it says:  
16 *EMR/NBS transportation services to EMR/NBS in accordance with*  
17 *the procedures in this Agreement.*

18 **MR. KEACH:** Right.

19 125 Q. So they would bill it, collect it and remit  
20 it to the two Irving railroads?

21 **MR. LEPENE:** Objection to the form. You can  
22 answer. If I don't want you to answer, I'll instruct you not  
23 to answer, but when I object to the form of the question for  
24 purposes of the record, unless I instruct you not to answer,  
25 you can go ahead and answer.

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

30

1 **MR. LEPENE:** Object to the form.

2 A. The track is owned by Eastern Maine between  
3 Brownville and the New Brunswick border.

4 **MR. KEACH:** Right.

5 130 Q. And was that driven by the fact that neither  
6 Eastern Maine Railway nor New Brunswick Southern were members  
7 of the Interline Settlement System?

8 A. I would say yes. The MMA -- not knowing how  
9 the MMA -- sorry. In terms of the oil shipments, I know that  
10 the MMA was collecting their funds through the ISS and,  
11 obviously, we were not.

12 131 Q. Because neither EMR nor NBS was a member of  
13 that system, correct?

14 A. We were not a member of the system, no,  
15 correct.

16 132 Q. Look at -- looking at page six-point --  
17 excuse me -- section 6.1 on page 3 of T-5, and just looking at  
18 the last sentence of 6.1 -- and I'll read it slowly -- it  
19 says:

20 *Although EMR/NBS will not appear in the*  
21 *route, MMA will bill or cause to be*  
22 *billed to the responsible party, charges*  
23 *for its interline movement and charges*  
24 *due to EMR/NBS under this Agreement, and*  
25 *will remit amounts due to EMR/NBS as*

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 provided in Section 12 hereof.  
 2 Do you see that?  
 3 A. I see that.  
 4 133 Q. Is that describing the same phenomenon that  
 5 we just went through in section 2?  
 6 A. It appears that way.  
 7 134 Q. And specifically relating to interline  
 8 movement and charges due to EMR or New Brunswick Southern,  
 9 correct?  
 10 A. Correct.  
 11 135 Q. I'd ask you to look at section 12.1,  
 12 specifically 12.1 B. It says:  
 13 *Payments due under this section shall be*  
 14 *made within 21 days from receipt of the*  
 15 *invoice thereof.*  
 16 Do you know what payments that's referring to?  
 17 A. That would be payments for our -- our haulage  
 18 of freight between Brownville and a spot on our line.  
 19 136 Q. Right. The amounts of which had been  
 20 collected by MMA?  
 21 A. Correct. The amounts due to us for our  
 22 freight services, I guess, irregardless [*sic*] of the MMA's  
 23 collection.  
 24 137 Q. Right, the EMR/NBS portion of amounts they  
 25 collected, correct?  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

1 Commercial Agreement?  
 2 A. I see that, yes.  
 3 141 Q. And on the first page of T-11 the parties are  
 4 stated as Montreal, Maine & Atlantic Railway Ltd. and Eastern  
 5 Maine Railway Company. Do you see that?  
 6 A. I see that.  
 7 142 Q. And if you go to the end, to the signature  
 8 pages, the document is executed by Montreal, Maine and  
 9 executed by Eastern Maine Railway, and the signature line for  
 10 New Brunswick Southern is crossed out, correct?  
 11 A. It is crossed out, correct.  
 12 143 Q. Right. Presumably because New Brunswick  
 13 wasn't a party to the agreement, based on the parties on the  
 14 first page. Is that your understanding?  
 15 A. That would be my assumption.  
 16 144 Q. Do you recognize the signature for Eastern  
 17 Maine?  
 18 A. The first signature would be that of our, I  
 19 guess, president and CEO, Mr. Jim Irving. And the second  
 20 signature would be, at the time, our vice-president, which  
 21 would have been John Murphy.  
 22 145 Q. Okay. Mr. Murphy had a cryptic signature.  
 23 All right. And you said that you are generally familiar with  
 24 the Interchange Agreement?  
 25 A. Generally, yes.  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

32

1 A. Correct.  
 2 **MR. LEPENE:** Object to the form.  
 3 138 Q. **BY MR. KEACH:** Well, was it your  
 4 understanding that MMA owed you that money whether or not they  
 5 had collected it from their customer?  
 6 A. That's my understanding.  
 7 **MR. KEACH:** All right. Alan, in that package  
 8 there's a copy of -- an executed copy of the Interchange  
 9 Agreement.  
 10 **MR. LEPENE:** Okay, we will start hunting for it.  
 11 **MR. KEACH:** It's in the package we sent FedEx this  
 12 morning.  
 13 **MR. LEPENE:** Yes. We'll find it. Maybe.  
 14 **MR. KEACH:** We haven't previously marked it.  
 15 **MR. LEPENE:** You want the Interchange Agreement?  
 16 **MR. KEACH:** Yes. We'll go into the other ones,  
 17 but I want the Interchange Agreement.  
 18 **MR. LEPENE:** Okay. And this will be -- we have  
 19 it. This will be Exhibit T-11.  
 20 --- *Exhibit T-11 marked.*  
 21 139 Q. **BY MR. KEACH:** Mr. Ellis, do you have Exhibit  
 22 T-11 in front of you?  
 23 A. I do.  
 24 140 Q. And do you recognize that to be the  
 25 Interchange Agreement that was referred to as Exhibit A to the  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

34

1 146 Q. And do you understand this to be the document  
 2 under which Eastern Maine agreed with MMA that they would  
 3 interchange trains at Brownville Junction in both directions?  
 4 A. That's my understanding.  
 5 147 Q. If you look at paragraph 1(c), it says:  
 6 *The interchange of cars covered by this*  
 7 *Agreement shall be governed by the*  
 8 *applicable Code of Car Service Rules and*  
 9 *Code of Car Hire Rules promulgated from*  
 10 *time to time by the Association of*  
 11 *American Railroads.*  
 12 Do you see that?  
 13 A. I see that.  
 14 148 Q. Do you know what that reference is to?  
 15 A. Other than what you have just read there, no.  
 16 I have not seen those documents.  
 17 149 Q. Flipping forward to paragraph 13, and again,  
 18 sort of parallel with the Commercial Agreement, this agreement  
 19 provides that:  
 20 *The payments called for under this*  
 21 *Agreement shall be made by either party*  
 22 *within twenty-one (21) days after*  
 23 *receipt of bills therefore [sic].*  
 24 Do you see that?  
 25 A. I see that.  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

1 150 Q. Do you know what specific payments were due  
2 under the Interchange Agreement?  
3 **MR. LEPENE:** If any.  
4 A. I don't necessarily, you know, know what that  
5 specific line is referring to. Commercially, the payment  
6 would be -- commercially, I guess, we were compensated for  
7 hauling the freight between Brownville Junction and a  
8 destination on our line. We did not invoice specifically for  
9 a fee, I guess, relating to an interchange, so there were no  
10 -- I guess, no invoices generated from Eastern Maine to  
11 Montreal, Maine & Atlantic for any sort of interchange fee.  
12 **MR. KEACH:** Right.  
13 151 Q. No separate invoices for interchange under --  
14 by this agreement.  
15 A. No separate invoices from Eastern Maine to  
16 MMA for any -- for interchange fees under this agreement, no.  
17 152 Q. So, to the extent that this agreement  
18 obligated Eastern Maine to interchange and, again, to bring  
19 trains to the next designated point, the fees due and owing  
20 under this agreement would have been incorporated within the  
21 invoices otherwise issued by -- as you said, by New Brunswick  
22 Southern, correct?  
23 **MR. LEPENE:** Objection as to form. You can  
24 answer.  
25 A. I would say yes.  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 A. I do not.  
2 158 Q. Do you know if the reference both here and  
3 the earlier reference to the Association of American Railroad  
4 rules created default rates for the services if they weren't  
5 otherwise agreed to by the parties?  
6 A. That I'm not sure of.  
7 159 Q. Did Eastern Maine ever assign this document  
8 to New Brunswick Southern?  
9 A. Not -- not to my knowledge.  
10 160 Q. To the extent that Eastern Maine Railway  
11 Company had claims against MMA, did Eastern Maine Railway  
12 assign any of its claims to New Brunswick Southern?  
13 A. Not that I'm aware of.  
14 161 Q. Is there any specific document that you're  
15 aware of that makes New Brunswick Southern an agent for  
16 Eastern Maine Railway in asserting claims?  
17 **MR. LEPENE:** Objection as to form.  
18 A. I guess I'm not -- I don't understand. What  
19 do you mean by "agent"?  
20 162 Q. **BY MR. KEACH:** Well, did Eastern Maine sign  
21 a document designating New Brunswick Southern as a party that  
22 could pursue economic claims on its behalf?  
23 A. I'm not aware of such a document.  
24 163 Q. And, specifically, I presume you're not aware  
25 of any document under which Eastern Maine Railway designated  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

36

1 153 Q. **BY MR. KEACH:** If you look at paragraph 14,  
2 it says:  
3 *Bills rendered pursuant to the*  
4 *provisions of this Agreement shall*  
5 *include direct labor and material costs,*  
6 *together with the surcharges, overhead*  
7 *percentages and equipment rentals in*  
8 *effect at the time any work is*  
9 *performed, as agreed to between the*  
10 *Parties --*  
11 Do you see that?  
12 A. I see that.  
13 154 Q. -- *but in the absence of such an*  
14 *Agreement, such rates shall not exceed*  
15 *those established for similar work by*  
16 *the [AAR] or some similar agency [...].*  
17 Do you see that?  
18 A. I see that.  
19 155 Q. Do you know what labour and material costs --  
20 direct labour and material costs this is referring to?  
21 A. I do not.  
22 156 Q. Do you know what surcharges it refers to?  
23 A. I do not.  
24 157 Q. Do you know what overhead percentages and  
25 equipment rentals it's referring to?  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

38

1 New Brunswick Southern Railway as its agent for filing Proofs  
2 of Claim in the MMA bankruptcy case, correct?  
3 A. Correct, I'm not aware of any such documents.  
4 164 Q. And are you aware of any document under which  
5 New Brunswick Southern authorized Eastern Maine to file Proofs  
6 of Claim for it in the Canadian proceedings of Montreal, Maine  
7 & Atlantic Canada?  
8 A. I'm not aware of a claim -- or, a --  
9 165 Q. And you're not aware of any -- you're not  
10 aware of any agency agreement or any agreement where they  
11 designated New Brunswick Southern as the party to file a claim  
12 for Eastern Maine, correct?  
13 A. Correct.  
14 **MR. KEACH:** Alan, can we get the big invoices back  
15 again?  
16 **MR. LEPENE:** Sure.  
17 **MR. KEACH:** And, hopefully, you can find that same  
18 reference to the 2012 fuel surcharge without too much  
19 difficulty this time.  
20 **MR. LEPENE:** All right, I will look for that right  
21 now.  
22 **MR. KEACH:** Yeah, I should have had you stick a  
23 placeholder in there before.  
24 **MR. LEPENE:** Yeah. Which -- which number -- there  
25 was some writing at the top.  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com



1 **MR. KEACH:** Yeah, it's the one that has *Arron K*  
2 *email 606330* on top.  
3 **MR. LEPENE:** Well, believe it or not, I have it.  
4 And before -- before I turn this over, can I get some -- yes,  
5 let's mark . . .  
6 (*Discussion held off the record.*)  
7 **MR. LEPENE:** So he has that page in front of him  
8 from Exhibit T-4.  
9 **MR. KEACH:** Okay.  
10 166 Q. Mr. Ellis, you have in front of you,  
11 presumably, what I think are two -- there's an invoice and a  
12 supplemental invoice. Do you see that?  
13 A. I see -- I see . . . I see the invoice. And  
14 the supplemental invoice has that *Arron K email* written at the  
15 top, correct?  
16 167 Q. Right. And they're both for 133,246.06,  
17 correct?  
18 A. That's correct.  
19 168 Q. And these are for unbilled fuel surcharges in  
20 2012?  
21 A. Correct.  
22 169 Q. And again, you said these would have been  
23 for actual shipments that occurred in 2012, where the fuel  
24 surcharges had just not been billed yet, correct?  
25 A. Correct.  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 reference to the number.  
2 **THE WITNESS:** It's six-zero --  
3 **MR. LEPENE:** Right.  
4 **THE WITNESS:** -- eight-two-one.  
5 **MR. LEPENE:** Eight-two-one. Okay, backup data.  
6 All right.  
7 174 Q. **BY MR. KEACH:** Mr. Ellis, do you know who  
8 "Arron K" is?  
9 A. Yes, I do. He works in our office.  
10 175 Q. Who is it?  
11 A. Aaron Keating. He works in our office.  
12 176 Q. Do you know why there were supplemental  
13 invoices created for each of these fuel surcharge invoices?  
14 A. Essentially, the supplemental invoice is  
15 prepared in our office and then is sent to our Accounts  
16 Receivable group, who would key it into our system, which  
17 would generate that actual invoice. That's the --  
18 177 Q. So you send the supp --  
19 A. -- reason why --  
20 178 Q. I'm sorry. Just so I understand, you send  
21 the supplemental invoice and then your Accounts Receivable  
22 group -- which I believe was Mr. Hansen's group until he  
23 retired, right? -- generates the actual invoice?  
24 A. The Accounts Receivable group would generate  
25 the actual invoice, correct.  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

1 170 Q. And it indicates, on this sheet anyway, that  
2 there is backup data attached. Is it fair to say, in this  
3 collection of invoices, that backup data is not attached?  
4 A. I don't see the backup data included in here.  
5 171 Q. Do you know where to locate that data?  
6 A. I could -- I could locate that data, correct.  
7 **MR. KEACH:** Alan, could we get that --  
8 **MR. LEPENE:** Sure.  
9 **MR. KEACH:** -- produced, please?  
10 **MR. LEPENE:** And let me just make a note so it's  
11 -- what's the invoice number?  
12 **THE WITNESS:** Invoice number was 60820.  
13 **MR. LEPENE:** Six-zero . . .  
14 **THE WITNESS:** Eight-two-zero.  
15 **MR. LEPENE:** Eight-two-zero. Okay.  
16 **MR. KEACH:** All right. And just flipping the  
17 page, there should be two facing invoices, an invoice and a  
18 supplemental invoice, for unbilled FSC in 2013.  
19 172 Q. Do you see that?  
20 A. I see that.  
21 173 Q. And again, there's a reference to backup data  
22 attached. Can we agree that there's no backup data attached?  
23 A. Agreed.  
24 **MR. KEACH:** Again, Alan, can we get that?  
25 **MR. LEPENE:** Okay. And again, let me make a  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

1 179 Q. So the supplemental invoice is an internal  
2 document only, the other form is the external document.  
3 A. Correct.  
4 180 Q. All right. Just flipping beyond that, you'll  
5 see -- and I'm just taking this next document as exemplary --  
6 you see a document called Canadian Funds, Invoice Number  
7 100848, Switching Settlement Statement?  
8 A. I see that.  
9 181 Q. All right. What is a switching settlement  
10 statement in your system?  
11 A. That would be our -- our fee that we would  
12 charge to haul a freight from Brownville Junction to a  
13 destination on our line. Or vice versa; it could be going  
14 from an origin on our line to Brownville Junction.  
15 182 Q. And if you go down the page, the heading on  
16 this document is Brownville Junction, right? It's in the --  
17 in the sort of centre top there's a reference to Brownville  
18 Junction?  
19 A. I see that, yeah.  
20 183 Q. What specifically does that reference to  
21 Brownville Junction designate?  
22 A. That would be the spot on the line that we  
23 would interchange with the Montreal, Maine & Atlantic.  
24 184 Q. So that's the interchange point.  
25 A. That is the interchange point.  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 185 Q. And just below that there's a reference to  
2 McAdam Subdivision. Do you see that?  
3 A. I see that.  
4 186 Q. And what is the McAdam Subdivision?  
5 A. The McAdam Subdivision is basically the rail  
6 line that moves between Saint John, New Brunswick, and McAdam,  
7 New Brunswick. And the reason why it's listed basically on  
8 this invoice is that would be the origin or destination of the  
9 customers that that traffic relates to.  
10 187 Q. So the McAdam Subdivision is a rail line  
11 operated by NBSR, or by both Eastern Maine and NBSR?  
12 A. It would be a rail line that is owned by NB  
13 Southern. Eastern Maine would run on that in as far as  
14 McAdam, New Brunswick.  
15 188 Q. Is there a designation for the line owned by  
16 Eastern Maine between Brownville, Maine, and the border?  
17 A. That would be the Mattawamkeag Subdivision.  
18 189 Q. And if you turn the page, there's another  
19 reference to the McAdam Subdivision and then -- and it says  
20 McAdam Subdivision total charges and you see "49644.22"?  
21 A. I see that.  
22 190 Q. What does that represent?  
23 A. That would represent the total of all of  
24 those lines preceding it for the freight to move -- or, the  
25 freight charges to move those railcars from -- back and forth  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 Subdivision would have covered the traffic running from  
2 Brownville Junction eastward to Saint John, correct?  
3 A. That's correct.  
4 196 Q. It's shown as EMRY with all the little -- you  
5 know, the sort of broken dotted line. And then the second  
6 segment of that is NBSR, similarly along a sort of broken  
7 line. Do you see that?  
8 A. I see that.  
9 197 Q. And so it would cover the charges from  
10 Brownville Junction to Saint John as per the route shown on  
11 this map, correct?  
12 A. Correct.  
13 198 Q. And the invoice section labelled St. Stephen  
14 Subdivision would have covered charges, to the extent  
15 applicable, running from McAdam, the dot shown as McAdam,  
16 southward to St. Stephen, correct?  
17 A. No. Those charges, the -- one, two, three --  
18 those seven charges, each for \$1,045, and the subtotal of the  
19 7,315, that would be for the freight charges going from  
20 Brownville Junction to St. Stephen.  
21 199 Q. Oh, okay. So the difference is just  
22 destination; they both cover charges from the interface in  
23 Brownville Junction and they're separated out based on whether  
24 the end point was St. Stephen or the end point was Saint John.  
25 A. That's correct.  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

44

1 between Brownville Junction and Saint John, New Brunswick, or  
2 vice versa.  
3 191 Q. Okay. So, it covers the entire route from  
4 Brownville Junction, Maine, to Saint John, New Brunswick.  
5 A. It does.  
6 192 Q. Now, just below that, there's a reference to  
7 the St. Stephen Subdivision.  
8 A. Correct.  
9 193 Q. Do you see that?  
10 A. Yeah.  
11 194 Q. And is that a separate designation for the  
12 charges that would be incurred for running along the smaller  
13 St. Stephen Subdivision?  
14 A. That would be for the St. Stephen  
15 Subdivision, for the customers that either the freight  
16 originated or terminated on that section of track.  
17 **MR. KEACH:** Okay. Alan, we sent you, I believe, a  
18 map that's in red and black. Can you just get a copy of that  
19 and mark it?  
20 **MR. LEPENE:** Yes. And that will be T-12.  
21 --- Exhibit T-12 marked.  
22 **MR. KEACH:** Mr. Ellis, I'm just going to ask you  
23 to take a look at this map, and this is just to give us a  
24 visual reference of what we were just talking about.  
25 195 Q. So the amount on the invoice under McAdam  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

46

1 **MR. KEACH:** Thank you for that clarification, I  
2 appreciate that. Alan, in that stuff we sent you, you'd have  
3 a freestanding copy of the Blocking Agreement as executed, and  
4 let's just go with that, just the Blocking Agreement for now.  
5 **MR. LEPENE:** Okay. T-13.  
6 **MR. KEACH:** Will that be T-13?  
7 **MR. LEPENE:** Yes.  
8 --- Exhibit T-13 marked.  
9 200 Q. **BY MR. KEACH:** Mr. Ellis, have you seen this  
10 document before?  
11 A. I have.  
12 201 Q. And do you understand it to be the Blocking  
13 Agreement referred to in the Commercial Agreement and also  
14 referred to in the NBSR Proof of Claim?  
15 A. That's correct.  
16 202 Q. I don't see any provision in the document for  
17 anybody to pay anybody anything with respect to the mutual  
18 services rendered. Is it your understanding that there were  
19 no charges that were incurred as a consequence of this  
20 agreement?  
21 A. That's my understanding. I'm not as familiar  
22 with this. This is a bit more of an operational-type  
23 agreement. I'm generally aware of it, but I'm not aware of  
24 charges associated with this.  
25 203 Q. Right. I mean, basically, it's an agreement  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 of each party to provide pre-assembled blocks of cars,  
2 correct?  
3 A. Correct.  
4 **MR. KEACH:** You can put that aside. Thanks.  
5 Alan, can you get T-6 and T-7 in front of the witness?  
6 **MR. LEPENE:** T-6 and T-7. And they are what?  
7 **MR. KEACH:** They're the two August 2nd demand  
8 letters.  
9 **MR. LEPENE:** The demand letter, okay.  
10 **MR. KEACH:** August 2, 2013.  
11 **MR. LEPENE:** Yeah. Yeah, yeah, yeah. T-6 and  
12 T-7. He has them.  
13 **MR. KEACH:** Before we go there, let me just ask  
14 one other question about the invoice, if I could, which I  
15 forgot to ask you before.  
16 204 Q. The amount shown as the bill amount for  
17 McAdam Subdivision and St. Stephen Subdivision --  
18 **MR. LEPENE:** We closed the -- we closed the book.  
19 **THE WITNESS:** Good thing you put the --  
20 **MR. LEPENE:** But we have a tab, fortunately.  
21 Okay.  
22 **MR. KEACH:** Good, good, I'm glad you saved the  
23 tab.  
24 205 Q. What are the factors that go into the amount  
25 that's billed in each -- for each of those cars?  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 about the need to send these letters?  
2 A. Not that I recall.  
3 212 Q. You see that T-7 is a demand letter by  
4 Eastern Maine Railway Company, correct?  
5 A. I see that.  
6 213 Q. And it says that it's a demand made pursuant  
7 to certain sections of the Commercial Agreement?  
8 A. I see that.  
9 214 Q. Do you know how much was owed to Eastern  
10 Maine that was being demanded?  
11 **MR. LEPENE:** Objection as to form.  
12 A. There was -- there were zero receivables on  
13 the Eastern Maine Railway Company's books for Montreal, Maine  
14 & Atlantic.  
15 215 Q. **BY MR. KEACH:** And that I understand, so let  
16 me ask you the question I actually asked you. Do you know how  
17 much was being demanded by Mr. Simpson on behalf of Eastern  
18 Maine Railway Company?  
19 **MR. LEPENE:** Objection as to form.  
20 A. I do not -- I'm not aware of how much was  
21 being, I guess, demanded.  
22 216 Q. **BY MR. KEACH:** You do understand this is a  
23 demand letter from Eastern Maine to MMA, correct?  
24 A. I understand that.  
25 217 Q. And T-6 is a demand letter by New Brunswick  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

48

1 A. Sorry, could you repeat that?  
2 206 Q. Yeah. What are the factors? I mean, how do  
3 you determine the amount due for each of these cars as they  
4 travelled over the subdivision?  
5 A. They would have been rates established with  
6 our Commercial group.  
7 207 Q. And are they based on -- is distance a  
8 factor? Are they based on how long the distance is that  
9 they're hauled by your railroad?  
10 A. I would assume there are several factors  
11 involved; distance may or may not be one of them, I guess,  
12 depending on the product or the commodity, et cetera.  
13 208 Q. It looks like there's a weight factor.  
14 Correct?  
15 A. There could be a weight factor involved as  
16 well.  
17 209 Q. All right. But as far as you know, these are  
18 preset rates set by the Commercial division?  
19 A. These are all set by the Commercial division,  
20 yes.  
21 210 Q. All right, going to T-6 and T-7, which are  
22 the two August 2nd letters, have you seen either of these  
23 documents before?  
24 A. Not that I can recall.  
25 211 Q. Did you have any discussions with Mr. Simpson  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

50

1 Southern Railway separately?  
2 A. Yes, correct.  
3 **MR. KEACH:** Alan, can you show the witness T-8?  
4 **MR. LEPENE:** T-8 is --  
5 **MR. KEACH:** Yeah, that e-mail chain.  
6 **MR. LEPENE:** We have it.  
7 **MR. KEACH:** You have it?  
8 **MR. LEPENE:** Yeah. Okay. He has it.  
9 **MR. KEACH:** All right. And before we get to the  
10 specifics of -- well, first, you should review T-8, Mr. Ryan  
11 [sic]. These are e-mails, some of which are your e-mails --  
12 or, e-mails to you or from you.  
13 A. Correct.  
14 218 Q. And, you know, as usual, you'll probably want  
15 to start with the back and come forward to be chronological.  
16 But do you recognize these e-mails to be e-mails to you and  
17 from you?  
18 A. I do.  
19 219 Q. Let me just -- before we get to the specifics  
20 of the document, let me back up to -- when I was asking you  
21 what topics you were strongest on, you mentioned that you  
22 thought Mr. Hansen might be stronger on the, you know, weekly  
23 swap or the periodic swap arrangement.  
24 A. Correct.  
25 220 Q. These e-mails relate to at least one instance  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 of this swap arrangement, correct?  
2 A. Correct.  
3 221 Q. Now, Mr. Hansen testified earlier today that  
4 while he put the swap system in place, the implementation of  
5 that swap system was largely left to you. Is that accurate?  
6 A. I would have had correspondence back and  
7 forth with Mr. Gardner or other folks at the Montreal, Maine &  
8 Atlantic from time to time and would have forwarded, you know,  
9 that such information on to somebody in Mr. Hansen's group to  
10 basically agree to whatever swap terms or payment terms, I  
11 guess.  
12 222 Q. Let's go specifically to T-8 and go to the  
13 first e-mail, which is again the third page in, I believe,  
14 which is an e-mail from Don Gardner to you dated April 26,  
15 2013. Do you see that?  
16 A. I see that.  
17 223 Q. All right. And who was Mr. Gardner, just for  
18 the record?  
19 A. I believe -- I see in his signature, he was  
20 the VP of Finance and Administration and CFO for the Montreal,  
21 Maine & Atlantic.  
22 224 Q. Okay. And he says: *Attached is a new*  
23 *summary through today.* Do you see that?  
24 A. I see that.  
25 225 Q. And if you turn the page, we've also included  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 A. Most -- most likely, correct.  
2 232 Q. Do you recall directing any such questions to  
3 Mr. Gardner?  
4 A. I can see in the follow-up e-mails that I had  
5 used that document to get an understanding that Mr. Gardner,  
6 in his books for the Montreal, Maine & Atlantic, had copies  
7 of all of our outstanding invoices that we were looking for  
8 to receive payment on.  
9 233 Q. Right, so you were able to reference it as to  
10 the accuracy of the amounts you were looking for.  
11 A. That's correct.  
12 234 Q. Okay. In fact, I mean, just flipping to the  
13 next page, it looks like he may not have attached it the  
14 first time and then successfully attached it the second time?  
15 A. Correct.  
16 235 Q. He says: *Here is the attachment.*  
17 A. Correct.  
18 236 Q. Sort of a common mistake that people make.  
19 And the next one -- and the next e-mail is an e-mail from you,  
20 Mr. Ellis, to Mr. Gardner, which says: *I have approximately*  
21 *\$650,000 approved and ready to go from my end.* What were you  
22 referring to there?  
23 A. That would have been information that I would  
24 have received from somebody in Mr. Hansen's group, referring  
25 most likely to payments that they had approved to go from the  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

52

1 what was in the e-mail, the attachment to the e-mail, which is  
2 this combined Accounts Payable Aged Invoice Report. Do you  
3 see that?  
4 A. I see that.  
5 226 Q. And did you understand that to be a summary  
6 of amounts due to, in one instance, Maine Northern Railway  
7 and, in another, New Brunswick Southern?  
8 A. Yes, that's correct.  
9 227 Q. Was this kind of summary sent by Mr. Gardner  
10 to you on any kind of regular basis during the period of this  
11 swap arrangement?  
12 A. Not to my recollection.  
13 228 Q. Do you recall receiving this one?  
14 A. I did not recall receiving this one. I've  
15 seen this e-mail here just the other day and . . .  
16 229 Q. Again, assuming we're not lying to you about  
17 this being attached, this was the attachment to an e-mail from  
18 Mr. Gardner to you, right?  
19 A. Yes, it was, correct.  
20 230 Q. And so, presumably, at the time, you would  
21 have looked at it?  
22 A. I would have looked at it, yes.  
23 231 Q. And if you had had any questions about it,  
24 you would have directed those questions to Mr. Gardner; is  
25 that correct?  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

54

1 Irving paper companies.  
2 237 Q. To --  
3 A. To --  
4 238 Q. -- MMA.  
5 A. To the MMA, correct.  
6 239 Q. And then you're asking Mr. Gardner how much  
7 they will be paying in terms of amounts owed to the Irving  
8 railroads in order to accomplish this swap, correct?  
9 A. Correct.  
10 240 Q. And also to confirm the timing of the crude  
11 oil payment.  
12 A. That's correct.  
13 241 Q. All right. And then in the next e-mail, Mr.  
14 Gardner responds to that and says that he would have 449,000  
15 and then with about 600,000 more of oil payments to come in  
16 on Monday, right?  
17 A. That's correct.  
18 242 Q. And he wants to do the swap on that basis,  
19 right?  
20 A. That's correct.  
21 243 Q. And then you ask about the timing again of  
22 the crude on Monday and you ask him to send a breakdown of  
23 the 449, right?  
24 A. Correct.  
25 244 Q. And then in the next e-mail, Mr. Gardner  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 basically says that there's not an exact match between the  
2 amounts, right, that he's 250,000 short?  
3 A. Correct.  
4 245 Q. With the paper payments. And then he says  
5 he'd send you the full oil payment and then pay the  
6 difference, i.e. the amounts checked on the exhibit, once he  
7 receives that amount, right?

8 A. That's correct.

9 246 Q. And if you look at that in the exhibit, the  
10 checked amounts are indicated by these little check marks in  
11 the column? Is that correct?

12 A. I assume so.

13 247 Q. And did you actually accomplish this swap on  
14 that basis?

15 A. That I don't recall. I would have sent this  
16 e-mail -- because I was not authorized to do -- to do the  
17 swaps, I can't release the funds from Irving Paper Group -- I  
18 would have sent this agreement to somebody in Karl Hansen's  
19 group, who would have agreed or disagreed; and had they  
20 agreed, then the swap would have proceeded along that path.

21 248 Q. Right. So Mr. Hansen was the only one who  
22 could authorize the swap?

23 A. Correct. Or somebody within his group.

24 249 Q. Do you know if there were any additional swap  
25 transactions that took place after this -- again, assuming

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

1 payment made by the MMA companies to the Irving railroads.  
2 **MR. LEPENE:** I object as to the form with respect  
3 to "similarly sized," but you can answer.

4 A. Correct.

5 255 Q. **BY MR. KEACH:** There wasn't -- it wasn't a  
6 situation where you actually set off amounts on the books,  
7 right? It was just a timing mechanism.

8 A. It was a timing --

9 256 Q. You held on to the --

10 A. Correct.

11 257 Q. Right. And again, other than the one set-off  
12 that we referred to earlier, there were no circumstances that  
13 you can recall where there were actual set-offs of amounts due  
14 from the paper companies to MMA versus amounts due from MMA  
15 to the railroads.

16 A. That's correct. Mr. Gardner, at one point in  
17 time, did do a set-off on his side, but that had since been  
18 reversed, because it was too complicated from an accounting,  
19 you know, perspective to get all those agreements done and  
20 whatnot within -- within our -- our organization here.

21 258 Q. Right. But again, just to -- so we  
22 understand each other, you understood that the swap, as we've  
23 described it, the timing device of the withholding of paper  
24 payments until railroad payments could be made, was a course  
25 of dealing that continued right up to the time of the

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

56

1 this transaction occurred -- that took place after this  
2 transaction and prior to the Lac-Mégantic derailment?

3 A. I would assume there would have been. This  
4 was dated -- I guess the last date on the e-mail was May the  
5 3rd, and the accident happened on July the 6th, I believe.

6 250 Q. Right. So --

7 A. I assume there would have been other swaps.

8 251 Q. Because that was the regular way that you  
9 dealt business? Or --

10 A. Correct.

11 252 Q. -- you did business, I should say.

12 A. Correct.

13 253 Q. How were those swaps documented within the  
14 Irving companies?

15 A. I would assume, a similar -- a similar basis  
16 to something along this line, where Mr. Gardner would have had  
17 certain amounts owing to the railroad companies and the Irving  
18 paper companies would have had certain amounts owing back to  
19 his company, and they would have come to some agreement on  
20 when -- whatever the basis would have been to do those swaps.

21 254 Q. So, and just so we understand each other, and  
22 Mr. Hansen described it this way, the swaps were not actually  
23 accounting set-offs, correct? It really was just a situation  
24 where the cheques due to MMA from the paper companies were  
25 withheld until there was a corresponding and similarly sized

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

58

1 Lac-Mégantic derailment?

2 A. That's my understanding, yes.

3 **MR. KEACH:** We're going to mute you for a second  
4 and then we'll come back.

5 --- *Pause in the proceedings.*

6 259 Q. Mr. Ellis, you had referred earlier to the  
7 absence of an entry on the Eastern Maine Railway books and  
8 records. I just want to ask you sort of generally about the  
9 books and records that Eastern Maine maintained. Does Eastern  
10 Maine have accounts payable and accounts receivable records  
11 that are separate and distinct from New Brunswick Southern?

12 A. They do.

13 260 Q. And can you give me a circumstance under  
14 which there is a separate source of revenue to Eastern Maine  
15 that is not shared with New Brunswick Southern?

16 A. They would have some sources of revenue for,  
17 I'll say, leases of land or private -- private sidings or  
18 crossings that they would have with landowners on their --  
19 that move across their tracks.

20 261 Q. Does Eastern Maine have any operating  
21 revenues that you book separately?

22 A. They would have -- they would have revenues  
23 internally, I guess, that we would allocate for tax purposes  
24 to -- to -- where they would bill New Brunswick Southern.

25 262 Q. In other words, you would do an intercompany

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com



1 adjustment to reflect revenues earned by Eastern Maine as  
 2 opposed to earned by New Brunswick Southern?  
 3 **MR. LEPENE:** Objection as to --  
 4 **MR. KEACH:** For tax purposes.  
 5 **MR. LEPENE:** Objection as to form.  
 6 A. We would -- we would bill -- or, Eastern  
 7 Maine Railway would bill New Brunswick Southern for an  
 8 allocated portion of freight for tax purposes.  
 9 263 Q. **BY MR. KEACH:** And did Eastern Maine bill New  
 10 Brunswick Southern for an allocated portion of the amounts  
 11 that were paid by MMA?  
 12 A. I assume, in general, they would have. Not  
 13 specifically.  
 14 264 Q. What do you mean by "in general"?  
 15 A. It would be, I guess, in general. It  
 16 wouldn't be on an invoice-by-invoice basis, it would be a  
 17 total of -- it could be freight that had moved -- you know,  
 18 freight that could have been MMA freight, it could be freight  
 19 for other carriers as well.  
 20 265 Q. How often did this billing take place, was it  
 21 an annual adjustment?  
 22 A. It would be less than annual. Basically, we  
 23 do a four-week period cycle, so it should have been done every  
 24 four weeks.  
 25 266 Q. So Eastern Maine Railway paid taxes on  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

1 A. They would have some liabilities, yes.  
 2 271 Q. And what liabilities would Eastern Maine  
 3 Railway have?  
 4 A. Payroll, I guess payroll liabilities for  
 5 track crews or train crews; they would have liabilities for  
 6 perhaps repairs to or maintenance to their -- to their  
 7 railroad track, snow removal; we'd have some utility bills, et  
 8 cetera.  
 9 272 Q. So just focusing on payroll for a second,  
 10 when Eastern Maine moved the freight from Brownville Junction  
 11 to -- you know, across the border, presumably to McAdam or to  
 12 some other switching point, were the engineers and conductors  
 13 on those trains employees of Eastern Maine?  
 14 A. Correct. Yes.  
 15 273 Q. And was their payroll -- did their payroll  
 16 cheques say Eastern Maine on them, or New Brunswick Southern?  
 17 A. That I'm not sure of.  
 18 274 Q. To the extent they were paid by anybody other  
 19 than Eastern Maine, would there have been an intercompany  
 20 adjustment for that payroll?  
 21 A. That I'm not sure of. I would generally say  
 22 yes.  
 23 275 Q. Is there a place in the books and records of  
 24 the company that reflects the intercompany allocations that  
 25 you just talked about, both on the revenue and expense sides?  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

1 amounts paid by MMA for the interchange between Brownville,  
 2 Maine, and New Brunswick, correct?  
 3 A. Eastern Maine, I guess, would have paid taxes  
 4 for freight that they would have billed New Brunswick Southern  
 5 for their portion.  
 6 267 Q. Right, for their portion of the amount paid  
 7 by MMA for freight running between Brownville, Maine, and  
 8 Saint John and St. Stephen.  
 9 **MR. LEPENE:** Objection as to form.  
 10 A. I would say yes.  
 11 268 Q. **BY MR. KEACH:** That was treated as Eastern  
 12 Maine's revenue for tax purposes?  
 13 **MR. LEPENE:** The amounts that they billed NBSR; is  
 14 that what you're referring to?  
 15 **MR. KEACH:** That's what he said, yes.  
 16 A. They were billing NBSR, I guess, for their  
 17 portion for tax purposes, I guess.  
 18 269 Q. And do you know on a percentage basis how  
 19 much of that revenue was treated as taxable income for EMR  
 20 versus the amount that was attributable to New Brunswick  
 21 Southern?  
 22 A. I'm going to say roughly 50 per cent.  
 23 270 Q. Did Eastern Maine Railway have its own  
 24 obligations; in other words, did it have separately booked  
 25 liabilities?  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

Deposition of Ryan Ellis, taken March 23, 2017

1 A. There would be general ledger accounts for  
 2 those transactions.  
 3 276 Q. Are there work papers for the tax returns as  
 4 well?  
 5 A. I want to say generally, yes, there should be  
 6 working papers. The tax returns for that year were filed by  
 7 a different accounting group, but . . .  
 8 277 Q. What accounting group do you use for filing  
 9 Eastern Maine's tax returns?  
 10 A. That was part of our Shared Services group,  
 11 which is under JDI Finance.  
 12 278 Q. But there are records that would show me how  
 13 much of the revenue otherwise paid by MMA was attributable --  
 14 was attributed to Eastern Maine for tax purposes, right?  
 15 **MR. LEPENE:** Objection as to form.  
 16 A. We would be able to see, I guess, how much  
 17 revenue Eastern Maine earned from NB Southern.  
 18 279 Q. **BY MR. KEACH:** And did Eastern Maine earn  
 19 revenue from NB Southern other than for interchanging with  
 20 MMA?  
 21 A. I guess there would also be freight that  
 22 moved across that line that would have interchanged with --  
 23 with another carrier, which would have been Springfield  
 24 Terminal Railway.  
 25 280 Q. And you didn't separate out in your  
 CADY REPORTING SERVICES, INC. - 216.861.9270  
 www.cadyreporting.com

1 allocation revenue from -- by source?

2 A. That I'm not sure of.

3 281 Q. Where are these records located?

4 A. Records should be located with JDI Finance.

5 282 Q. And where is JDI Finance located?

6 A. They're located here in Saint John.

7 283 Q. And JDI Finance does this by virtue of a

8 shared services agreement with Eastern Maine Railway and New

9 Brunswick Southern?

10 A. They provide shared services to, I think, the

11 majority of the J.D. Irving Group of Companies.

12 284 Q. Including those two railroads.

13 A. Including those railroads, yes.

14 **MR. KEACH:** Okay. Just give me a minute, Alan.

15 **MR. LEPENE:** Sure.

16 **MR. KEACH:** I think we're done. I may have a

17 follow-up request, just for the record, for the records we

18 were just referring to, but I won't keep the witness here for

19 that; you and I can follow up offline on that.

20 **MR. LEPENE:** That will be fine. And he'll read

21 his deposition.

22 *(And further deponent saith naught)*

23 *(Deposition adjourned 2:33 p.m.)*

24

25

CADY REPORTING SERVICES, INC. - 216.861.9270

[www.cadyreporting.com](http://www.cadyreporting.com)

<p><b>\$</b></p>	<p><b>7</b></p>	<p>Approved by Ellis Tr. Page 19 of 21</p>	<p>broken by 155 27:23</p>	<p>38:19</p>	<p>1</p>
<p><b>\$1,045</b> [1] - 45:18 <b>\$650,000</b> [1] - 53:21</p>	<p><b>7,315</b> [1] - 45:19</p>	<p><b>Aroostook</b> [2] - 25:16, 25:17 <b>Arron</b> [3] - 39:1, 39:14, 41:8 <b>aside</b> [2] - 8:5, 47:4 <b>assembled</b> [1] - 47:1 <b>asserting</b> [1] - 37:16 <b>assess</b> [1] - 27:11 <b>assisted</b> [1] - 22:23 <b>associated</b> [1] - 46:24 <b>Atlantic</b> [10] - 21:11, 25:10, 33:4, 35:11, 38:7, 42:23, 49:14, 51:8, 51:21, 53:6 <b>attorney</b> [1] - 15:11 <b>attorney-client</b> [1] - 15:11 <b>attorneys</b> [3] - 21:25, 22:1, 22:8 <b>attributable</b> [3] - 29:11, 60:20, 62:13 <b>attributed</b> [1] - 62:14 <b>authorize</b> [1] - 55:22 <b>authorized</b> [2] - 38:5, 55:16</p>	<p><b>Brownville</b> [24] - 24:10, 26:21, 26:23, 29:5, 29:20, 30:3, 31:18, 34:3, 35:7, 42:12, 42:14, 42:16, 42:17, 42:21, 43:16, 44:1, 44:4, 45:2, 45:10, 45:20, 45:23, 60:1, 60:7, 61:10</p>	<p><b>comptroller</b> [7] - 4:20, 5:12, 11:6, 11:13, 12:14, 12:19, 24:6 <b>conclusion</b> [1] - 21:17 <b>conductors</b> [1] - 61:12 <b>consequence</b> [2] - 10:24, 46:19 <b>consult</b> [1] - 10:15 <b>conversion</b> [1] - 19:11 <b>converted</b> [1] - 18:23 <b>corporations</b> [1] - 5:5 <b>corresponding</b> [1] - 56:25 <b>crews</b> [2] - 61:5 <b>crossed</b> [2] - 33:10, 33:11 <b>CRU</b> [1] - 16:13 <b>crude</b> [7] - 16:1, 16:5, 16:10, 16:13, 16:16, 54:10, 54:22 <b>cryptic</b> [1] - 33:22 <b>cycle</b> [1] - 59:23</p>	<p><b>directing</b> [1] - 53:2 <b>disagreed</b> [1] - 55:19 <b>distance</b> [3] - 48:7, 48:8, 48:11 <b>distinct</b> [3] - 4:25, 5:3, 58:11 <b>documented</b> [1] - 56:13 <b>dollar</b> [2] - 21:1, 23:2 <b>dot</b> [1] - 45:15 <b>doth</b> [1] - 4:5 <b>dotted</b> [1] - 45:5 <b>driven</b> [1] - 30:5 <b>duly</b> [1] - 4:5</p>
<p><b>1</b></p>	<p><b>AAR</b> [1] - 36:16 <b>absence</b> [2] - 36:13, 58:7 <b>accessorial</b> [1] - 27:14 <b>accident</b> [2] - 8:8, 56:5 <b>accomplish</b> [3] - 20:20, 54:8, 55:13 <b>accordance</b> [2] - 27:17, 28:16 <b>accuracy</b> [1] - 53:10 <b>acquisition</b> [1] - 25:17 <b>add-on</b> [1] - 17:10 <b>adjust</b> [1] - 17:10 <b>adjusted</b> [1] - 18:24 <b>adjustment</b> [4] - 19:22, 59:1, 59:21, 61:20 <b>Administration</b> [1] - 51:20 <b>administrative</b> [1] - 8:18 <b>admonition</b> [1] - 15:20 <b>affiliate</b> [2] - 5:7, 5:8 <b>affiliates</b> [1] - 25:18 <b>Aged</b> [1] - 52:2 <b>agency</b> [2] - 36:16, 38:10 <b>agent</b> [3] - 37:15, 37:19, 38:1 <b>Agreement</b> [1] - 26:6 <b>Alan</b> [12] - 5:15, 14:5, 24:24, 32:7, 38:14, 40:7, 40:24, 44:17, 46:2, 47:5, 50:3, 63:14 <b>allocate</b> [1] - 58:23 <b>allocated</b> [2] - 59:8, 59:10 <b>American</b> [2] - 34:11, 37:3 <b>analysing</b> [1] - 13:10 <b>analysis</b> [1] - 13:8 <b>analytical</b> [2] - 13:7, 13:9 <b>analytical-type</b> [1] - 13:7 <b>answering</b> [1] - 8:25 <b>anticipate</b> [1] - 9:4 <b>applicable</b> [2] - 34:8, 45:15 <b>appropriate</b> [1] - 10:17</p>	<p><b>B</b></p>	<p><b>C</b></p>	<p><b>E</b></p>	
<p><b>Interchange</b> [1] - 26:6</p>	<p><b>A</b></p>	<p><b>background</b> [1] - 12:6 <b>backup</b> [6] - 40:2, 40:3, 40:4, 40:21, 40:22, 41:5 <b>Bangor</b> [2] - 25:16, 25:17 <b>bankruptcies</b> [4] - 20:7, 20:8, 20:11, 20:13 <b>bankruptcy</b> [1] - 38:2 <b>begins</b> [1] - 23:9 <b>big</b> [1] - 38:14 <b>billed</b> [5] - 30:22, 39:24, 47:25, 60:4, 60:13 <b>billing</b> [2] - 59:20, 60:16 <b>Blocking</b> [5] - 23:18, 23:24, 46:3, 46:4, 46:12 <b>blocks</b> [1] - 47:1 <b>border</b> [5] - 24:13, 29:7, 30:3, 43:16, 61:11 <b>breakdown</b> [1] - 54:22 <b>breaking</b> [2] - 18:4, 18:8 <b>briefly</b> [2] - 12:4, 22:20</p>	<p><b>calculate</b> [1] - 21:13 <b>capacity</b> [2] - 5:12, 11:24 <b>Car</b> [2] - 34:8, 34:9 <b>car</b> [1] - 8:8 <b>carrier</b> [1] - 62:23 <b>carriers</b> [1] - 59:19 <b>carry</b> [1] - 24:16 <b>cars</b> [4] - 34:6, 47:1, 47:25, 48:3 <b>categories</b> [2] - 6:22, 7:10 <b>caution</b> [2] - 15:9, 15:12 <b>CEO</b> [1] - 33:19 <b>certified</b> [1] - 12:9 <b>CFO</b> [1] - 51:20 <b>chain</b> [1] - 50:5 <b>checked</b> [2] - 55:6, 55:10 <b>chronological</b> [1] - 50:15 <b>circumstance</b> [1] - 58:13 <b>clarification</b> [1] - 46:1 <b>Code</b> [2] - 34:8, 34:9 <b>codes</b> [1] - 16:15 <b>collect</b> [5] - 27:11, 28:6, 28:19, 29:9, 29:10 <b>collected</b> [3] - 31:20, 31:25, 32:5 <b>collecting</b> [1] - 30:10 <b>collection</b> [2] - 31:23, 40:3 <b>comfortable</b> [1] - 8:3 <b>commencing</b> [1] - 25:25 <b>commercially</b> [2] - 35:5, 35:6 <b>commodity</b> [1] - 48:12 <b>communicated</b> [1] - 21:10 <b>compensated</b> [1] - 35:6 <b>complicated</b> [1] - 57:18 <b>components</b> [1] -</p>	<p><b>D</b></p>	<p><b>earn</b> [1] - 62:18 <b>earning</b> [1] - 12:13 <b>easier</b> [2] - 8:21, 8:22 <b>Eastern</b> [2] - 60:11, 62:9 <b>Eastern Maine</b> [36] - 13:18, 24:10, 24:13, 26:12, 27:5, 29:16, 29:23, 30:2, 33:16, 34:2, 35:10, 35:15, 35:18, 37:7, 37:20, 38:5, 38:12, 43:11, 43:13, 43:16, 49:9, 49:23, 58:9, 58:14, 58:20, 59:1, 59:9, 60:3, 61:10, 61:13, 61:16, 61:19, 62:14, 62:17, 62:18 <b>Eastern Maine Railroad</b> [19] - 4:15, 4:21, 25:11, 30:6, 33:4, 33:9, 37:10, 37:11, 37:16, 37:25, 49:4, 49:13, 49:17, 58:7, 59:6, 59:25, 60:23, 61:2, 63:8 <b>eastward</b> [1] - 45:2 <b>economic</b> [1] - 37:22 <b>educational</b> [1] - 12:5 <b>Effective</b> [1] - 26:1 <b>eight-two-one</b> [2] - 41:4, 41:5 <b>eight-two-zero</b> [2] - 40:14, 40:15 <b>ELLIS</b> [1] - 4:5 <b>Ellis</b> [15] - 4:10, 4:11, 6:2, 8:6, 14:12, 15:14, 22:4, 25:2, 32:21, 39:10, 41:7, 44:22, 46:9, 53:20, 58:6 <b>email</b> [2] - 39:2, 39:14 <b>employed</b> [9] - 4:11, 4:12, 4:14,</p>
<p><b>1(c)</b> [1] - 34:5 <b>1.1</b> [2] - 25:21, 25:23 <b>100848</b> [1] - 42:7 <b>100880</b> [1] - 16:6 <b>100888</b> [1] - 16:7 <b>12.1</b> [2] - 31:11, 31:12 <b>133,246.06</b> [1] - 39:16 <b>1:00</b> [1] - 4:1</p>	<p><b>2</b></p>	<p><b>B</b></p>	<p><b>C</b></p>	<p><b>E</b></p>	
<p><b>2,164,471.30</b> [1] - 18:16 <b>2,571,819.91</b> [1] - 18:13 <b>2-million-571</b> [1] - 18:20 <b>250,000</b> [1] - 55:2 <b>2:33</b> [1] - 63:23</p>	<p><b>2</b></p>	<p><b>B</b></p>	<p><b>C</b></p>	<p><b>E</b></p>	
<p><b>3</b></p>	<p><b>3</b></p>	<p><b>B</b></p>	<p><b>C</b></p>	<p><b>E</b></p>	
<p><b>30(b)(6)</b> [1] - 6:5</p>	<p><b>3</b></p>	<p><b>B</b></p>	<p><b>C</b></p>	<p><b>E</b></p>	
<p><b>4</b></p>	<p><b>4</b></p>	<p><b>B</b></p>	<p><b>C</b></p>	<p><b>E</b></p>	
<p><b>400728</b> [1] - 16:6 <b>400740</b> [1] - 16:7 <b>449</b> [1] - 54:23 <b>449,000</b> [1] - 54:14 <b>49644.22</b> [1] - 43:20</p>	<p><b>4</b></p>	<p><b>B</b></p>	<p><b>C</b></p>	<p><b>E</b></p>	
<p><b>5</b></p>	<p><b>5</b></p>	<p><b>B</b></p>	<p><b>C</b></p>	<p><b>E</b></p>	
<p><b>50</b> [1] - 60:22</p>	<p><b>5</b></p>	<p><b>B</b></p>	<p><b>C</b></p>	<p><b>E</b></p>	
<p><b>6</b></p>	<p><b>6</b></p>	<p><b>B</b></p>	<p><b>C</b></p>	<p><b>E</b></p>	
<p><b>6.1</b> [2] - 30:17, 30:18 <b>600,000</b> [1] - 54:15 <b>606330</b> [1] - 39:2 <b>60815</b> [1] - 16:6 <b>60816</b> [1] - 16:6 <b>60820</b> [1] - 40:12</p>	<p><b>6</b></p>	<p><b>B</b></p>	<p><b>C</b></p>	<p><b>E</b></p>	



4:16, 5:11, 11:14,  
11:24, 12:16  
**employers** [1] -  
12:11  
**EMR** [7] - 27:22,  
28:11, 29:5, 29:6,  
30:12, 31:8, 60:19  
**EMR's** [2] - 27:24,  
28:11  
**EMR/NBS** [10] -  
26:2, 27:15, 27:16,  
28:16, 29:11, 30:20,  
30:24, 30:25, 31:24  
**EMRY** [1] - 45:4  
**engineers** [1] -  
61:12  
**established** [3] -  
18:24, 36:15, 48:5  
**evolution** [1] - 7:23  
**exact** [1] - 55:1  
**exchange** [4] -  
19:2, 19:5, 19:14  
**executed** [4] - 32:8,  
33:8, 33:9, 46:3  
**exemplary** [1] -  
42:5  
**existence** [1] - 19:6  
**existing** [1] - 25:15  
**external** [1] - 42:2

**F**

**f** [1] - 7:8  
**f** [1] - 6:15  
**facing** [1] - 40:17  
**factor** [3] - 48:8,  
48:13, 48:15  
**factors** [3] - 47:24,  
48:2, 48:10  
**familiarity** [2] -  
24:1, 24:5  
**Federal** [1] - 6:5  
**FedEx** [1] - 32:11  
**flip** [1] - 23:3  
**flowing** [1] - 24:7  
**folks** [1] - 51:7  
**forgot** [2] - 19:16,  
47:15  
**fortunately** [1] -  
47:20  
**forum** [1] - 8:18  
**forwarded** [1] -  
51:8  
**four-week** [1] -  
59:23  
**freestanding** [1] -  
46:3  
**freight** [23] - 26:21,  
27:3, 27:10, 27:12,  
28:1, 29:8, 31:18,  
31:22, 35:7, 42:12,  
43:24, 43:25, 44:15,  
45:19, 59:8, 59:17,  
59:18, 60:4, 60:7,  
61:10, 62:21  
**FSC** [3] - 16:20,  
17:17, 40:18  
**fuel** [11] - 16:23,

16:25, 17:1, 17:11,  
17:13, 17:20, 27:12,  
38:18, 39:19, 39:23,  
41:13  
**fulfilling** [1] - 12:18  
**functions** [1] -  
13:11

**G**

**Gardner** [14] - 51:7,  
51:14, 51:17, 52:9,  
52:18, 52:24, 53:3,  
53:5, 53:20, 54:6,  
54:14, 54:25, 56:16,  
57:16  
**generate** [2] -  
41:17, 41:24  
**generated** [1] -  
35:10  
**generates** [1] -  
41:23  
**glad** [1] - 47:22  
**governed** [2] -  
26:3, 34:7  
**governing** [1] -  
26:12  
**grade** [1] - 12:5  
**graduated** [1] -  
12:7  
**grocery** [1] - 12:1

**H**

**Hansen** [7] - 4:19,  
7:17, 20:21, 50:22,  
51:3, 55:21, 56:22  
**Hansen's** [6] -  
20:23, 21:9, 41:22,  
51:9, 53:24, 55:18  
**haulage** [1] - 31:17  
**heading** [1] - 42:15  
**hereof** [1] - 31:1  
**hereto** [1] - 26:6  
**herewith** [1] - 26:5  
**hopefully** [2] -  
8:21, 38:17  
**hunting** [1] - 32:10

**I**

**i.e** [1] - 55:6  
**IGA** [1] - 12:1  
**illness** [1] - 10:23  
**implementation** [1]  
- 51:4  
**importantly** [2] -  
8:22, 9:6  
**inclusive** [1] - 28:4  
**incorporated** [1] -  
35:20  
**incurred** [2] -  
44:12, 46:19  
**instance** [4] -  
15:24, 29:22, 50:25,  
52:6  
**instruct** [3] - 15:6,

28:32, 28:24  
**instructing** [1] -  
21:21  
**interchange** [13] -  
17:4, 17:5, 34:3,  
34:6, 35:9, 35:11,  
35:13, 35:16, 35:18,  
42:23, 42:24, 42:25,  
60:1

**Interchange** [10] -  
23:18, 23:24, 26:4,  
26:11, 32:8, 32:15,  
32:17, 32:25, 33:24,  
35:2  
**interchanged** [5] -  
24:9, 24:14, 29:5,  
29:6, 62:22  
**interchanging** [2] -  
24:7, 62:19  
**intercompany** [3] -  
58:25, 61:19, 61:24  
**interface** [1] -  
45:22  
**interline** [3] -  
27:22, 30:23, 31:7  
**Interline** [1] - 30:7  
**internal** [1] - 42:1  
**internally** [1] -  
58:23  
**invoice-by-  
invoice** [1] - 59:16  
**irregardless** [1] -  
31:22  
**Irving** [15] - 11:13,  
12:10, 12:16, 19:1,  
20:16, 21:12, 25:16,  
28:20, 33:19, 54:1,  
54:7, 55:17, 56:14,  
56:17, 57:1  
**ISS** [1] - 30:10

**J**

**J.D. Irving** [2] - 5:8,  
63:11  
**James** [1] - 4:10  
**JDI** [5] - 12:17,  
62:11, 63:4, 63:5,  
63:7  
**joined** [2] - 11:11,  
11:12  
**judging** [1] - 17:25  
**Junction** [18] -  
24:10, 26:21, 26:23,  
29:6, 34:3, 35:7,  
42:12, 42:14, 42:16,  
42:18, 42:21, 44:1,  
44:4, 45:2, 45:10,  
45:20, 45:23, 61:10

**K**

**Karl** [2] - 7:17,  
55:18  
**KEACH** [63] - 4:7,  
5:14, 5:20, 5:22, 6:2,  
14:5, 14:9, 15:13,

21:16, 22:2, 22:7,  
22:11, 24:24, 25:2,  
27:7, 28:18, 29:2,  
29:21, 30:4, 32:3,  
32:7, 32:11, 32:14,  
32:16, 32:21, 35:12,  
36:1, 37:20, 38:14,  
38:17, 38:22, 39:1,  
39:9, 40:7, 40:9,  
40:16, 40:24, 41:7,  
44:17, 44:22, 46:1,  
46:6, 46:9, 47:4,  
47:7, 47:10, 47:13,  
47:22, 49:15, 49:22,  
50:3, 50:5, 50:7,  
50:9, 57:5, 58:3,  
59:4, 59:9, 60:11,  
60:15, 62:18, 63:14,  
63:16  
**Keating** [1] - 41:11  
**Kent** [3] - 11:14,  
11:18, 11:23  
**key** [1] - 41:16

**L**

**labelled** [1] - 45:13  
**labor** [1] - 36:5  
**Lac** [2] - 56:2, 58:1  
**Lac-Mégantic** [2] -  
56:2, 58:1  
**landowners** [1] -  
58:18  
**largely** [1] - 51:5  
**leases** [1] - 58:17  
**ledger** [1] - 62:1  
**legality** [1] - 22:18  
**legs** [1] - 29:9  
**LEPENE** [56] -  
5:18, 5:21, 5:23,  
14:7, 15:9, 21:16,  
21:23, 22:6, 22:9,  
25:1, 27:6, 28:13,  
28:21, 29:18, 30:1,  
32:2, 32:10, 32:13,  
32:15, 32:18, 35:3,  
35:23, 37:17, 38:16,  
38:20, 38:24, 39:3,  
39:7, 40:8, 40:10,  
40:13, 40:15, 40:25,  
41:3, 41:5, 44:20,  
46:5, 46:7, 47:6,  
47:9, 47:11, 47:18,  
47:20, 49:11, 49:19,  
50:4, 50:6, 50:8,  
57:2, 59:3, 59:5,  
60:9, 60:13, 62:15,  
63:15, 63:20  
**Lepene** [1] - 15:18  
**liabilities** [5] -  
60:25, 61:1, 61:2,  
61:4, 61:5  
**light** [2] - 25:17,  
27:21  
**lying** [1] - 52:16

**M**

**mails** [7] - 50:11,  
50:12, 50:16, 50:25,  
53:4  
**Maine** [20] - 5:16,  
5:24, 5:25, 13:21,  
21:11, 24:10, 25:10,  
33:4, 33:8, 35:11,  
38:6, 42:23, 43:16,  
44:4, 49:13, 51:7,  
51:21, 53:6, 60:2,  
60:7  
**Maine Northern  
Railway** [3] - 4:22,  
7:14, 52:6  
**Maine's** [2] - 60:12,  
62:9  
**maintained** [1] -  
58:9  
**maintenance** [1] -  
61:6  
**majority** [1] - 63:11  
**map** [3] - 44:18,  
44:23, 45:11  
**marks** [1] - 55:10  
**match** [1] - 55:1  
**Mattawamkeag** [1]  
- 43:17  
**McAdam** [13] -  
43:2, 43:4, 43:5,  
43:6, 43:10, 43:14,  
43:19, 43:20, 44:25,  
45:15, 47:17, 61:11  
**mechanism** [1] -  
57:7  
**medication** [2] -  
10:23, 11:2  
**miscellaneous** [1] -  
27:13  
**mistake** [1] - 53:18  
**MMA** [40] - 20:15,  
24:7, 24:9, 25:18,  
26:2, 26:12, 27:2,  
27:4, 27:10, 27:23,  
28:1, 28:9, 28:11,  
29:5, 29:8, 29:14,  
30:8, 30:9, 30:10,  
30:21, 31:20, 32:4,  
34:2, 35:16, 37:11,  
38:2, 49:23, 54:4,  
54:5, 56:24, 57:1,  
57:14, 59:11, 59:18,  
60:1, 60:7, 62:13,  
62:20  
**MMA's** [3] - 27:24,  
29:11, 31:22  
**Monday** [2] - 54:16,  
54:22  
**Montreal** [11] -  
21:11, 25:10, 33:4,  
33:8, 35:11, 38:6,  
42:23, 49:13, 51:7,  
51:20, 53:6  
**mostly** [1] - 11:21  
**movement** [2] -  
30:23, 31:8  
**movements** [1] -

17:10  
**Murphy** [2] - 33:21,  
33:22  
**mute** [1] - 58:3  
**mutual** [1] - 46:17  
**Mégantic** [2] - 56:2,  
58:1

**N**

**naught** [1] - 63:22  
**NB Southern** [7] -  
29:6, 29:13, 29:15,  
43:12, 62:17, 62:19  
**NBS** [3] - 27:22,  
28:12, 30:12  
**NBS's** [1] - 28:12  
**NBSR** [6] - 43:11,  
45:6, 46:14, 60:13,  
60:16  
**New Brunswick  
Southern Railway**  
[9] - 4:12, 4:16, 4:21,  
6:6, 7:13, 11:11,  
25:11, 38:1, 49:25  
**nod** [1] - 19:19  
**non-tortuous** [1] -  
10:9  
**Northern** [4] - 5:16,  
5:24, 5:25, 13:21

**O**

**oath** [1] - 8:25  
**object** [4] - 28:23,  
30:1, 32:2, 57:2  
**Object** [1] - 29:18  
**objection** [14] -  
21:16, 22:6, 22:9,  
27:6, 28:13, 28:21,  
35:23, 37:17, 49:11,  
49:19, 59:3, 59:5,  
60:9, 62:15  
**obligated** [1] -  
35:18  
**obligations** [3] -  
21:3, 26:18, 60:24  
**offline** [1] - 63:19  
**offs** [4] - 18:25,  
20:3, 56:23, 57:13  
**oil** [10] - 7:24, 16:1,  
16:5, 16:16, 29:7,  
29:22, 30:9, 54:11,  
54:15, 55:5  
**operational** [1] -  
46:22  
**operational-type**  
[1] - 46:22  
**opportunities** [1] -  
13:12  
**origin** [2] - 42:14,  
43:8  
**originated** [1] -  
44:16  
**outstanding** [1] -  
53:7  
**overhead** [2] -

36:6, 36:24  
owing [5] - 21:11,  
28:5, 35:19, 56:17,  
56:18

**P**

package [2] - 32:7,  
32:11  
parallel [1] - 34:18  
parties' [1] - 26:18  
path [1] - 55:20  
Pause [1] - 58:5  
paycheque [1] -  
4:18  
payroll [6] - 61:4,  
61:9, 61:15, 61:20  
performed [1] -  
36:9  
periodic [1] - 50:23  
pertaining [1] -  
27:15  
petition [1] - 19:8  
phenomenon [1] -  
31:4  
phrase [1] - 13:13  
placed [1] - 21:25  
placeholder [1] -  
38:23  
play [1] - 26:16  
pre [2] - 25:15, 47:1  
pre-assembled [1]  
- 47:1  
pre-existing [1] -  
25:15  
preceding [1] -  
43:24  
preparation [1] -  
14:16  
preset [1] - 48:18  
presumption [2] -  
9:19, 10:3  
privilege [1] - 15:11  
proceeded [1] -  
55:20  
promulgated [1] -  
34:9  
Proof [2] - 23:14,  
46:14  
proof [1] - 14:17  
Proofs [4] - 14:6,  
19:4, 38:1, 38:5  
proper [3] - 21:15,  
21:20, 22:5  
provisions [1] -  
36:4  
pulled [1] - 23:1  
pursuant [2] - 36:3,  
49:6  
pursue [1] - 37:22

**Q**

qualified [1] - 6:21

rail [3] - 43:5,  
43:10, 43:12  
railcars [1] - 43:25  
Railroad [5] -  
13:15, 13:18, 13:21,  
25:16, 37:3  
railroad [4] - 48:9,  
56:17, 57:24, 61:7  
Railroads [1] -  
34:11  
railroads [14] -  
11:6, 12:22, 13:23,  
14:3, 20:16, 21:5,  
24:6, 25:16, 28:20,  
54:8, 57:1, 57:15,  
63:12, 63:13  
Railway [4] - 5:8,  
25:11, 33:4, 62:24  
railways [1] - 4:25  
realm [1] - 22:3  
receipt [2] - 31:14,  
34:23  
receiving [2] -  
52:13, 52:14  
record's [1] - 14:9  
red [1] - 44:18  
reduced [1] - 20:4  
reflect [1] - 59:1  
reflected [1] -  
25:20  
reflects [1] - 61:24  
relationships [1] -  
26:2  
release [1] - 55:17  
Remarks [1] - 16:9  
remit [7] - 27:14,  
28:11, 28:15, 28:19,  
29:10, 29:12, 30:25  
render [4] - 27:3,  
27:10, 28:1, 29:8  
rendered [2] - 36:3,  
46:18  
rentals [2] - 36:7,  
36:25  
repairs [1] - 61:6  
repeated [1] - 9:20  
rephrase [1] - 22:2  
replace [1] - 25:15  
reporter [5] - 5:15,  
5:18, 8:23, 9:17,  
19:18  
responses [1] -  
19:21  
retired [1] - 41:23  
reveal [1] - 15:17  
revenues [3] -  
58:21, 58:22, 59:1  
reversed [1] - 57:18  
role [8] - 4:23,  
12:15, 12:18, 12:25,  
13:8, 13:12, 14:15  
route [3] - 30:21,  
44:3, 45:10  
run [1] - 43:13  
running [4] - 44:12,  
45:1, 45:15, 60:7

**S**

saith [1] - 63:22  
saved [1] - 47:22  
scheduled [1] -  
17:4  
segment [1] - 45:6  
sending [1] - 29:14  
separated [1] -  
45:23  
separately [3] -  
50:1, 58:21, 60:24  
series [2] - 8:24,  
9:24  
serve [1] - 4:23  
served [1] - 4:20  
set-off [12] - 19:23,  
20:10, 20:12, 20:14,  
20:20, 20:22, 21:13,  
21:14, 22:5, 22:18,  
57:11, 57:17  
set-offs [4] - 18:25,  
20:3, 56:23, 57:13  
setting [1] - 21:8  
Seventeen [1] - 4:4  
shake [1] - 19:19  
shall [7] - 26:3,  
27:10, 31:13, 34:7,  
34:21, 36:4, 36:14  
shared [5] - 12:15,  
12:22, 58:15, 63:8,  
63:10  
Shared [2] - 13:1,  
62:10  
shifted [1] - 13:7  
shipment [8] -  
16:1, 16:5, 24:8,  
26:25, 27:3, 27:24,  
29:5, 29:7  
shipments [6] -  
16:16, 17:14, 18:9,  
24:18, 30:9, 39:23  
short [1] - 55:2  
sic [2] - 34:23,  
50:11  
sides [1] - 61:25  
sidings [1] - 58:17  
signature [7] -  
33:7, 33:9, 33:16,  
33:18, 33:20, 33:22,  
51:19  
Simpson [6] - 7:24,  
13:25, 14:2, 15:22,  
48:25, 49:17  
six-point [1] -  
30:16  
six-zero [2] - 40:13,  
41:2  
sized [2] - 56:25,  
57:3  
slowly [1] - 30:18  
small [1] - 8:8  
smaller [1] - 44:12  
snow [1] - 61:7

Southern [31] -  
5:16, 5:24, 12:17,  
12:18, 13:15, 24:14,  
24:16, 26:13, 27:5,  
27:25, 30:6, 31:8,  
33:10, 35:22, 37:8,  
37:12, 37:15, 37:21,  
38:5, 38:11, 52:7,  
58:11, 58:15, 58:24,  
59:2, 59:7, 59:10,  
60:4, 60:21, 61:16,  
63:9  
southward [1] -  
45:16  
spot [3] - 26:23,  
31:18, 42:22  
Springfield [1] -  
62:23  
stamping [1] -  
23:10  
stick [1] - 38:22  
store [1] - 12:1  
strategic [1] -  
13:12  
stronger [1] - 50:22  
strongest [1] -  
50:21  
structure [1] - 7:20  
student [1] - 12:2  
subsequent [2] -  
20:2, 20:4  
substance [1] -  
22:16  
subtotal [1] - 45:18  
successfully [1] -  
53:14  
sufficient [1] - 10:3  
summarize [1] -  
29:3  
superior [4] - 7:15,  
7:18, 7:22, 8:2  
supervision [1] -  
15:1  
supp [1] - 41:18  
surcharge [7] -  
16:23, 17:1, 17:4,  
17:9, 17:13, 38:18,  
41:13  
surcharges [6] -  
17:21, 27:13, 36:6,  
36:22, 39:19, 39:24  
swap [15] - 7:17,  
50:23, 51:1, 51:4,  
51:5, 51:10, 52:11,  
54:8, 54:18, 55:13,  
55:20, 55:22, 55:24,  
57:22  
swaps [5] - 55:17,  
56:7, 56:13, 56:20,  
56:22  
Switching [1] -  
42:7  
switching [2] -  
42:9, 61:12  
sworn [1] - 4:5

**U**

U.S [2] - 18:22,  
19:4  
UNBILLED [2] -

**V**

verb [1] - 22:12  
verbalize [1] -  
19:20  
verbs [1] - 22:12  
versa [2] - 42:13,  
44:2  
vice [3] - 33:20,  
42:13, 44:2  
vice-president [1] -  
33:20  
videoconference  
[1] - 9:14  
virtue [1] - 63:7  
visual [1] - 44:24  
VP [1] - 51:20

**W**

weekly [2] - 7:16,  
50:22  
weight [2] - 48:13,  
48:15  
withheld [1] - 56:25  
withholding [1] -  
57:23  
wonder [1] - 22:4  
wondered [1] -  
22:10

**Z**

zero [5] - 40:13,  
40:14, 40:15, 41:2,  
49:12

16:20, 17:17  
unbilled [6] - 17:1,  
17:13, 17:20, 17:24, 3  
39:19, 40:18  
University [1] -  
12:7  
upward [1] - 17:10  
utility [1] - 61:7



1



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

---

**In re:**

**MONTREAL, MAINE & ATLANTIC**

Bk No. 13-10670

**RAILWAY, LTD.**

Chapter 11

Debtor

---

**DEPOSITION OF IAN SIMPSON**

Held at J.D. Irving, Limited, 300 Union Street  
in the City of Saint John, County of St. John,  
Province of New Brunswick, Canada, the 23rd day  
of March A.D. 2017, before court reporter  
Kathryn A. Burke.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**A P P E A R A N C E S**

**Robert J. Keach, Esq.** and  
**Lindsay K. Zahradka, Esq.** (admitted *pro hac vice*)  
Bernstein, Shur, Sawyer & Nelson, P.A. (via videoconference)  
100 Middle Street, West Tower, Portland, Maine 04101  
Telephone: (207) 774-1200, Facsimile: (207) 774-1127  
E-mail: rkeach@bernsteinshur.com, lzahradka@bernsteinshur.com

Counsel for Robert J. Keach, Estate Representative of the  
Post-Effective Date Estate of Montreal, Maine & Atlantic  
Railway Ltd.

**Alan R. Lepene, Esq.**, Thompson Hine, 3900 Key Center  
127 Public Square, Cleveland, Ohio 44114-1291  
Telephone: (216) 566-5520, Facsimile: (216) 566-5800  
E-mail: alan.lepene@thompsonhine.com

Counsel for the Maine Northern Railway Company Limited  
and New Brunswick Southern Railway Company Limited

**I N D E X**

Page

WITNESS: **IAN SIMPSON**

Examination-in-Chief by Mr. Keach 4

**EXHIBITS**

- T-2 Proof of Claim by NB Southern Railway.
- T-3 Proof of Claim by Maine Northern Railway.
- T-5 Commercial Agreement between MMA, EMR and NBSR, dated January 9, 2003.
- T-6 Demand Letter to MMA from Ian Simpson on behalf of NB Southern Railway, dated August 2, 2013.
- T-7 Demand Letter to MMA from Ian Simpson on behalf of Eastern Maine Railway, dated August 2, 2013.
- T-8 E-mail exchange between Ryan Ellis and Donald Gardner, Jr.
- T-9 Notice of Deposition of New Brunswick Southern Railway pursuant to Rule 30(b)(6).
- T-10 Notice of Deposition of Maine Northern Railway pursuant to Rule 30(b)(6).
- T-11 Interchange Agreement at Brownville Junction between MMA and EMR.
- T-13 Blocking Agreement, dated January 9, 2003.

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

deposition of Mr. Ellis, correct?

A. Yes.

Q. Were you present when I gave Mr. Ellis a number of ground rules to proceed by?

A. Yes.

Q. Can we operate on the same set of presumptions that I gave to Mr. Ellis?

A. Yes.

**MR. KEACH:** All right. Alan, we can start, I think, by showing him 10 and 9 -- 9 and 10, excuse me.

**MR. LEPENE:** And they are . . .? Well --

**MR. KEACH:** They're the two -- the two 30(b)(6) documents.

**MR. LEPENE:** Got it. There's 9.

**THE WITNESS:** Oh, 10's here.

**MR. LEPENE:** Oh, you've got them. Okay, we have 9 and 10.

**MR. KEACH:** Thanks.

Q. Mr. Simpson, let's start with Exhibit 9, which is the deposition notice under 30(b)(6) for New Brunswick Southern Railway. Do you have that in front of you?

A. Thirty (b)(6). T-9?

**MR. LEPENE:** Yeah, this is it.

Q. **BY MR. KEACH:** T-9. Have you seen this document before, Mr. Simpson?

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

4

**(3:00 p.m.)**

**ON THIS** Twenty-third day of March in the Year of Our Lord Two Thousand Seventeen Did Personally Come and Appear

**IAN SIMPSON**, Who, having been duly sworn, doth depose and say as follows:

**EXAMINATION-IN-CHIEF BY MR. KEACH:**

Q. Could you state your full name for the record, please?

A. Ian William Simpson.

Q. And, Mr. Simpson, by whom are you employed?

A. NB Southern Railway.

Q. And I think you heard previous testimony that you're considered the general manager of Eastern Maine Railway and Maine Northern Railway as well. Is that true?

A. That's true.

Q. And those are separate and distinct corporate entities from New Brunswick Southern, correct?

A. Yes.

Q. And how long have you been the general manager of the Irving railroads?

A. A little over twelve and a half years.

**MR. KEACH:** Alan, let's start -- let me shortcut something else first.

Q. Mr. Simpson, you were present during the

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ian Simpson, taken March 23, 2017

6

A. Yes, I have.

Q. And if you'd turn to page 2, you'll see that there are a list of subject matters or topics listed (a) through (f).

A. Yes.

Q. And do you have knowledge or information as to all of those topics or subject matters?

A. I do. Some with a little more detail than others, but I do.

Q. All right. Are there any of these particular subject matters or topic areas where others within the Irving Group of Companies would have superior knowledge to yours?

A. I would say that the exact preparation of the numbers detail by detail, line item by line item, Ryan Ellis and Karl Hansen would have a little more information than me.

Q. Is there any other area where someone else would have superior knowledge or information?

A. I don't think so, no.

Q. And please take a look at Exhibit T-10, which is a similar notice for Maine Northern Railway. Again, I'd just ask you to go to page 2 and look at the subject matters that are listed (a) through (f). Do you have knowledge or information as to each of these topic areas or subject matters?

A. I do.

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

16 Q. Again, are there any individual topics and subject matters listed here where others within the Irving organization would have a greater amount of knowledge or information than you do?

A. No, my same response: some of the numbers and some of the details behind the numbers, Mr. Ellis or Hansen may know a little bit more about it.

17 Q. Now, you're general manager for each of these railroads as well as Eastern Maine. Is that position more operational than financial?

A. I have responsibility for really all aspects of running the company.

18 Q. Is that essentially the functional equivalent of a CEO position?

A. I would say so. We're just not as formal on the names. Mr. Irving is the CEO and the president.

19 Q. But as related to the individual railroads, there's nobody higher up in the org. chart than you, correct?

A. Correct.

20 Q. And again, Mr. Simpson, you were present during all the testimony that Mr. Ellis gave, correct?

A. Correct.

21 Q. Is there any element of Mr. Ellis's testimony that you disagree with?

A. No.

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

A. No.

26 Q. What was the occasion under which you reviewed it before?

A. It would have been put together and I would have seen a copy of it, with a general understanding or general explanation as to what it entailed and how some of the numbers were put together.

27 Q. And who would you have had those conversations with?

A. I believe it was Mr. Ellis.

28 Q. Do you know if New Brunswick Southern Railway Company Limited filed a similar Proof of Claim in the CCAA proceedings for Montreal, Maine & Atlantic Canada?

A. I'm not sure what you're referring to.

29 Q. Do you know -- are you aware that Montreal, Maine & Atlantic Canada filed a separate, Canadian bankruptcy proceeding in Quebec?

A. I was not aware.

30 Q. And so, do you know -- and so you do not know whether or not New Brunswick Southern filed an equivalent document to T-2 in that Canadian proceeding.

A. I don't recall.

31 Q. Do you recall whether or not New Brunswick Southern retained counsel for the purposes of representing it in the Canadian insolvency proceeding for Montreal, Maine &

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ian Simpson, taken March 23, 2017

**MR. KEACH:** Alan, why don't we put T-2 in front of the witness, please. And you can put those two notices aside.

**MR. LEPENE:** Okay. And T-2 is . . .

**MR. KEACH:** Is New Brunswick Southern's Proof of Claim.

**MR. LEPENE:** Okay. Things are getting spread across the table here, Bob, so bear with us for a second.

**MR. KEACH:** No worries. Take your time.

**THE WITNESS:** They're here. T-2 and T-3?

**MR. LEPENE:** You've got them? Yeah, okay, good. All right, we have them.

**MR. KEACH:** All right, let's look at T-2.

*(Discussion held off the record.)*

22 Q. Mr. Simpson, do you have Exhibit T-2 in front of you?

A. Yes.

23 Q. Have you seen this document before?

A. Yes.

24 Q. And do you understand this to be the Proof of Claim filed by New Brunswick Southern Railway Company Limited in the Chapter 11 case of Montreal, Maine & Atlantic Railway Ltd.?

A. Yes.

25 Q. Did you have any role in preparing this document?

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ian Simpson, taken March 23, 2017

Atlantic Canada?

A. I'm just not -- you're using the word MMA Canada. I'm not -- all of my dealings have been with the MMA in Bangor, so I'm not -- not entirely sure precisely what you're -- what you're asking.

32 Q. Okay. Were you aware, prior to my just saying so, that there was a separate legal entity, a Nova Scotia unlimited liability company organized under the laws of Nova Scotia, known as Montreal, Maine & Atlantic Canada?

A. I'm not aware of that company.

33 Q. And if I told you that New Brunswick Southern had filed a Proof of Claim in the insolvency proceedings of Montreal, Maine & Atlantic Canada, that would be news to you.

A. I just don't recall.

**MR. KEACH:** Alan, can we show Mr. Simpson T-5, the Commercial Agreement?

**MR. LEPENE:** Sure.

34 Q. **BY MR. KEACH:** Mr. Simpson, I would ask if you have seen this document before.

A. Yes.

35 Q. And when did you first see this document?

A. It may have been a number of years ago. I can't tell you exactly when.

36 Q. Were you involved in negotiating this agreement?

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com



A. No, I -- this was January of 2003. I took the responsibility at the railroad in around August of 2004.

37 Q. So this agreement pre-dated you, then.

A. Yes.

38 Q. Prior to becoming general manager of the three railroads, of each of the three railroads, what was your function within the Irving organization?

A. I spent twelve and a half years with one of their trucking companies -- Sunbury Transport.

39 Q. And you went from Sunbury to becoming the GM of each of the railroads?

A. Yes. Two railroads at the time, and the third, the MNR, came into existence in 2011.

40 Q. As a consequence of the track sale by MMA, correct?

A. The abandonment by the MMA, yes, to the State.

41 Q. Right. Are you familiar with the terms and conditions of the Commercial Agreement?

A. Yes.

42 Q. What are you -- and again, I just want your understanding, I'm not looking for any succinct legal summary, but what is your understanding of the obligations of the three parties under the Commercial Agreement?

A. The MMA has -- we are a haulage carrier for  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

and compete with, or, in the case of the MMA, that they would have competed with; namely, the Pan Am Railway, which was Springfield Terminal, and CN. And I should also add that the MMA already had this ISS arrangement set up, so it would have been a duplication of functions.

46 Q. **BY MR. KEACH:** Other than what you've just described, are there any other major, or I should say, material obligations of the parties under the Commercial Agreement that you can recall?

A. No. Well, just the exception that came after the fact with a request from Mr. Grindrod regarding payment of -- through the ISS.

47 Q. You mean the extension of time, the agreement to extend the time for payment?

A. That's correct.

48 Q. That extended it from 21 days to, as I recall, 60; is that correct?

**MR. LEPENE:** Objection as to form. And I would also point out that those issues have already been resolved by the decision of the Bankruptcy Court.

**MR. KEACH:** I think that decision is probably subject to being reopened for lots of reasons right now, but we can talk about that offline.

49 Q. So, but the change you're referring to was the extension-of-time-to-pay request by Mr. Grindrod?

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ian Simpson, taken March 23, 2017

12

the MMA, so the MMA has adapted all of our stations, meaning all of our customers, whether it be on the EMR or the NBSR; and when they invoice a customer, when they call on the customer, they quote a rate between our two railroads, and if it's going to another destination or another origin on another railroad, they have the relationship with the customer; they do the entire billing and they pay us our predetermined, pre-agreed-upon rate.

The EMR, however, does not have any stations, because we do not have any customers, haulage customers, on the EMR. All of the stations, all of the customers are on the NBSR.

43 Q. On the Canadian side of the --

A. Correct.

44 Q. -- of the network.

A. That's right.

45 Q. All right. And was that structure largely dictated by the fact that, for reasons you've previously testified to, neither the EMR nor the New Brunswick Southern Railway were members of the Interline System?

**MR. LEPENE:** Objection as to form.

A. It's correct we weren't part of the ISS, but it was -- it was a recognized relationship that occurs between any two railroads, and it was consistent with the commercial agreements we have with the other railroads that we partner  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ian Simpson, taken March 23, 2017

14

A. Yes.

**MR. KEACH:** Alan, can you put T-11 in front of the witness, please?

**MR. LEPENE:** And T-11 is --

**MR. KEACH:** The Interchange --

**MR. LEPENE:** -- the Interchange --

**MR. KEACH:** The Interchange Agreement.

**MR. LEPENE:** We'll find it. He has it.

**MR. KEACH:** Thanks.

50 Q. So, Mr. Simpson, just to briefly refer to T-5 again -- and you were present when I read this passage to Mr. Ryan -- excuse me, Mr. Ellis -- that said the parties agree that the relationships between MMA and EMR and NBS are governed by the Commercial Agreement and the Interchange Agreement. That was from 1.1 of the Commercial Agreement. Do you recall that?

A. Yes.

51 Q. And you testified earlier that you agreed with his understanding of the document, correct?

A. Correct.

52 Q. Describe for me what the reciprocal obligations of the parties are under the Interchange Agreement.

A. The Interchange Agreement is between the two parties that physically interchange with one another; that's  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com



why there's only the Eastern Maine Railway on there, and the MMA. So we -- it's the physical point of interchange, so we could not add -- in the case of Brownville, we could not add the Maine Northern or could not add the NB Southern Railway.

53 Q. No, I understand why, but I appreciate the explanation. But what were the reciprocal obligations of Eastern Maine on the one hand and Maine, Montreal [sic] on the other?

A. So we would go into --

54 Q. Under the --

A. We would go into their yard, which is a designated interchange point in Brownville, Maine. We had specific tracks that we'd go into with our trains, they would have specific tracks designated for trains that were destined to us, and we would do the physical unhooking of our respective locomotives in those tracks and turn the trains over to one another.

55 Q. And there's a reference in the Interchange Agreement to payments being due one to the other. What was the nature of those payments?

A. They were strictly as a result of anything that would have physically happened in the yards as a result of the interchange. It would have had nothing to do with any of the haulage agreements, car hire -- or, not car hire, but the car haulage that would have been in the Commercial

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

there were various line items there for things like repairs, for example. Would those have been examples of obligations arising out of the Interchange Agreement because the repairs would have happened within the yard?

A. I would have to see the specific invoices. I can't -- I'm not sure what you're referring to.

58 Q. But repairs would be an example of what you were just talking about, right?

MR. LEPENE: Objection as to form.

A. A repair to a track defect that EMR caused would be an example -- could be an example of that.

MR. KEACH: Can you show the witness T-13, Alan?

MR. LEPENE: He has it.

MR. KEACH: He has the Blocking Agreement?

MR. LEPENE: Yeah.

59 Q. BY MR. KEACH: Mr. Simpson, would you agree with Mr. Ellis that there were no financial obligations arising out of the Blocking Agreement?

A. There were obligations that could be invoiced through section 4, if either railroad were in default of the Blocking Agreement; however, I'm not aware of any payables or receivables between the two companies at the time.

60 Q. Are you aware as to whether any -- either of the parties has ever invoiced an amount under section 4 of the Blocking Agreement?

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ian Simpson, taken March 23, 2017

16

Agreements.

56 Q. And give me an example of what kind of obligation you're talking about.

A. So, if Eastern Maine Railway were doing a physical interchange, our train is in the yard of the MMA and we had a derailment and we put a car on its side and we caused physical damage to their track or their property, then my -- Eastern Maine Railway would be responsible to do the work, or if the MMA repaired the track and sent me an invoice for that work.

Another example would be, when we interchange cars with one another, if a railcar was determined to have a mechanical issue -- let's say, a wheel or a brake shoe needed to be changed -- the other railway would have to perform that maintenance before it was interchanged.

If there was a delay -- you were referencing car hire with Mr. Ellis -- if there was a delay with that car being stuck on the other railroad for an extra day or two days or longer, then any fees for the car hire cost would stay in the account of the railroad that had caused the issue.

So those would be examples of how there might be some -- some payables and receivables between the two railroads as it relates to the Interchange Agreement.

57 Q. All right. And there -- for example, in the list of invoices that was attached to the Proof of Claim,

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ian Simpson, taken March 23, 2017

18

A. Not that I recall.

MR. KEACH: T-6 and 7, Alan.

MR. LEPENE: Those are the letters? Okay, I have them.

MR. KEACH: Two letters.

MR. LEPENE: Yeah, he has them.

MR. KEACH: Mr. Simpson, let's start with T-6.

61 Q. That's your signature at the bottom?

A. It is.

62 Q. Do you recall what occasioned you to send T-6?

A. I've just got to read it, just to refresh my memory. I haven't seen it probably since the day I wrote it.

63 Q. Please take your time, as much time as you need.

--- Pause in the proceedings.

A. Okay. Sorry, your question?

64 Q. My question was: What occasioned you to send it?

A. At that point, we were not receiving any payments from the MMA and, in fact, had conversations directly with Mr. Burkhardt that indicated / gave us reason to believe we would not be getting any payments in the future.

65 Q. And based on that conversation, you decided to send the letter?

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

A. Yes, that was the basis for sending the letter: our concern about the fact that we had not been paid and there was every reason to believe that we were not going to get paid in the future.

66 Q. And I want you to be careful with your response to the next question, because I'm not looking for the substance of any conversations you may have had, but did you have a conversation with any counsel, either in-house counsel at Irving or outside counsel for Irving, in connection with sending Exhibit T-6?

**MR. LEPENE:** So that calls for a yes or no answer.

A. Yes.

67 Q. **BY MR. KEACH:** And did you send the letter after that conversation with counsel?

A. Yes.

68 Q. Can you take a look at T-7?

A. Okay.

69 Q. Is that your signature at the bottom of T-7?

A. Yes.

70 Q. And is that a demand made to Montreal, Maine & Atlantic Railway on the same date as T-6, but rather on the letterhead of Eastern Maine Railway Company as opposed to NB Southern?

A. Yes.

71 Q. And again, same cautions as before. Did you  
CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

publication section, correct?

A. That's right.

79 Q. Do you know whether or not you were demanding distinct dollar amounts for Eastern Maine and NB Southern, or were you demanding the same total dollar amount on behalf of both entities?

**MR. LEPENE:** Objection as to form.

A. Yeah, I don't recall the specific amounts by specific companies.

80 Q. **BY MR. KEACH:** But you were making, you know, a demand on behalf of Eastern Maine and another demand on behalf of NB Southern, correct?

A. Correct.

81 Q. And you did so after consulting with counsel.

A. Yes.

82 Q. In both instances.

A. Yes.

**MR. KEACH:** Alan, can you put T-8 in front of the witness?

**THE WITNESS:** I've got it.

**MR. LEPENE:** You have it? Okay.

**MR. KEACH:** It's that e-mail chain with the --

**MR. LEPENE:** Yeah, he has it.

83 Q. **BY MR. KEACH:** Mr. Simpson, had you seen this e-mail exchange prior to today?

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

send T-7 after the same conversation with counsel that you referred to with respect to T-6?

A. Yes.

72 Q. With respect to the amounts being sought under T-6 and T-7, were those the same amounts being sought?

A. I don't recall the exact amounts.

73 Q. Well, both letters refer to amounts arising under sections 2, 6 and 7 of the Commercial Agreement.

A. Right.

74 Q. Is that correct?

A. Yes.

75 Q. And again, if we go look at the Commercial Agreement -- and I want you to take as much time as you need, and that's Exhibit T-5 -- section 2 is the performance of transportation services, which you heard Mr. Ellis describe as the basic financial obligation relating to the agreement to interchange with one another and for haulage.

A. Right.

76 Q. Seven is the rates and charges provision in general, right? And 12 is the payments provision in general. Am I getting that correct?

A. Yes.

77 Q. Excuse me, I skipped over 7 --

A. You skipped over 6, I believe.

78 Q. Six, excuse me, which is just the rate

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

A. I believe, yes.

84 Q. Do you recall when you first saw it?

A. When I first -- no, I don't recall.

85 Q. Do you recall whether it was before or after the Lac-Mégantic derailment?

A. I can't say for sure.

86 Q. I'd ask you to go to the last page and take a look at what was the attachment to the e-mail.

A. Right.

87 Q. You'll see these are two Accounts Payable Aged Invoice Reports, right?

A. Yes.

88 Q. And it's been -- I think Mr. Ellis testified that these were spreadsheets sent to him by Mr. Gardner. Is that your understanding as well?

**MR. LEPENE:** If you know.

A. Yeah, look, I don't know. If that's what Mr. Ellis said, I'd base it on that, but I personally do not know when these were sent and between what parties.

89 Q. **BY MR. KEACH:** If you look at the spreadsheet that's on the lower part of the page, which --

A. Yes.

90 Q. -- Mr. Ellis has testified is representative of amounts due to New Brunswick Southern, you see to the right on the -- on the caption at the top the name Montreal, Maine &

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Atlantic Canada (MCC). Do you see that?

A. Yes.

91 Q. Which means that this reflects amounts due from New Brunswick Southern to Montreal, Maine & Atlantic Canada.

**MR. LEPENE:** Objection --

92 Q. **BY MR. KEACH:** Did this --

**MR. LEPENE:** Objection as to form.

**MR. KEACH:** All right.

93 Q. Assuming that's what this shows -- in other words, what it seems to show on its face -- you testified earlier that you weren't aware that there was such a separate entity as Montreal, Maine & Atlantic Canada; is that correct?

A. Correct.

94 Q. When you first saw that, did that -- did the fact that this appeared to suggest that amounts owed by New Brunswick Southern were owed to a different entity, Montreal, Maine & Atlantic Canada, did that draw your attention?

**MR. LEPENE:** Objection as to form.

A. I had never had any relationships, conversations, commercial agreements, et cetera, with anybody other than the Montreal, Maine & Atlantic Ltd., with the group in Bangor.

95 Q. **BY MR. KEACH:** Well, if I told you that the group in Bangor also included people doing accounting for CADY REPORTING SERVICES, INC. - 216.861.9270 www.cadyreporting.com

A. Yes.

102 Q. In the case of EMR and New Brunswick Southern, why does EMR's authority -- why does its asset base and authority stop at the Canadian border and you have a separate entity on the Canadian side? Do you know why that is?

A. I didn't set the companies up, so the precise reasoning, I can't tell you. I would assume it's because of just legal entities in Canada versus the U.S., and it could be set up for different tax or ownership reasons.

103 Q. Right. And are there different regulatory regimes that govern each side of the border?

A. There are. There's the FRA on the U.S. side and the -- and Transport Canada on the Canadian side.

104 Q. Right. And those circumstances would also have been true for MMA, right?

A. It could be. There's also provincially or federally regulated railroads in Canada, so I have no idea how MMA's Canadian operations were set up.

105 Q. And you, in fact, didn't even know they had a separate Canadian operation, you're telling me, until after the derailment, correct?

A. I knew they had Canadian track. How they were set up as an entity, I didn't and don't know.

106 Q. To date, you don't know that there's a CADY REPORTING SERVICES, INC. - 216.861.9270 www.cadyreporting.com

Deposition of Ian Simpson, taken March 23, 2017

24

Montreal, Maine & Atlantic Canada, would that be a surprise to you?

A. I can't comment on their organizational structure. That would be --

96 Q. Well, if I --

A. -- just guessing.

97 Q. -- told you that, would that be -- would that be news to you as of today, if I told you that?

A. That the Bangor office was -- please repeat your question.

98 Q. Yeah, that their Bangor office also did the accounting function for Montreal, Maine & Atlantic Canada.

A. Would that be a surprise to me?

99 Q. Yes.

A. It would be a reasonable consideration, I guess.

100 Q. Were you ever aware prior to the Lac-Mégantic derailment that the accounting staff in Hermon, Maine, for Montreal, Maine & Atlantic also was the accounting staff for Montreal, Maine & Atlantic Canada, a separate subsidiary?

A. I did not know there was a Montreal, Maine & Atlantic Canada subsidiary, so I can't comment on that.

101 Q. You were aware that Montreal, Maine & Atlantic operated in Canada, right? Or that a railroad affiliated with Montreal, Maine & Atlantic operated in Canada?

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

Deposition of Ian Simpson, taken March 23, 2017

26

separate Canadian entity organized under the laws of Nova Scotia.

A. Well, even the fact that they'd be under Nova Scotia, I have no idea how -- how that would work.

107 Q. But you're not -- I'm telling you stuff you don't know, right? You'd have to rely on me for that.

A. Correct.

**MR. KEACH:** All right. Alan, I think that's it for Mr. Simpson.

**MR. LEPENE:** Okay.

**MR. KEACH:** Why don't we just take two seconds and just review what I think are outstanding on production.

**MR. LEPENE:** All right. We'll do this off the record?

**MR. KEACH:** Sure. She doesn't need to take this down.

**MR. LEPENE:** Okay, we can close this up. He'll read his deposition.

*(And further deponent saith naught.)*

*(Deposition adjourned 3:35 p.m.)*

CADY REPORTING SERVICES, INC. - 216.861.9270  
www.cadyreporting.com

**1.1** [1] - 14:15  
**10's** [1] - 5:15

**3**  
**30(b)(6)** [2] - 5:12, 5:20  
**3:00** [1] - 4:1  
**3:35** [1] - 26:20

**6**  
**60** [1] - 13:17

**A**  
**abandonment** [1] - 11:16  
**adapted** [1] - 12:1  
**affiliated** [1] - 24:25  
**Aged** [1] - 22:11  
**Alan** [8] - 4:23, 5:9, 10:15, 14:2, 17:12, 18:2, 21:18, 26:8  
**alan** [1] - 8:1  
**aside** [1] - 8:2  
**aspects** [1] - 7:11  
**Atlantic** [19] - 8:21, 9:13, 9:16, 10:1, 10:9, 10:13, 19:21, 23:1, 23:4, 23:13, 23:18, 23:22, 24:1, 24:12, 24:19, 24:20, 24:22, 24:24, 24:25  
**authority** [2] - 25:3, 25:4

**B**  
**b(6)** [1] - 5:22  
**Bangor** [5] - 10:4, 23:23, 23:25, 24:9, 24:11  
**Bankruptcy** [1] - 13:20  
**bankruptcy** [1] - 9:16  
**basic** [1] - 20:16  
**bear** [1] - 8:7  
**becoming** [2] - 11:5, 11:10  
**billing** [1] - 12:7  
**Blocking** [4] - 17:14, 17:18, 17:21, 17:25  
**border** [2] - 25:4, 25:12  
**brake** [1] - 16:13  
**briefly** [1] - 14:10  
**Brownville** [2] - 15:3, 15:12  
**Burkhardt** [1] - 18:22

**caption** [1] - 22:25  
**car** [7] - 15:24, 15:25, 16:6, 16:16, 16:17, 16:19  
**careful** [1] - 19:5  
**carrier** [1] - 11:25  
**cars** [1] - 16:11  
**cautions** [1] - 19:25  
**CCAA** [1] - 9:12  
**CEO** [2] - 7:14, 7:16  
**chain** [1] - 21:22  
**Chapter** [1] - 8:21  
**chart** [1] - 7:18  
**CN** [1] - 13:3  
**competed** [1] - 13:2  
**connection** [1] - 19:9  
**consequence** [1] - 11:14  
**consulting** [1] - 21:14

**D**  
**dealings** [1] - 10:3  
**default** [1] - 17:20  
**defect** [1] - 17:10  
**demand** [3] - 19:20, 21:11  
**demanding** [2] - 21:3, 21:5  
**deponent** [1] - 26:19  
**depose** [1] - 4:6  
**Deposition** [1] - 26:20  
**deposition** [3] - 5:1, 5:20, 26:18  
**derailment** [4] - 16:6, 22:5, 24:18, 25:22  
**designated** [2] - 15:12, 15:14  
**destination** [1] - 12:5  
**destined** [1] - 15:14  
**dictated** [1] - 12:18  
**disagree** [1] - 7:24  
**distinct** [2] - 4:17, 21:4  
**dollar** [2] - 21:4, 21:5  
**doth** [1] - 4:5  
**duly** [1] - 4:5  
**duplication** [1] - 13:5

**E**  
**Eastern Maine** [4] - 7:9, 15:7, 21:4, 21:11  
**Eastern Maine**

19:22  
**element** [1] - 7:23  
**ellis** [1] - 17:17  
**Ellis** [13] - 5:1, 5:3, 5:7, 6:14, 7:6, 7:21, 9:10, 14:12, 16:17, 20:15, 22:13, 22:18, 22:23  
**Ellis's** [1] - 7:23  
**employed** [1] - 4:11  
**EMR** [7] - 12:2, 12:9, 12:11, 12:19, 14:13, 17:10, 25:2  
**EMR's** [1] - 25:3  
**entailed** [1] - 9:6  
**equivalent** [2] - 7:13, 9:20  
**exact** [2] - 6:13, 20:6  
**exchange** [1] - 21:25  
**existence** [1] - 11:13  
**extend** [1] - 13:14  
**extended** [1] - 13:16  
**extension** [2] - 13:13, 13:25  
**extension-of-time-to-pay** [1] - 13:25

**F**  
**f)** [2] - 6:4, 6:22  
**face** [1] - 23:11  
**federally** [1] - 25:18  
**formal** [1] - 7:15  
**FRA** [1] - 25:13  
**function** [2] - 11:7, 24:12  
**functional** [1] - 7:13  
**functions** [1] - 13:5

**G**  
**Gardner** [1] - 22:14  
**GM** [1] - 11:10  
**govern** [1] - 25:12  
**governed** [1] - 14:14  
**greater** [1] - 7:3  
**Grindrod** [2] - 13:11, 13:25  
**guessing** [1] - 24:6

**H**  
**Hansen** [2] - 6:15, 7:7  
**haulage** [5] - 11:25, 12:10, 15:24, 15:25, 20:17  
**Hermon** [1] - 24:18

**IAN** [1] - 4:5  
**in-house** [1] - 19:8  
**insolvency** [2] - 9:25, 10:12  
**instances** [1] - 21:16  
**Interchange** [9] - 14:5, 14:6, 14:7, 14:14, 14:22, 14:24, 15:18, 16:23, 17:3  
**interchange** [7] - 14:25, 15:2, 15:12, 15:23, 16:5, 16:11, 20:17  
**interchanged** [1] - 16:15  
**Interline** [1] - 12:20  
**invoiced** [2] - 17:19, 17:24  
**Irving** [7] - 4:21, 6:11, 7:2, 7:16, 11:7, 19:9  
**ISS** [3] - 12:22, 13:4, 13:12

**K**  
**Karl** [1] - 6:15  
**KEACH** [36] - 4:7, 4:23, 5:9, 5:12, 5:18, 5:24, 8:1, 8:4, 8:8, 8:12, 10:15, 10:18, 13:6, 13:21, 14:2, 14:5, 14:7, 14:9, 17:12, 17:14, 17:16, 18:2, 18:5, 18:7, 19:13, 21:10, 21:18, 21:22, 21:24, 22:20, 23:7, 23:9, 23:24, 26:8, 26:11, 26:15

**L**  
**Lac** [2] - 22:5, 24:17  
**Lac-Mégantic** [2] - 22:5, 24:17  
**largely** [1] - 12:17  
**LEPENE** [29] - 5:11, 5:14, 5:16, 5:23, 8:3, 8:6, 8:10, 10:17, 12:21, 13:18, 14:4, 14:6, 14:8, 17:9, 17:13, 17:15, 18:3, 18:6, 19:11, 21:7, 21:21, 21:23, 22:16, 23:6, 23:8, 23:19, 26:10, 26:13, 26:17  
**letterhead** [1] - 19:22  
**locomotives** [1] - 15:16  
**lower** [1] - 22:21

**Maine** [23] - 8:21, 9:13, 9:16, 9:25, 10:9, 10:13, 15:4, 15:7, 15:12, 19:20, 22:25, 23:4, 23:13, 23:18, 23:22, 24:1, 24:12, 24:18, 24:19, 24:20, 24:21, 24:23, 24:25  
**Maine Northern Railway** [2] - 4:15, 6:20  
**maintenance** [1] - 16:15  
**major** [1] - 13:7  
**MCC** [1] - 23:1  
**mechanical** [1] - 16:13  
**memory** [1] - 18:13  
**MMA** [15] - 10:2, 10:3, 11:14, 11:16, 11:25, 12:1, 13:1, 13:4, 14:13, 15:2, 16:5, 16:9, 18:21, 25:16  
**MMA's** [1] - 25:19  
**MNR** [1] - 11:13  
**Montreal** [20] - 8:21, 9:13, 9:15, 9:25, 10:9, 10:13, 15:7, 19:20, 22:25, 23:4, 23:13, 23:17, 23:22, 24:1, 24:12, 24:19, 24:20, 24:21, 24:23, 24:25  
**Mégantic** [2] - 22:5, 24:17

**N**  
**namely** [1] - 13:2  
**names** [1] - 7:16  
**naught** [1] - 26:19  
**NB Southern** [3] - 19:22, 21:4, 21:12  
**NB Southern Railway** [2] - 4:12, 15:4  
**NBS** [1] - 14:13  
**NBSR** [2] - 12:2, 12:12  
**network** [1] - 12:15  
**New Brunswick Southern Railway** [4] - 5:20, 8:20, 9:11, 12:19  
**news** [2] - 10:13, 24:8  
**nobody** [1] - 7:18  
**Northern** [1] - 15:4  
**notices** [1] - 8:2  
**Nova** [4] - 10:7, 10:9, 26:1, 26:3

**objection** [7] - 12:21, 13:18, 17:9, 21:7, 23:6, 23:8, 23:19  
**obligation** [2] - 16:3, 20:16  
**obligations** [7] - 11:23, 13:8, 14:22, 15:6, 17:2, 17:17, 17:19  
**occasioned** [2] - 18:10, 18:18  
**occurs** [1] - 12:23  
**offline** [1] - 13:23  
**operational** [1] - 7:10  
**org** [1] - 7:18  
**organizational** [1] - 24:3  
**origin** [1] - 12:5  
**outstanding** [1] - 26:12  
**ownership** [1] - 25:10

**P**  
**Pan** [1] - 13:2  
**passage** [1] - 14:11  
**Pause** [1] - 18:16  
**perform** [1] - 16:14  
**performance** [1] - 20:14  
**physically** [2] - 14:25, 15:22  
**pre** [2] - 11:3, 12:8  
**pre-agreed-upon** [1] - 12:8  
**pre-dated** [1] - 11:3  
**precise** [1] - 25:7  
**precisely** [1] - 10:4  
**predetermined** [1] - 12:7  
**preparation** [1] - 6:13  
**presumptions** [1] - 5:7  
**proceed** [1] - 5:4  
**proceeding** [3] - 9:17, 9:21, 9:25  
**Proof** [5] - 8:4, 8:19, 9:12, 10:12, 16:25  
**provincially** [1] - 25:17  
**publication** [1] - 21:1

**Q**  
**Quebec** [1] - 9:17  
**quote** [1] - 12:4

**railcar** [1] - 16:12  
**railroad** [6] - 11:2,  
12:6, 16:18, 16:20,  
17:20, 24:24  
**railroads** [12] -  
4:21, 7:9, 7:17, 11:6,  
11:11, 11:12, 12:4,  
12:24, 12:25, 16:23,  
25:18  
**railway** [1] - 16:14  
**Railway** [3] - 8:21,  
13:2, 19:21  
**reasonable** [1] -  
24:15  
**reasoning** [1] -  
25:8  
**receiving** [1] -  
18:20  
**reciprocal** [2] -  
14:21, 15:6  
**recognized** [1] -  
12:23  
**reflects** [1] - 23:3  
**refresh** [1] - 18:12  
**regimes** [1] - 25:12  
**regulatory** [1] -  
25:11  
**relationships** [2] -  
14:13, 23:20  
**reopened** [1] -  
13:22  
**repair** [1] - 17:10  
**repaired** [1] - 16:9  
**repairs** [3] - 17:1,  
17:3, 17:7  
**representing** [1] -  
9:24  
**resolved** [1] - 13:19  
**respective** [1] -  
15:16  
**role** [1] - 8:24  
**running** [1] - 7:12  
**Ryan** [2] - 6:14,  
14:12

**S**

**saith** [1] - 26:19  
**Scotia** [4] - 10:8,  
10:9, 26:2, 26:4  
**seconds** [1] - 26:11  
**sending** [2] - 19:1,  
19:10  
**Seventeen** [1] - 4:4  
**shoe** [1] - 16:13  
**shortcut** [1] - 4:23  
**signature** [2] -  
18:8, 19:18  
**SIMPSON** [1] - 4:5  
**Simpson** [14] -  
4:10, 4:11, 4:25,  
5:19, 5:25, 7:20,  
8:14, 10:15, 10:18,  
14:10, 17:16, 18:7,  
21:24, 26:9

**sought** [2] - 20:4,  
20:5  
**Southern** [8] - 4:18,  
9:20, 9:24, 10:11,  
22:24, 23:4, 23:17,  
25:3  
**Southern's** [1] - 8:4  
**spent** [1] - 11:8  
**spread** [1] - 8:6  
**spreadsheet** [1] -  
22:20  
**spreadsheets** [1] -  
22:14  
**Springfield** [1] -  
13:3  
**staff** [2] - 24:18,  
24:19  
**stations** [3] - 12:1,  
12:9, 12:11  
**stay** [1] - 16:19  
**strictly** [1] - 15:21  
**structure** [2] -  
12:17, 24:4  
**stuck** [1] - 16:18  
**subsidiary** [2] -  
24:20, 24:22  
**substance** [1] -  
19:7  
**succinct** [1] - 11:22  
**Sunbury** [2] - 11:9,  
11:10  
**superior** [2] - 6:12,  
6:17  
**surprise** [2] - 24:1,  
24:13  
**sworn** [1] - 4:5

**T**

**T-10** [1] - 6:19  
**T-11** [2] - 14:2, 14:4  
**T-13** [1] - 17:12  
**T-2** [6] - 8:1, 8:3,  
8:9, 8:12, 8:14, 9:21  
**T-3** [1] - 8:9  
**T-5** [3] - 10:15,  
14:10, 20:14  
**T-6** [7] - 18:2, 18:7,  
18:11, 19:10, 19:21,  
20:2, 20:5  
**T-7** [4] - 19:16,  
19:18, 20:1, 20:5  
**T-8** [1] - 21:18  
**T-9** [2] - 5:22, 5:24  
**table** [1] - 8:7  
**Terminal** [1] - 13:3  
**THIS** [1] - 4:3  
**topic** [2] - 6:11,  
6:23  
**topics** [3] - 6:3, 6:7,  
7:1  
**trains** [3] - 15:13,  
15:14, 15:16  
**Transport** [2] -  
11:9, 25:14  
**Twenty-third** [1] -

**U**

**U.S.** [2] - 25:9,  
25:13  
**unhooking** [1] -  
15:15  
**unlimited** [1] - 10:8

**W**

**wheel** [1] - 16:13  
**William** [1] - 4:10  
**worries** [1] - 8:8

**Y**

**yard** [3] - 15:11,  
16:5, 17:4  
**yards** [1] - 15:22



1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF MAINE

3 Case No. 13-10670-pgc

4 - - - - - x

5 In the Matter of:

6

7 MONTREAL MAINE & ATLANTIC RAILWAY LTD.,

8

9 Debtor.

10

11 - - - - - x

12

13 U.S. Bankruptcy Court

14 District of Maine

15 537 Congress Street

16 2nd Floor

17 Portland, Maine 04101

18

19 February 5, 2016

20 9:00 AM

21

22 B E F O R E:

23 HON PETER G. GARY

24 U.S. BANKRUPTCY JUDGE

25

1     **Hearing on Judge's Oral Opinion**

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25     **Transcribed by: Nicole Yawn**



1 A P P E A R A N C E S :

2 OFFICE OF THE U.S. TRUSTEE

3 Attorney for the U.S. Trustee

4 537 Congress Street

5 Room 303

6 Portland, ME 04101

7

8 BY: ROBERT J. KEACH, ESQ.

9

10 BERNSTEIN, SHUR, SAWYER & NELSON

11 Attorney for the U.S. Trustee

12 100 Middle Street

13 Portland, ME 04104-5029

14

15 BY: LINDSAY K. ZAHRADKA, ESQ.

16

17 THOMPSON HINE LLP

18 Attorney for New Brunswick Southern and Northern Maine

19 3900 Key Center

20 127 Public Square

21 Cleveland, OH 44114-1291

22

23 BY: ALAN R. LEPENE, ESQ. (TELEPHONIC)

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

THE CLERK: -- the honorable Peter Gary presiding.

Be seated.

THE COURT: Good morning.

UNIDENTIFIED SPEAKER: Good morning.

UNIDENTIFIED SPEAKER: Good morning.

THE COURT: We're here on the Montreal Maine &  
Atlantic Railway Ltd case, Chapter 11, case number 13-10670.  
And we have Ms. Zahradka and Mr. Keach here for -- or on  
behalf of the trustee.

Good morning.

MS. ZAHRADKA: Good morning, Your Honor.

MR. KEACH: Good morning.

THE COURT: And do we have Mr. Lepene on the phone  
for New Brunswick Southern and Maine Northern or Northern  
Maine?

MR. LEPENE: Yes, Your Honor. Good morning.

THE COURT: Good morning.

So I'm going to read an oral decision this  
morning. I'm also going to read parts of the stipulation.  
I'm doing this to try to put in one place the complete  
decision. In that case, if there's further review, at least  
a reviewing Court can initially look to just one place. So  
it's for that convenience.

So this is my oral decision concerning the

1 objections of Chapter 11 Trustee Robert J. Keach, Trustee to  
2 the proofs of claim filed by Maine Northern Railway Company,  
3 Maine Northern, and the New Brunswick Southern Railway  
4 Company, LTD, New Brunswick. I may refer to these railways  
5 collectively as claimant railways. I note at the hearing  
6 and in some of the various pleadings, sometimes they're  
7 referred to as the Irving Railroad.

8 The claimant railways assert that certain of their  
9 claims against the debtor, Montreal Maine & Atlantic  
10 Railway, Ltd., Debtor for MMA, are priority claims under 11  
11 U.S.C. Section 1171(b). When I refer to section numbers on  
12 their own, I'm referring to the bankruptcy format from 1978  
13 code. This decision contains my findings of fact and  
14 conclusions of law in accordance with Federal Rule of  
15 Bankruptcy Procedures 7002.

16 In reaching this decision, I've considered, among  
17 other things, the trustee's written objections, document --  
18 or docket entry 1826; the joint response of the claimant  
19 railways, 1855; the trustee's reply, 1878; the stipulations  
20 of the parties, 1877; the admissions and other filings of  
21 the parties in this case; and the evidence presented at the  
22 November 20th, 2015 testimonial hearing, which evidence  
23 included the admitted exhibits and the testimony of Carl  
24 Hansen (ph), general manager of Corporate Credit Financial  
25 for all the Irving companies, including the claimant

1 railways, and Ian Simpson, general manager of the claimant  
2 railways.

3 Actually, I'd like to take one minute and thank  
4 the parties and their counsel for the materials you provided  
5 to me. They're excellent. They were very helpful.  
6 Notwithstanding they disagreed with each other, but they  
7 were very helpful.

8 And I also want to thank the attorneys and the  
9 witnesses for the excellent presentation at the hearing.  
10 I've only been a judge for a year -- two years and a month,  
11 but I found that one of the most professional, thorough,  
12 civil, and efficient hearings I've had the pleasure to  
13 preside over.

14 Background -- one thing you did to make my job  
15 easier is that you provided certain stipulations, which  
16 helped to focus the hearing, focus my analysis. Those  
17 stipulations are set forth, as I said, in 1877 for trying to  
18 unify the record in one place. I'm going to repeat some of  
19 them here. To the extent there's any discrepancy between  
20 what I say here and those listed at 1877, 1877 controls.  
21 Here they are.

22 Maine Northern's proof of claim, 242-1, and New  
23 Brunswick's proof of claim, 243-1, the duplicate claims, are  
24 withdrawn and expunged in their entirety from MMA's claims  
25 register. Maine Northern's proof of claim, 257-1, and New

1 Brunswick's proof of claim, 259-1, are not withdrawn and are  
2 referred to today as the 1171(b) claims. For purposes of  
3 resolving the objection to the 1171(b) claims, the Wheeling  
4 and Lake Erie Railway Companies at all times held valid  
5 security interests in the debtor's accounts receivable and  
6 certain inventory and proceeds to secure obligations due  
7 under a line of credit and a (ph) security agreement dated  
8 in June of 2009.

9 MMA was a participating railroad in the Interline  
10 Settlement System, the ISS. Claimant railways weren't. The  
11 ISS provides a certain central clearinghouse for  
12 participating railroads involved in the interchange of  
13 freight traffic among multiple rail carriers to settle  
14 accounts receivable and accounts payable arising from the  
15 interchange of such traffic.

16 Railroads participating in the ISS that originate  
17 traffic are known as billing railroads, and they invoice the  
18 customer for all freight charges from the point of origin to  
19 the point of destination, even if the shipment is  
20 interchanged with other railroads along the route.

21 Customers are responsible for paying the billing railroad  
22 the entire invoice, and the billing railroad is responsible  
23 for paying the other railroads involved in the shipment  
24 their share of the proceeds representing the freight charges  
25 earned by them.

1           Railroads that participate in the ISS calculate on  
2 a monthly basis the accounts receivable and accounts payable  
3 arising from the interchange of traffic that are due and  
4 owing each participant. The payment of the net amount due  
5 and owing is made on the second business day of each month.  
6 By agreement with the claimant railways, MMA acted as the  
7 billing railroad. When either claimant railway originated  
8 traffic, it interchanged with MMA as well as when MMA  
9 originated traffic, it interchanged with either of the  
10 claimant railroads.

11           MMA also collected from the ISS freight revenue  
12 attributable to freight services provided by the claimant  
13 railways in connection with shipments originated by other  
14 carriers that were interchanged by such carriers with MMA  
15 and by MMA with the claimant railways. For the purposes of  
16 the claims, parties stipulated that, other than \$1,952  
17 claimed by New Brunswick for repair of cars owned or leased  
18 by the debtor other than 5,146 claimed by Maine Northern for  
19 repair of cars owned or leased by the debtor, inspection  
20 services provided by Maine Northern, the claims of the  
21 claimant railways, if any, result from the fact that MMA  
22 collected funds, either directly from customers or via the  
23 ISS, and did not pay amounts to the claimant railways.

24           The Irving Companies, as defined as Irving Pulp &  
25 Paper, Ltd, Irving Paper, Ltd, and J.D. Irving, Ltd are

1 affiliates of both of the claimant railways and customers of  
2 MMA. During the six-month period preceding the filing,  
3 claimant railways and the Irving Paper Companies, on the one  
4 hand, MMA, on the other, would settle their respective  
5 accounts receivable and accounts payable by arranging  
6 concurrent exchange of wire transfers and checks.

7 The issue before me is whether the claims asserted  
8 by the claimant railways in the 1171(b) claims qualify as 6-  
9 month claims titled to priority under 1171(b). The amount  
10 of such claims shall be determined at a subsequent hearing,  
11 if required. So in addition to these stipulations, I found  
12 the following -- I find that the following facts were  
13 established at the hearing or otherwise. And by otherwise,  
14 I mean they may have been determined by the prior filings or  
15 prior representations. And those facts are as follows.

16 The MMA claimants railway business relationship  
17 began approximately in 2003. As the debtor indicated in its  
18 first amended disclosure statement, from January 2003 until  
19 May 2014, the debtor and the wholly owned Canadian  
20 subsidiary, MMA Canada, operated on an integrated  
21 international short line freight railroad system. This  
22 system originally included 510 route miles of track in  
23 Maine, Vermont, Quebec and were operated from the debtor's  
24 principle office in Hermon, Maine.

25 The system was a substantial component of the



1 transportation systems in Northern Maine, Northern New  
2 England, Quebec, and New Brunswick. And it provided the  
3 shortest rail transportation route between Maine and  
4 Montreal and was a critical rail artery between St. John and  
5 New Brunswick and Montreal.

6 In 2003, at the time when MMA and the claimant  
7 railways began doing business, Mr. Hansen had concerns that  
8 MMA would not be able to pay Irving. MMA and the claimant  
9 railways established a weekly payment swap system. In  
10 Mr. Hansen's words, quote, "Basically, Irving Paper and  
11 Irving Pulp & Paper's funds would flow into my department  
12 once a week. We'd get hold of MMA, and we'd agree that  
13 simultaneously I'd send them their wire transfer and they  
14 would the same second send the wire transfer back to me for  
15 monies owed to New Brunswick Southern," end quote.

16 In terms of the amount of cash that was being sent  
17 from Irving to MMA compared to the amount of cash that MMA  
18 was sending to Irving, Irving's was by far larger initially.  
19 These transfers were done virtually simultaneously.  
20 Mr. Hansen's stated reason for establishing this -- agreeing  
21 to this system was that he was determined that the claimant  
22 railways were not going to rely on MMA's credit to make sure  
23 they got paid.

24 Mr. Simpson testified that the decision not to  
25 participate in the ISS was not influenced by the credit

1       worthiness of MMA. The claimant railways could have  
2       withheld transferring money to MMA by wire if MMA did not  
3       pay the amounts due to Irving.

4                Until June or July of 2012 this arrangement  
5       worked. Then things changed. As the debtor described in  
6       the first amended disclosure statement, in the two years  
7       leading up to the commencement of this case, the debtor --  
8       the Chapter 11 case -- the debtor benefited from a dramatic  
9       increased use of trains to move oil from the Central and  
10      Western regions of the U.S. to refineries in the East.

11              United States and Canadian oil drillers were  
12      producing oil faster than the new pipelines could be built.  
13      Trains were needed to transport crude oil to refineries.  
14      Prior to the derailment, the debtor had been hauling 500,000  
15      barrels of oil monthly through Quebec and Maine. Due to  
16      this business, the debtor enjoyed a significant increase in  
17      gross revenue. For a short time, positive net operating  
18      income, although needed (ph), capital expenditures remained  
19      deferred and underfunded.

20              This resulted in an increase in oil shipments  
21      carried by the MMA and interchanged with the claimant  
22      railways for delivery to St. John. Beginning in 2012, the  
23      amounts owed by MMA for interline freight services provided  
24      by the claimant railways began to exceed the amounts owed by  
25      Irving to MMA. As Mr. Hansen put it at trial, "Well, the

1 shipment of oil would have been coming out of the Dakotas by  
2 C.T. They would hit MMA's line."

3 "They would interchange with MMA. Then the oil  
4 would come. The train would come down through until it hit  
5 New Brunswick Southern's line. New Brunswick Southern would  
6 transport it then into St. John, New Brunswick. And the  
7 cost, our share, Irving's share -- it would bring it from  
8 where we would interfaced with St. John, became excessive,  
9 quite high."

10 Turning to the burden of proof, I don't think  
11 that's any -- of any dispute. Section 502(a) provides that,  
12 quote, "A claim or interest, proof of which is filed under  
13 Section 501 of this title, is deemed allowed unless a party  
14 and interest objects," end quote. If an objection is filed  
15 in court after notice and hearing, quote, "shall allow such  
16 claim, except to the extent the claim is unenforceable  
17 against the debtor, property of the debtor," end quote.  
18 That's 502(b) (1).

19 The burden is on the objecting party to put forth  
20 evidence sufficient to negate the prima facie validity of  
21 the claim. If the objecting party produces such evidence,  
22 the burden shifts back to the claimant to prove the validity  
23 of its claim by a preponderance of the evidence. Given the  
24 travel of this case, I conclude the burden is on the  
25 claimant railways to establish that their claims are

1 priority claims under Section 1171(b).

2 Trustee argues that these claims fail for several  
3 reasons. Generally, the reasons are, one, interline charges  
4 are per se unsecured claims as a matter of law; two,  
5 claimant railways have failed to establish that the  
6 interline charges were necessary operating expenses of MMA;  
7 three, the claimant railways failed to establish that they  
8 provided services or goods to MMA with the expectation that  
9 they'd be paid for current operating revenues, not in  
10 reliance on MMA's general credit worthiness.

11 As a sort of subset of this argument, the trustee  
12 asserted that the claimant railways established a, quote,  
13 "special security arrangement," end quote, with MMA, which  
14 excepts them from the protections of the six-months rule.  
15 I'll address those three arguments in that order.

16 One, interline charges cannot be 1171(b) claims as  
17 a matter of law. Obviously, I've got to first look at  
18 1171(b), which provides, quote, "any unsecured claim against  
19 the debtor that would have been entitled to priority, if a  
20 receiver in equity of the property of the debtor had been  
21 appointed by federal court on the date of the order for  
22 relief on its title shall be entitled to the same priority  
23 in the case of its chapter (ph)," end quote.

24 This section codified a long-established equitable  
25 doctrine called the six-months rule applied in railroad

1 receivership cases that permitted receivers to pay certain  
2 necessary expenses incurred in the period immediately  
3 preceding the receivership. See in re: Boston and Maine  
4 Corp., 634 F.2d 1359, 1366 through 79.

5 As is clear -- or maybe not so clear -- from the  
6 language of this rule, it does not set forth terms or  
7 conditions which give rise to a priority. There's no test  
8 to do. That job is left to the courts.

9 In the Boston and Maine II case, the one that I  
10 cited a minute ago, 634 F.2d 1359, is a good place to start.  
11 That Court wrote that, "A claim will be entitled to priority  
12 under 1171(b) when it, one, represents a current operating  
13 expense necessarily incurred; two, was incurred within six  
14 months before the reorganization petition was filed; and  
15 three, the goods or services were delivered in the  
16 expectation that they would be paid for out of current  
17 operating revenues of the railroad and not in reliance on  
18 the railroad's general credit." I note at the outset --  
19 that's the end of the three-part test.

20 I note at the outset that this is not necessarily  
21 an easy concept to apply, which might have explained why at  
22 the end of oral argument, after hearing the exact same  
23 evidence and hearing the same testimony, both Mr. Lepene and  
24 you, Mr. Keach, argued that the answer was clear. And I had  
25 to do then -- what I had to do was different. And I

1 struggled with that. And I think Courts have struggled with  
2 that.

3 I found at least one commentator in Five  
4 Bankruptcy Services LED, Section 46:67 say something I  
5 thought was observant. Quote, "It is difficult, it not  
6 impossible, to identify from prior decisions any unified  
7 principle or group of principles to be applied when claimant  
8 requests priority for prepetition claim in railroad  
9 reorganization pursuant to 1171(b). Each case has been  
10 decided based on its unique facts and Courts' analysis of  
11 equities asserted by the competing parties."

12 So the trustee argues that -- let me just make  
13 sure I have something here. Turning to the first argument  
14 of the trustee. Trustee argues that the freight services  
15 provided to MMA in connection with the interline rail  
16 shipments cannot, as a matter of law, constitute 1171(b)  
17 claims. I disagree.

18 I read Boston and Maine II to have reversed the  
19 decision of District Court, which denied priority treatment  
20 of the claims of interlining railroads which sought six-  
21 month priority status for their per diem claims. Other  
22 Courts have done that also. Finance Company vs. Charleston,  
23 62 F. 205.

24 So my conclusion was that, as a matter of law, the  
25 mere fact that the claims are for interline freight services

1 does not exclude them from possible priority consideration.  
2 So if the claimant railways can -- I find they pass that  
3 first challenge by the trustee. And if the claimant  
4 railways can satisfy the judicially established three  
5 elements required for the 1171(b) claims, then they're  
6 entitled to priority treatment. So let's turn to that.

7 Looking first at the necessity of the charges, the  
8 testimony of Mr. Hansen and Mr. Simpson as well as the  
9 debtor's statements in its first amended disclosure  
10 statement lead me to conclude that the claimant railways  
11 meet this element. The testimony by Mr. Simpson established  
12 that the inability of MMA to interchange traffic with the  
13 claimant railways on the, quote, "critical rail artery,"  
14 quote, between St. John and Montreal would have had a  
15 significant adverse effect on MMA's operations, including,  
16 among other things, the possible loss of business with  
17 Irving as well as a reduction in revenue.

18 Ian Simpson testified at trial regarding the  
19 freight services provided to MMA. He confirmed the  
20 importance of MMA -- importance to MMA of the critical rail  
21 artery between Montreal and St. John. He characterized it  
22 as the most direct, economical, and practical route for the  
23 shipment of oil to the refineries in St. John.

24 At trial, he further testified that the impact on  
25 MMA's operation if they had been unable to interchange



1 traffic with the Irving Railroad, would have been  
2 significant in negative ways. He also testified that the  
3 only way that MMA could get traffic into St. John would be  
4 through the claimant railways' lines for final delivery. In  
5 cross-examination by the trustee, he did admit it would not  
6 be impossible for MMA to technically interchange with  
7 another carrier to indirectly deliver product. But he said  
8 it would not be practical or economical.

9 Simpson had firsthand knowledge of MMA's efforts  
10 to solicit Irving Paper Company's (indiscernible) business.  
11 Although the testimony of Mr. Hansen on some of these issues  
12 was blunted by the trustee on cross-examination, I conclude  
13 that the persuasive testimony of Mr. Simpson on these facts  
14 was not controverted. Based upon this and the other  
15 evidence adduced at the hearing, I conclude that the  
16 claimant railways satisfied their burden on the necessity  
17 issue. I don't ascribe to the narrow view of what a  
18 necessity is. I find that it is sufficient claims are for a  
19 current expense, goods and services and bringing ordinary  
20 operation of the rail.

21 The second element, the six-month element --  
22 there's no meaningful challenge as to that. So I conclude  
23 that the claimant railways meet their burden.

24 Now turning to, I think, what's the heart of it is  
25 the third element, that the goods or services were delivered

1 in the expectation that they be paid for out of current  
2 operating revenues of the railway and not in reliance on the  
3 railroad's general credit. I admit that element is not  
4 easily applied and is susceptible to the arguments that  
5 parties made in the closing arguments. As a matter of  
6 common sense, these alternatives are not mutually exclusive.

7 A party dealing with a railroad might well rely on  
8 both the current operating revenues of the railroad as well  
9 as its general credit. A credit manager of any entity  
10 dealing with a railroad could plausibly testify that it  
11 relied on the current operating revenues of the railroad  
12 rather than its general credit, or perhaps more closer to  
13 the truth, that it relied more on the railroad's current  
14 operating revenues than its general credit. Thus, arguably,  
15 anybody dealing with a railroad within six months of  
16 bankruptcy could potentially be entitled to a priority  
17 claim.

18 Had the claimant railroads been dealing with MMA  
19 in the manner in which it did prior to the oil shipments,  
20 2012, this case would have been easier for me. And the  
21 trustee's argument would have been more powerful for me.  
22 When the oil started shipping, however, that arrangement  
23 changed.

24 MMA could not -- as was testified at the hearing,  
25 MMA could not afford to keep current on payments owed to the

1 claimant railways under the new reality of the new -- post-  
2 2012. And it proposed an alternative, which the claimant  
3 railways accepted. Under this new system, the interline  
4 freight charges incurred in connection with oil shipments  
5 would be carved out of the swap arrangement and instead,  
6 those charges would be paid to the claimant railways on  
7 MMA's receipt of payment from the ISS of the amounts owed to  
8 MMA for such shipments.

9 Carl Hansen testified about the claimant railways'  
10 reasons for doing so. Quote, "Once I was briefed a bit on  
11 what this ISS was, I felt comfortable enough that monies  
12 would be coming into MMA without any hiccups, so to speak,  
13 and that shortly thereafter, within a matter of days, I  
14 would be paid the monies owed by MMA for the transportation  
15 of oil on our lines." Mr. Hansen emphasized at trial that  
16 this new arrangement was not, in his view, based upon the  
17 claimant railways' reliance on MMA's general credit  
18 worthiness.

19 "Q: Mr. Hansen, in providing freight services in  
20 connection with the interchange of traffic, the MMA, did  
21 Irving Railroads rely on MMA's general credit worthiness?"

22 Mr. Hansen's answer -- Absolutely not.

23 Q: What did the Irving Railroads rely upon?

24 Answer by Mr. Hansen -- "We relied upon them being  
25 paid out of the ISS system, which I felt was secure and that

1 meant I would be paid shortly thereafter." End of  
2 Mr. Hansen's quotes here.

3 Mr. Simpson supported this testimony. Quote, "We  
4 expected prompt payment. Because when ISS -- when they  
5 received their money from the ISS, they were receiving their  
6 share and our share. And that's what we were looking for.  
7 When they got paid, we were to be paid."

8 Based on testimony like this as well as other  
9 evidence presented at the hearing, I conclude that the  
10 claimant railways met their burden as to the third element  
11 of the 1171(b) claims. Testimony shows that, in order to  
12 keep the interchange of services going between the parties,  
13 claimant railways agreed to wait for the ISS system to  
14 process payment and then to pay -- the ISS to pay them to  
15 MMA before MMA would pay the claimant railways. I do not  
16 conclude that this was reliance on MMA's credit, nor do I  
17 conclude that this was some sort of special security  
18 arrangement which excepts the claimant railways from the  
19 protection of the six-months rule. I didn't find anything  
20 in that deal or that arrangement that had incorporated  
21 common conditions of the commercial credit, security  
22 interests, and the like.

23 I do not find that the existence of the Wheeling  
24 line of credit changes my conclusion. Mr. Hansen was not  
25 aware that MMA had a line of credit with Wheeling, he so

1 testified. Mr. Simpson admitted he was aware of it, quote,  
2 "anecdotally," end quote, but had no knowledge of how it,  
3 quote, "worked," end quote, and was not familiar with it.  
4 Nobody, according to the testimony, ever advised Mr. Hansen  
5 or Mr. Simpson that MMA's ability to pay claimant railroads  
6 was dependent on MMA being able to draw on the Wheeling line  
7 of credit.

8 So based upon the unique facts and my analysis of  
9 the equities asserted by MMA, on one hand, and the claimant  
10 railroads, on the other, I conclude that the claimant  
11 railways have met their burden. The claims shall be allowed  
12 as 1171(b) claims.

13 Now, the stipulations indicate that the amount of  
14 the claims will be determined at a subsequent hearing, if  
15 required. I throw in as a suggestion -- and I've said a lot  
16 here. I'm sure the parties want to digest it. And they can  
17 figure out what kind of further process is required.

18 So my proposal, subject to both of your input, is  
19 that you submit a brief status report in 14 days and the  
20 status report indicate whether a further hearing's required.  
21 If so, at that time, also submit a proposed joint pretrial  
22 order. And you can contact the clerk's office to arrange  
23 for the hearing time. But that's just my stab at a  
24 proposal. And I'm open to ideas.

25 And maybe I begin with you, Mr. Keach?

1 MR. KEACH: Your Honor, I think my suggestion is  
2 that Mr. Lepene and I talk with respect to the issues  
3 relating to the amount. It may very well be that we can  
4 stipulate as to the amount relatively quickly and actually  
5 allow Your Honor to enter a sort of unified final judgment  
6 based on that stipulation. And then the parties can decide  
7 what they want to do with that input. But --

8 THE COURT: Okay. And one of the reasons that I  
9 wanted to put all of this in this fashion is I thought that  
10 somebody might be not happy with what I'm doing. So I  
11 wanted to try to streamline it as best I could.

12 So fine. Why don't we do that? What do you  
13 think? Fourteen days?

14 MR. KEACH: Easily within 14 days. I suspect  
15 sooner. I'm not sure about Mr. Lepene's schedule, but I  
16 suspect it's really not going to be that difficult.

17 THE COURT: Okay.

18 Mr. Lepene, your thoughts on this?

19 MR. LEPENE: I would agree with Mr. Keach and what  
20 you have proposed, Your Honor. And I will plan to call  
21 Mr. Keach. And I'm sure we can accomplish that within 14  
22 days.

23 THE COURT: Okay. Thank you.

24 Mr. Keach, anything else this morning?

25 MR. KEACH: Nothing further, Your Honor. Thank

1 you.

2 THE COURT: Thank you.

3 Mr. Lepene, anything from you?

4 MR. LEPENE: Nothing further, Your Honor. Thank  
5 you.

6 THE COURT: Okay. Thank you.

7 The Court will be adjourned.

8 THE DEPUTY: All rise.

9 (Whereupon, these proceedings were concluded at 9:29  
10 AM)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

RULING

Page

Trustee's Objection to  
Claimant Railways Proofs of Claim 21

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T I O N

I, Nicole Yawn certify that the foregoing transcript is a true and accurate record of the proceedings.

Nicole Yawn

Digitally signed by Nicole Yawn  
DN: cn=Nicole Yawn, o, ou,  
email=digital1@veritext.com, c=US  
Date: 2016.02.12 14:55:25 -05'00'

---

Nicole Yawn

February 10, 2016

Veritext Legal Solutions  
330 Old Country Road  
Suite 300  
Mineola, NY 11501

<b>&amp;</b>	<b>3</b>	<b>advised</b> 21:4	<b>ascribe</b> 17:17
<b>&amp;</b> 1:7 3:10 4:7 5:9 8:24 10:11	<b>300</b> 25:24	<b>affiliates</b> 9:1	<b>assert</b> 5:8
<b>0</b>	<b>303</b> 3:5	<b>afford</b> 18:25	<b>asserted</b> 9:7 13:12 15:11 21:9
<b>04101</b> 1:17 3:6	<b>330</b> 25:23	<b>ago</b> 14:10	<b>atlantic</b> 1:7 4:8 5:9
<b>04104-5029</b> 3:13	<b>3900</b> 3:19	<b>agree</b> 10:12 22:19	<b>attorney</b> 3:3,11,18
<b>1</b>	<b>4</b>	<b>agreed</b> 20:13	<b>attorneys</b> 6:8
<b>1</b> 12:18	<b>44114-1291</b> 3:21	<b>agreeing</b> 10:20	<b>attributable</b> 8:12
<b>1,952</b> 8:16	<b>46:67</b> 15:4	<b>agreement</b> 7:7 8:6	<b>aware</b> 20:25 21:1
<b>10</b> 25:10	<b>5</b>	<b>alan</b> 3:23	<b>b</b>
<b>100</b> 3:12	<b>5</b> 1:19	<b>allow</b> 12:15 22:5	<b>b</b> 1:22 5:11 7:2,3 9:8,9 12:18 13:1,16 13:18 14:12 15:9,16 16:5 20:11 21:12
<b>11</b> 4:8 5:1,10 11:8	<b>5,146</b> 8:18	<b>allowed</b> 12:13 21:11	<b>back</b> 10:14 12:22
<b>11501</b> 25:25	<b>500,000</b> 11:14	<b>alternative</b> 19:2	<b>background</b> 6:14
<b>1171</b> 5:11 7:2,3 9:8 9:9 13:1,16,18 14:12 15:9,16 16:5 20:11 21:12	<b>501</b> 12:13	<b>alternatives</b> 18:6	<b>bankruptcy</b> 1:1,13 1:24 5:12,15 15:4 18:16
<b>127</b> 3:20	<b>502</b> 12:11,18	<b>amended</b> 9:18 11:6 16:9	<b>barrels</b> 11:15
<b>13-10670</b> 1:3 4:8	<b>510</b> 9:22	<b>amount</b> 8:4 9:9 10:16,17 21:13 22:3 22:4	<b>based</b> 15:10 17:14 19:16 20:8 21:8 22:6
<b>1359</b> 14:4,10	<b>537</b> 1:15 3:4	<b>amounts</b> 8:23 11:3 11:23,24 19:7	<b>basically</b> 10:10
<b>1366</b> 14:4	<b>6</b>	<b>analysis</b> 6:16 15:10 21:8	<b>basis</b> 8:2
<b>14</b> 21:19 22:14,21	<b>6</b> 9:8	<b>anecdotally</b> 21:2	<b>began</b> 9:17 10:7 11:24
<b>1826</b> 5:18	<b>62</b> 15:23	<b>answer</b> 14:24 19:22 19:24	<b>beginning</b> 11:22
<b>1855</b> 5:19	<b>634</b> 14:4,10	<b>anybody</b> 18:15	<b>behalf</b> 4:10
<b>1877</b> 5:20 6:17,20 6:20	<b>7</b>	<b>applied</b> 13:25 15:7 18:4	<b>benefited</b> 11:8
<b>1878</b> 5:19	<b>7002</b> 5:15	<b>apply</b> 14:21	<b>bernstein</b> 3:10
<b>1978</b> 5:12	<b>79</b> 14:4	<b>appointed</b> 13:21	<b>best</b> 22:11
<b>2</b>	<b>9</b>	<b>approximately</b> 9:17	<b>billing</b> 7:17,21,22 8:7
<b>2003</b> 9:17,18 10:6	<b>9:00</b> 1:20	<b>arguably</b> 18:14	<b>bit</b> 19:10
<b>2009</b> 7:8	<b>a</b>	<b>argued</b> 14:24	<b>blunted</b> 17:12
<b>2012</b> 11:4,22 18:20 19:2	<b>ability</b> 21:5	<b>argues</b> 13:2 15:12 15:14	<b>boston</b> 14:3,9 15:18
<b>2014</b> 9:19	<b>able</b> 10:8 21:6	<b>argument</b> 13:11 14:22 15:13 18:21	<b>brief</b> 21:19
<b>2015</b> 5:22	<b>absolutely</b> 19:22	<b>arguments</b> 13:15 18:4,5	<b>briefed</b> 19:10
<b>2016</b> 1:19 25:10	<b>accepted</b> 19:3	<b>arising</b> 7:14 8:3	<b>bring</b> 12:7
<b>205</b> 15:23	<b>accomplish</b> 22:21	<b>arrange</b> 21:22	<b>bringing</b> 17:19
<b>20th</b> 5:22	<b>accounts</b> 7:5,14,14 8:2,2 9:5,5	<b>arrangement</b> 11:4 13:13 18:22 19:5,16 20:18,20	<b>brunswick</b> 3:18 4:15 5:3,4 8:17 10:2,5,15 12:5,5,6
<b>21</b> 24:4	<b>accurate</b> 25:4	<b>arranging</b> 9:5	<b>brunswick's</b> 6:23 7:1
<b>242-1</b> 6:22	<b>acted</b> 8:6	<b>artery</b> 10:4 16:13 16:21	
<b>243-1</b> 6:23	<b>addition</b> 9:11		
<b>257-1</b> 6:25	<b>address</b> 13:15		
<b>259-1</b> 7:1	<b>adduced</b> 17:15		
<b>2nd</b> 1:16	<b>adjourned</b> 23:7		
	<b>admissions</b> 5:20		
	<b>admit</b> 17:5 18:3		
	<b>admitted</b> 5:23 21:1		
	<b>adverse</b> 16:15		

[built - department]

Page 2

<p><b>built</b> 11:12  <b>burden</b> 12:10,19,22  12:24 17:16,23  20:10 21:11  <b>business</b> 8:5 9:16  10:7 11:16 16:16  17:10</p>	<p><b>checks</b> 9:6  <b>cited</b> 14:10  <b>civil</b> 6:12  <b>claim</b> 5:2 6:22,23  6:25 7:1 12:12,16  12:16,21,23 13:18  14:11 15:8 18:17  24:5  <b>claimant</b> 5:5,8,18  5:25 6:1 7:10 8:6,7  8:10,12,15,21,23  9:1,3,8 10:6,8,21  11:1,21,24 12:22,25  13:5,7,12 15:7 16:2  16:3,10,13 17:4,16  17:23 18:18 19:1,2  19:6,9,17 20:10,13  20:15,18 21:5,9,10  24:5  <b>claimants</b> 9:16  <b>claimed</b> 8:17,18  <b>claims</b> 5:9,10 6:23  6:24 7:2,3 8:16,20  9:7,8,9,10 12:25  13:1,2,4,16 15:17  15:20,21,25 16:5  17:18 20:11 21:11  21:12,14  <b>clear</b> 14:5,5,24  <b>clearinghouse</b> 7:11  <b>clerk</b> 4:2  <b>clerk's</b> 21:22  <b>cleveland</b> 3:21  <b>closer</b> 18:12  <b>closing</b> 18:5  <b>code</b> 5:13  <b>codified</b> 13:24  <b>collected</b> 8:11,22  <b>collectively</b> 5:5  <b>come</b> 12:4,4  <b>comfortable</b> 19:11  <b>coming</b> 12:1 19:12  <b>commencement</b>  11:7  <b>commentator</b> 15:3  <b>commercial</b> 20:21</p>	<p><b>common</b> 18:6 20:21  <b>companies</b> 5:25 7:4  8:24 9:3  <b>company</b> 5:2,4  15:22  <b>company's</b> 17:10  <b>compared</b> 10:17  <b>competing</b> 15:11  <b>complete</b> 4:21  <b>component</b> 9:25  <b>concept</b> 14:21  <b>concerning</b> 4:25  <b>concerns</b> 10:7  <b>conclude</b> 12:24  16:10 17:12,15,22  20:9,16,17 21:10  <b>concluded</b> 23:9  <b>conclusion</b> 15:24  20:24  <b>conclusions</b> 5:14  <b>concurrent</b> 9:6  <b>conditions</b> 14:7  20:21  <b>confirmed</b> 16:19  <b>congress</b> 1:15 3:4  <b>connection</b> 8:13  15:15 19:4,20  <b>consideration</b> 16:1  <b>considered</b> 5:16  <b>constitute</b> 15:16  <b>contact</b> 21:22  <b>contains</b> 5:13  <b>controls</b> 6:20  <b>controverted</b> 17:14  <b>convenience</b> 4:24  <b>corp</b> 14:4  <b>corporate</b> 5:24  <b>cost</b> 12:7  <b>counsel</b> 6:4  <b>country</b> 25:23  <b>court</b> 1:1,13 4:4,7  4:14,18,23 12:15  13:21 14:11 15:19  22:8,17,23 23:2,6,7  <b>courts</b> 14:8 15:1,10  15:22</p>	<p><b>credit</b> 5:24 7:7  10:22,25 13:10  14:18 18:3,9,9,12  18:14 19:17,21  20:16,21,24,25 21:7  <b>critical</b> 10:4 16:13  16:20  <b>cross</b> 17:5,12  <b>crude</b> 11:13  <b>current</b> 13:9 14:12  14:16 17:19 18:1,8  18:11,13,25  <b>customer</b> 7:18  <b>customers</b> 7:21  8:22 9:1</p>
<p><b>c</b></p>			<p><b>d</b></p>
<p><b>c</b> 3:1 4:1 25:1,1  <b>c.t.</b> 12:2  <b>calculate</b> 8:1  <b>call</b> 22:20  <b>called</b> 13:25  <b>canada</b> 9:20  <b>canadian</b> 9:19  11:11  <b>capital</b> 11:18  <b>carl</b> 5:23 19:9  <b>carried</b> 11:21  <b>carrier</b> 17:7  <b>carriers</b> 7:13 8:14  8:14  <b>cars</b> 8:17,19  <b>carved</b> 19:5  <b>case</b> 1:3 4:8,8,22  5:21 11:7,8 12:24  13:23 14:9 15:9  18:20  <b>cases</b> 14:1  <b>cash</b> 10:16,17  <b>center</b> 3:19  <b>central</b> 7:11 11:9  <b>certain</b> 5:8 6:15 7:6  7:11 14:1  <b>certify</b> 25:3  <b>challenge</b> 16:3  17:22  <b>changed</b> 11:5 18:23  <b>changes</b> 20:24  <b>chapter</b> 4:8 5:1  11:8 13:23  <b>characterized</b> 16:21  <b>charges</b> 7:18,24  13:3,6,16 16:7 19:4  19:6  <b>charleston</b> 15:22</p>			<p><b>d</b> 4:1 24:1  <b>dakotas</b> 12:1  <b>date</b> 13:21  <b>dated</b> 7:7  <b>day</b> 8:5  <b>days</b> 19:13 21:19  22:13,14,22  <b>deal</b> 20:20  <b>dealing</b> 18:7,10,15  18:18  <b>debtor</b> 1:9 5:9,10  8:18,19 9:17,19  11:5,7,8,14,16  12:17,17 13:19,20  <b>debtor's</b> 7:5 9:23  16:9  <b>decide</b> 22:6  <b>decided</b> 15:10  <b>decision</b> 4:19,22,25  5:13,16 10:24 15:19  <b>decisions</b> 15:6  <b>deemed</b> 12:13  <b>deferred</b> 11:19  <b>defined</b> 8:24  <b>deliver</b> 17:7  <b>delivered</b> 14:15  17:25  <b>delivery</b> 11:22 17:4  <b>denied</b> 15:19  <b>department</b> 10:11</p>

<p><b>dependent</b> 21:6  <b>deputy</b> 23:8  <b>derailment</b> 11:14  <b>described</b> 11:5  <b>destination</b> 7:19  <b>determined</b> 9:10,14  10:21 21:14  <b>diem</b> 15:21  <b>different</b> 14:25  <b>difficult</b> 15:5 22:16  <b>digest</b> 21:16  <b>direct</b> 16:22  <b>directly</b> 8:22  <b>disagree</b> 15:17  <b>disagreed</b> 6:6  <b>disclosure</b> 9:18 11:6  16:9  <b>discrepancy</b> 6:19  <b>dispute</b> 12:11  <b>district</b> 1:2,14  15:19  <b>docket</b> 5:18  <b>doctrine</b> 13:25  <b>document</b> 5:17  <b>doing</b> 4:21 10:7  19:10 22:10  <b>dramatic</b> 11:8  <b>draw</b> 21:6  <b>drillers</b> 11:11  <b>due</b> 7:6 8:3,4 11:3  11:15  <b>duplicate</b> 6:23</p>	<p><b>element</b> 16:11  17:21,21,25 18:3  20:10  <b>elements</b> 16:5  <b>emphasized</b> 19:15  <b>england</b> 10:2  <b>enjoyed</b> 11:16  <b>enter</b> 22:5  <b>entire</b> 7:22  <b>entirety</b> 6:24  <b>entitled</b> 13:19,22  14:11 16:6 18:16  <b>entity</b> 18:9  <b>entry</b> 5:18  <b>equitable</b> 13:24  <b>equities</b> 15:11 21:9  <b>equity</b> 13:20  <b>erie</b> 7:4  <b>esq</b> 3:8,15,23  <b>establish</b> 12:25 13:5  13:7  <b>established</b> 9:13  10:9 13:12,24 16:4  16:11  <b>establishing</b> 10:20  <b>evidence</b> 5:21,22  12:20,21,23 14:23  17:15 20:9  <b>exact</b> 14:22  <b>examination</b> 17:5  17:12  <b>exceed</b> 11:24  <b>excellent</b> 6:5,9  <b>excepts</b> 13:14 20:18  <b>excessive</b> 12:8  <b>exchange</b> 9:6  <b>exclude</b> 16:1  <b>exclusive</b> 18:6  <b>exhibits</b> 5:23  <b>existence</b> 20:23  <b>expectation</b> 13:8  14:16 18:1  <b>expected</b> 20:4  <b>expenditures</b> 11:18  <b>expense</b> 14:13  17:19</p>	<p><b>expenses</b> 13:6 14:2  <b>explained</b> 14:21  <b>expunged</b> 6:24  <b>extent</b> 6:19 12:16</p> <p style="text-align: center;"><b>f</b></p> <p><b>f</b> 1:22 15:23 25:1  <b>f.2d</b> 14:4,10  <b>facie</b> 12:20  <b>fact</b> 5:13 8:21 15:25  <b>facts</b> 9:12,15 15:10  17:13 21:8  <b>fail</b> 13:2  <b>failed</b> 13:5,7  <b>familiar</b> 21:3  <b>far</b> 10:18  <b>fashion</b> 22:9  <b>faster</b> 11:12  <b>february</b> 1:19 25:10  <b>federal</b> 5:14 13:21  <b>felt</b> 19:11,25  <b>figure</b> 21:17  <b>filed</b> 5:2 12:12,14  14:14  <b>filing</b> 9:2  <b>filings</b> 5:20 9:14  <b>final</b> 17:4 22:5  <b>finance</b> 15:22  <b>financial</b> 5:24  <b>find</b> 9:12 16:2 17:18  20:19,23  <b>findings</b> 5:13  <b>fine</b> 22:12  <b>first</b> 9:18 11:6  13:17 15:13 16:3,7  16:9  <b>firsthand</b> 17:9  <b>five</b> 15:3  <b>floor</b> 1:16  <b>flow</b> 10:11  <b>focus</b> 6:16,16  <b>following</b> 9:12,12  <b>follows</b> 9:15  <b>foregoing</b> 25:3  <b>format</b> 5:12  <b>forth</b> 6:17 12:19  14:6</p>	<p><b>found</b> 6:11 9:11  15:3  <b>fourteen</b> 22:13  <b>freight</b> 7:13,18,24  8:11,12 9:21 11:23  15:14,25 16:19 19:4  19:19  <b>funds</b> 8:22 10:11  <b>further</b> 4:22 16:24  21:17,20 22:25 23:4</p> <p style="text-align: center;"><b>g</b></p> <p><b>g</b> 1:23 4:1  <b>gary</b> 1:23 4:2  <b>general</b> 5:24 6:1  13:10 14:18 18:3,9  18:12,14 19:17,21  <b>generally</b> 13:3  <b>give</b> 14:7  <b>given</b> 12:23  <b>going</b> 4:19,20 6:18  10:22 20:12 22:16  <b>good</b> 4:4,5,6,11,12  4:13,17,18 14:10  <b>goods</b> 13:8 14:15  17:19,25  <b>gross</b> 11:17  <b>group</b> 15:7</p> <p style="text-align: center;"><b>h</b></p> <p><b>hand</b> 9:4 21:9  <b>hansen</b> 5:24 10:7  11:25 16:8 17:11  19:9,15,19,24 20:24  21:4  <b>hansen's</b> 10:10,20  19:22 20:2  <b>happy</b> 22:10  <b>hauling</b> 11:14  <b>hearing</b> 2:1 5:5,22  6:9,16 9:10,13  12:15 14:22,23  17:15 18:24 20:9  21:14,23  <b>hearing's</b> 21:20  <b>hearings</b> 6:12  <b>heart</b> 17:24</p>
<b>e</b>			
<p><b>e</b> 1:22,22 3:1,1 4:1,1  24:1 25:1  <b>earned</b> 7:25  <b>easier</b> 6:15 18:20  <b>easily</b> 18:4 22:14  <b>east</b> 11:10  <b>easy</b> 14:21  <b>economical</b> 16:22  17:8  <b>effect</b> 16:15  <b>efficient</b> 6:12  <b>efforts</b> 17:9  <b>either</b> 8:7,9,22</p>			

[held - necessary]

Page 4

<p><b>held</b> 7:4  <b>helped</b> 6:16  <b>helpful</b> 6:5,7  <b>hermon</b> 9:24  <b>hiccups</b> 19:12  <b>high</b> 12:9  <b>hine</b> 3:17  <b>hit</b> 12:2,4  <b>hold</b> 10:12  <b>hon</b> 1:23  <b>honor</b> 4:12,17 22:1  22:5,20,25 23:4  <b>honorable</b> 4:2</p>	<p><b>interchanged</b> 7:20  8:8,9,14 11:21  <b>interest</b> 12:12,14  <b>interests</b> 7:5 20:22  <b>interfaced</b> 12:8  <b>interline</b> 7:9 11:23  13:3,6,16 15:15,25  19:3  <b>interlining</b> 15:20  <b>international</b> 9:21  <b>inventory</b> 7:6  <b>invoice</b> 7:17,22  <b>involved</b> 7:12,23  <b>irving</b> 5:7,25 8:24  8:24,25,25 9:3 10:8  10:10,11,17,18 11:3  11:25 16:17 17:1,10  19:21,23  <b>irving's</b> 10:18 12:7  <b>iss</b> 7:10,11,16 8:1  8:11,23 10:25 19:7  19:11,25 20:4,5,13  20:14  <b>issue</b> 9:7 17:17  <b>issues</b> 17:11 22:2</p>	<p><b>keep</b> 18:25 20:12  <b>key</b> 3:19  <b>kind</b> 21:17  <b>knowledge</b> 17:9  21:2  <b>known</b> 7:17</p>	<p><b>mean</b> 9:14  <b>meaningful</b> 17:22  <b>meant</b> 20:1  <b>meet</b> 16:11 17:23  <b>mere</b> 15:25  <b>met</b> 20:10 21:11  <b>middle</b> 3:12  <b>miles</b> 9:22  <b>mineola</b> 25:25  <b>minute</b> 6:3 14:10  <b>mma</b> 5:10 7:9 8:6,8  8:8,11,14,15,21 9:2  9:4,16,20 10:6,8,8  10:12,17,17 11:1,2  11:2,21,23,25 12:3  13:6,8,13 15:15  16:12,19,20,20 17:3  17:6 18:18,24,25  19:8,12,14,20 20:15  20:15,25 21:6,9  <b>mma's</b> 6:24 10:22  12:2 13:10 16:15,25  17:9 19:7,17,21  20:16 21:5  <b>money</b> 11:2 20:5  <b>monies</b> 10:15 19:11  19:14  <b>month</b> 6:10 8:5 9:2  9:9 15:21 17:21  <b>monthly</b> 8:2 11:15  <b>months</b> 13:14,25  14:14 18:15 20:19  <b>montreal</b> 1:7 4:7  5:9 10:4,5 16:14,21  <b>morning</b> 4:4,5,6,11  4:12,13,17,18,20  22:24  <b>move</b> 11:9  <b>multiple</b> 7:13  <b>mutually</b> 18:6</p>
<p><b>i</b></p>	<p><b>j</b> 3:8 5:1  <b>j.d.</b> 8:25  <b>january</b> 9:18  <b>job</b> 6:14 14:8  <b>john</b> 10:4 11:22  12:6,8 16:14,21,23  17:3  <b>joint</b> 5:18 21:21  <b>judge</b> 1:24 6:10  <b>judge's</b> 2:1  <b>judgment</b> 22:5  <b>judicially</b> 16:4  <b>july</b> 11:4  <b>june</b> 7:8 11:4</p>	<p><b>lake</b> 7:4  <b>language</b> 14:6  <b>larger</b> 10:18  <b>law</b> 5:14 13:4,17  15:16,24  <b>lead</b> 16:10  <b>leading</b> 11:7  <b>leased</b> 8:17,19  <b>led</b> 15:4  <b>left</b> 14:8  <b>legal</b> 25:22  <b>lepene</b> 3:23 4:14,17  14:23 22:2,18,19  23:3,4  <b>lepene's</b> 22:15  <b>lindsay</b> 3:15  <b>line</b> 7:7 9:21 12:2,5  20:24,25 21:6  <b>lines</b> 17:4 19:15  <b>listed</b> 6:20  <b>llp</b> 3:17  <b>long</b> 13:24  <b>look</b> 4:23 13:17  <b>looking</b> 16:7 20:6  <b>loss</b> 16:16  <b>lot</b> 21:15</p>	<p><b>m</b></p>
<p><b>ian</b> 6:1 16:18  <b>ideas</b> 21:24  <b>identify</b> 15:6  <b>ii</b> 14:9 15:18  <b>immediately</b> 14:2  <b>impact</b> 16:24  <b>importance</b> 16:20  16:20  <b>impossible</b> 15:6  17:6  <b>inability</b> 16:12  <b>included</b> 5:23 9:22  <b>including</b> 5:25  16:15  <b>income</b> 11:18  <b>incorporated</b> 20:20  <b>increase</b> 11:16,20  <b>increased</b> 11:9  <b>incurred</b> 14:2,13,13  19:4  <b>indicate</b> 21:13,20  <b>indicated</b> 9:17  <b>indirectly</b> 17:7  <b>indiscernible</b> 17:10  <b>influenced</b> 10:25  <b>initially</b> 4:23 10:18  <b>input</b> 21:18 22:7  <b>inspection</b> 8:19  <b>integrated</b> 9:20  <b>interchange</b> 7:12,15  8:3 12:3 16:12,25  17:6 19:20 20:12</p>	<p><b>k</b></p>	<p><b>maine</b> 1:2,7,14,17  3:18 4:7,15,16 5:2,3  5:9 6:22,25 8:18,20  9:23,24 10:1,3  11:15 14:3,9 15:18  <b>manager</b> 5:24 6:1  18:9  <b>manner</b> 18:19  <b>materials</b> 6:4  <b>matter</b> 1:5 13:4,17  15:16,24 18:5 19:13</p>	<p><b>n</b></p>
<p><b>k</b> 3:15  <b>keach</b> 3:8 4:9,13 5:1  14:24 21:25 22:1,14  22:19,21,24,25</p>	<p><b>n</b> 3:1 4:1 24:1 25:1  <b>narrow</b> 17:17  <b>necessarily</b> 14:13  14:20  <b>necessary</b> 13:6 14:2</p>		

<p>necessity 16:7 17:16 17:18 needed 11:13,18 negate 12:20 negative 17:2 nelson 3:10 net 8:4 11:17 new 3:18 4:15 5:3,4 6:22,25 8:17 10:1,2 10:5,15 11:12 12:5 12:5,6 19:1,1,3,16 nicole 2:25 25:3,6 northern 3:18 4:15 4:15 5:2,3 8:18,20 10:1,1 northern's 6:22,25 note 5:5 14:18,20 notice 12:15 notwithstanding 6:6 november 5:22 number 4:8 numbers 5:11 ny 25:25</p>	<p>operating 11:17 13:6,9 14:12,17 18:2,8,11,14 operation 16:25 17:20 operations 16:15 opinion 2:1 oral 2:1 4:19,25 14:22 order 13:15,21 20:11 21:22 ordinary 17:19 origin 7:18 originally 9:22 originate 7:16 originated 8:7,9,13 outset 14:18,20 owed 10:15 11:23 11:24 18:25 19:7,14 owing 8:4,5 owned 8:17,19 9:19</p>	<p>payable 7:14 8:2 9:5 paying 7:21,23 payment 8:4 10:9 19:7 20:4,14 payments 18:25 period 9:2 14:2 permitted 14:1 persuasive 17:13 peter 1:23 4:2 petition 14:14 pgc 1:3 ph 5:24 7:7 11:18 13:23 phone 4:14 pipelines 11:12 place 4:21,23 6:18 14:10 plan 22:20 plausibly 18:10 pleadings 5:6 pleasure 6:12 point 7:18,19 portland 1:17 3:6 3:13 positive 11:17 possible 16:1,16 post 19:1 potentially 18:16 powerful 18:21 practical 16:22 17:8 preceding 9:2 14:3 prepetition 15:8 preponderance 12:23 presentation 6:9 presented 5:21 20:9 preside 6:13 presiding 4:2 pretrial 21:21 prima 12:20 principle 9:24 15:7 principles 15:7 prior 9:14,15 11:14 15:6 18:19 priority 5:10 9:9 13:1,19,22 14:7,11</p>	<p>15:8,19,21 16:1,6 18:16 procedures 5:15 proceedings 23:9 25:4 proceeds 7:6,24 process 20:14 21:17 produces 12:21 producing 11:12 product 17:7 professional 6:11 prompt 20:4 proof 6:22,23,25 7:1 12:10,12 proofs 5:2 24:5 property 12:17 13:20 proposal 21:18,24 proposed 19:2 21:21 22:20 protection 20:19 protections 13:14 prove 12:22 provided 6:4,15 8:12,20 10:2 11:23 13:8 15:15 16:19 provides 7:11 12:11 13:18 providing 19:19 public 3:20 pulp 8:24 10:11 purposes 7:2 8:15 pursuant 15:9 put 4:21 11:25 12:19 22:9</p>
<b>o</b>	<b>p</b>	<b>q</b>	
<p>o 1:22 4:1 25:1 objecting 12:19,21 objection 7:3 12:14 24:4 objections 5:1,17 objects 12:14 obligations 7:6 observant 15:5 obviously 13:17 office 3:2 9:24 21:22 oh 3:21 oil 11:9,11,12,13,15 11:20 12:1,3 16:23 18:19,22 19:4,15 okay 22:8,17,23 23:6 old 25:23 once 10:12 19:10 open 21:24 operated 9:20,23</p>	<p>p 3:1,1 4:1 page 24:3 paid 10:23 13:9 14:16 18:1 19:6,14 19:25 20:1,7,7 paper 8:25,25 9:3 10:10 17:10 paper's 10:11 part 14:19 participant 8:4 participate 8:1 10:25 participating 7:9,12 7:16 parties 5:20,21 6:4 8:16 15:11 18:5 20:12 21:16 22:6 parts 4:20 party 12:13,19,21 18:7 pass 16:2 pay 8:23 10:8 11:3 14:1 20:14,14,15 21:5</p>	<p>qualify 9:8 quebec 9:23 10:2 11:15 quickly 22:4 quite 12:9 quote 10:10,15 12:12,14,15,17 13:12,13,18,23 15:5 16:13,14 19:10 20:3 21:1,2,3,3</p>	



[quotes - stipulation]

Page 6

<b>quotes</b> 20:2	<b>refer</b> 5:4,11	<b>reviewing</b> 4:23	<b>shipping</b> 18:22
<b>r</b>	<b>referred</b> 5:7 7:2	<b>rise</b> 14:7 23:8	<b>short</b> 9:21 11:17
<b>r</b> 1:22 3:1,23 4:1 25:1	<b>referring</b> 5:12	<b>road</b> 25:23	<b>shortest</b> 10:3
<b>rail</b> 7:13 10:3,4 15:15 16:13,20 17:20	<b>refineries</b> 11:10,13 16:23	<b>robert</b> 3:8 5:1	<b>shortly</b> 19:13 20:1
<b>railroad</b> 5:7 7:9,21 7:22 8:7 9:21 13:25 14:17 15:8 17:1 18:7,8,10,11,15	<b>regarding</b> 16:18	<b>room</b> 3:5	<b>shows</b> 20:11
<b>railroad's</b> 14:18 18:3,13	<b>regions</b> 11:10	<b>route</b> 7:20 9:22 10:3 16:22	<b>shur</b> 3:10
<b>railroads</b> 7:12,16 7:17,20,23 8:1,10 15:20 18:18 19:21 19:23 21:5,10	<b>register</b> 6:25	<b>rule</b> 5:14 13:14,25 14:6 20:19	<b>significant</b> 11:16 16:15 17:2
<b>railway</b> 1:7 4:8 5:2 5:3,10 7:4 8:7 9:16 18:2	<b>relating</b> 22:3	<b>ruling</b> 24:2	<b>simpson</b> 6:1 10:24 16:8,11,18 17:9,13 20:3 21:1,5
<b>railways</b> 5:4,5,8,19 6:1,2 7:10 8:6,13,15 8:21,23 9:1,3,8 10:7 10:9,22 11:1,22,24 12:25 13:5,7,12 16:2,4,10,13 17:4 17:16,23 19:1,3,6,9 19:17 20:10,13,15 20:18 21:11 24:5	<b>relationship</b> 9:16	<b>s</b>	<b>simultaneously</b> 10:13,19
<b>reaching</b> 5:16	<b>relatively</b> 22:4	<b>s</b> 3:1 4:1	<b>six</b> 9:2 13:14,25 14:13 15:20 17:21 18:15 20:19
<b>read</b> 4:19,20 15:18	<b>reliance</b> 13:10 14:17 18:2 19:17 20:16	<b>satisfied</b> 17:16	<b>solicit</b> 17:10
<b>reality</b> 19:1	<b>relied</b> 18:11,13 19:24	<b>satisfy</b> 16:4	<b>solutions</b> 25:22
<b>really</b> 22:16	<b>relief</b> 13:22	<b>sawyer</b> 3:10	<b>somebody</b> 22:10
<b>reason</b> 10:20	<b>rely</b> 10:22 18:7 19:21,23	<b>schedule</b> 22:15	<b>sooner</b> 22:15
<b>reasons</b> 13:3,3 19:10 22:8	<b>remained</b> 11:18	<b>se</b> 13:4	<b>sort</b> 13:11 20:17 22:5
<b>receipt</b> 19:7	<b>reorganization</b> 14:14 15:9	<b>seated</b> 4:3	<b>sought</b> 15:20
<b>receivable</b> 7:5,14 8:2 9:5	<b>reorganize</b> 8:17,19	<b>second</b> 8:5 10:14 17:21	<b>southern</b> 3:18 4:15 5:3 10:15 12:5
<b>received</b> 20:5	<b>repeat</b> 6:18	<b>section</b> 5:11,11 12:11,13 13:1,24 15:4	<b>southern's</b> 12:5
<b>receiver</b> 13:20	<b>reply</b> 5:19	<b>secure</b> 7:6 19:25	<b>speak</b> 19:12
<b>receivers</b> 14:1	<b>report</b> 21:19,20	<b>security</b> 7:5,7 13:13 20:17,21	<b>speaker</b> 4:5,6
<b>receivership</b> 14:1,3	<b>representations</b> 9:15	<b>see</b> 14:3	<b>special</b> 13:13 20:17
<b>receiving</b> 20:5	<b>representing</b> 7:24	<b>send</b> 10:13,14	<b>square</b> 3:20
<b>record</b> 6:18 25:4	<b>represents</b> 14:12	<b>sending</b> 10:18	<b>st</b> 10:4 11:22 12:6,8 16:14,21,23 17:3
<b>reduction</b> 16:17	<b>requests</b> 15:8	<b>sense</b> 18:6	<b>stab</b> 21:23
	<b>required</b> 9:11 16:5 21:15,17,20	<b>sent</b> 10:16	<b>start</b> 14:10
	<b>resolving</b> 7:3	<b>services</b> 8:12,20 11:23 13:8 14:15 15:4,14,25 16:19 17:19,25 19:19 20:12	<b>started</b> 18:22
	<b>respect</b> 22:2	<b>set</b> 6:17 14:6	<b>stated</b> 10:20
	<b>respective</b> 9:4	<b>settle</b> 7:13 9:4	<b>statement</b> 9:18 11:6 16:10
	<b>response</b> 5:18	<b>settlement</b> 7:10	<b>statements</b> 16:9
	<b>responsible</b> 7:21,22	<b>share</b> 7:24 12:7,7 20:6,6	<b>states</b> 1:1 11:11
	<b>result</b> 8:21	<b>shifts</b> 12:22	<b>status</b> 15:21 21:19 21:20
	<b>resulted</b> 11:20	<b>shipment</b> 7:19,23 12:1 16:23	<b>stipulate</b> 22:4
	<b>revenue</b> 8:11 11:17 16:17	<b>shipments</b> 8:13 11:20 15:16 18:19 19:4,8	<b>stipulated</b> 8:16
	<b>revenues</b> 13:9 14:17 18:2,8,11,14		<b>stipulation</b> 4:20 22:6
	<b>reversed</b> 15:18		
	<b>review</b> 4:22		

<p><b>stipulations</b> 5:19 6:15,17 9:11 21:13 <b>streamline</b> 22:11 <b>street</b> 1:15 3:4,12 <b>struggled</b> 15:1,1 <b>subject</b> 21:18 <b>submit</b> 21:19,21 <b>subsequent</b> 9:10 21:14 <b>subset</b> 13:11 <b>subsidiary</b> 9:20 <b>substantial</b> 9:25 <b>sufficient</b> 12:20 17:18 <b>suggestion</b> 21:15 22:1 <b>suite</b> 25:24 <b>supported</b> 20:3 <b>sure</b> 10:22 15:13 21:16 22:15,21 <b>susceptible</b> 18:4 <b>suspect</b> 22:14,16 <b>swap</b> 10:9 19:5 <b>system</b> 7:10 9:21,22 9:25 10:9,21 19:3 19:25 20:13 <b>systems</b> 10:1</p>	<p><b>thing</b> 6:14 <b>things</b> 5:17 11:5 16:16 <b>think</b> 12:10 15:1 17:24 22:1,13 <b>third</b> 17:25 20:10 <b>thompson</b> 3:17 <b>thorough</b> 6:11 <b>thought</b> 15:5 22:9 <b>thoughts</b> 22:18 <b>three</b> 13:7,15 14:15 14:19 16:4 <b>throw</b> 21:15 <b>time</b> 10:6 11:17 21:21,23 <b>times</b> 7:4 <b>title</b> 12:13 13:22 <b>titled</b> 9:9 <b>today</b> 7:2 <b>track</b> 9:22 <b>traffic</b> 7:13,15,17 8:3,8,9 16:12 17:1,3 19:20 <b>train</b> 12:4 <b>trains</b> 11:9,13 <b>transcribed</b> 2:25 <b>transcript</b> 25:3 <b>transfer</b> 10:13,14 <b>transferring</b> 11:2 <b>transfers</b> 9:6 10:19 <b>transport</b> 11:13 12:6 <b>transportation</b> 10:1 10:3 19:14 <b>travel</b> 12:24 <b>treatment</b> 15:19 16:6 <b>trial</b> 11:25 16:18,24 19:15 <b>true</b> 25:4 <b>trustee</b> 3:2,3,11 4:10 5:1,1 13:2,11 15:12,14,14 16:3 17:5,12 <b>trustee's</b> 5:17,19 18:21 24:4</p>	<p><b>truth</b> 18:13 <b>try</b> 4:21 22:11 <b>trying</b> 6:17 <b>turn</b> 16:6 <b>turning</b> 12:10 15:13 17:24 <b>two</b> 6:10 11:6 13:4 14:13</p> <p style="text-align: center;"><b>u</b></p> <p><b>u.s.</b> 1:13,24 3:2,3,11 11:10 <b>u.s.c.</b> 5:11 <b>unable</b> 16:25 <b>underfunded</b> 11:19 <b>unenforceable</b> 12:16 <b>unidentified</b> 4:5,6 <b>unified</b> 15:6 22:5 <b>unify</b> 6:18 <b>unique</b> 15:10 21:8 <b>united</b> 1:1 11:11 <b>unsecured</b> 13:4,18 <b>use</b> 11:9</p> <p style="text-align: center;"><b>v</b></p> <p><b>valid</b> 7:4 <b>validity</b> 12:20,22 <b>various</b> 5:6 <b>veritext</b> 25:22 <b>vermont</b> 9:23 <b>view</b> 17:17 19:16 <b>virtually</b> 10:19 <b>vs</b> 15:22</p> <p style="text-align: center;"><b>w</b></p> <p><b>wait</b> 20:13 <b>want</b> 6:8 21:16 22:7 <b>wanted</b> 22:9,11 <b>way</b> 17:3 <b>ways</b> 17:2 <b>week</b> 10:12 <b>weekly</b> 10:9 <b>western</b> 11:10 <b>wheeling</b> 7:3 20:23 20:25 21:6 <b>wholly</b> 9:19 <b>wire</b> 9:6 10:13,14 11:2</p>	<p><b>withdrawn</b> 6:24 7:1 <b>withheld</b> 11:2 <b>witnesses</b> 6:9 <b>words</b> 10:10 <b>worked</b> 11:5 21:3 <b>worthiness</b> 11:1 13:10 19:18,21 <b>written</b> 5:17 <b>wrote</b> 14:11</p> <p style="text-align: center;"><b>x</b></p> <p><b>x</b> 1:4,11 24:1</p> <p style="text-align: center;"><b>y</b></p> <p><b>yawn</b> 2:25 25:3,6 <b>year</b> 6:10 <b>years</b> 6:10 11:6</p> <p style="text-align: center;"><b>z</b></p> <p><b>zahradka</b> 3:15 4:9 4:12</p>
<b>t</b>			
<p><b>t</b> 25:1,1 <b>take</b> 6:3 <b>talk</b> 22:2 <b>technically</b> 17:6 <b>telephonic</b> 3:23 <b>terms</b> 10:16 14:6 <b>test</b> 14:7,19 <b>testified</b> 10:24 16:18,24 17:2 18:24 19:9 21:1 <b>testify</b> 18:10 <b>testimonial</b> 5:22 <b>testimony</b> 5:23 14:23 16:8,11 17:11 17:13 20:3,8,11 21:4 <b>thank</b> 6:3,8 22:23 22:25 23:2,4,6</p>			



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In the Matter of:

MONTREAL MAINE & ATLANTIC Case No. 13-10670-PGC  
RAILWAY LTD.,  
Debtor.

U.S. Bankruptcy Court  
537 Congress Street, 2nd Floor  
Portland, Maine

November 20, 2015  
1:33 PM

B E F O R E :  
HON. PETER G. CARY  
U.S. BANKRUPTCY JUDGE

1     **Hearing re:    Doc #1826;  Objection to Claim**

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25     **Transcribed by:   Dawn South and Sheila Orms**

1 A P P E A R A N C E S :

2 BERNSTEIN SHUR

3 Chapter 11 Trustee

4 100 Middle Street

5 P.O. Box 9729

6 Portland, ME 04104

7

8 BY: ROBERT J. KEACH, ESQ.

9 LINDSAY ZAHRADKA, ESQ.

10

11 THOMPSON HINE

12 Attorney for New Brunswick Southern Railway Company and

13 the Maine Northern Railway Company

14 3900 Key Center

15 127 Public Square

16 Cleveland, OH 44114-1291

17

18 BY: ALAN R. LEPENE, ESQ.

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

THE CLERK: The United States Bankruptcy Court for the District of Maine is now in session, the Honorable Peter Cary presiding. Please be seated and come to order.

THE COURT: Good afternoon.

(A chorus of good afternoon)

THE COURT: We're here on the Montreal Maine & Atlantic Railway Ltd. case, 13-10670, and we are on a continued hearing of document 1826, trustee's objection to proofs of claim of New Brunswick Southern Railway and Maine Northern Railway. And I understand we have a stipulation that gets rid of the duplicate claims.

But why don't I begin with appearances starting with you, Mr. Keach.

MR. KEACH: Thank you, Your Honor. Robert Keach, the Chapter 11 Trustee for Montreal Maine & Atlantic Railway Ltd. I'm here with Lindsay Zahradka from Bernstein Shur.

MS. ZAHRADKA: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. KEACH: Mr. Caruso is here as a witness, we'll introduce him later.

THE COURT: Okay. Hello, Mr. Caruso.

MR. LEPENE: Good afternoon, Your Honor, Alan Lepene with Thompson Hine on behalf of the New Brunswick Southern Railway Company and the Maine Northern Railway

1 Company. And with me today, Ryan Ellis, Ian Simpson, and  
2 Karl Hansen with J.D. Irving and the affiliated railroad  
3 companies who will be witnesses today.

4 THE COURT: Wonderful. Good afternoon.

5 Thank you for the stipulations. So we can take  
6 away 242 and 243, correct?

7 MR. KEACH: That is correct, Your Honor.

8 THE COURT: Okay. And then I saw the stipulations  
9 regarding the -- what the claim under 257 is comprised of  
10 and what the claim under 259 is comprised of. Wheelings  
11 valid security interest stipulation in the AR, the ISS  
12 descriptions, Irving as affiliate, and the sole issue that  
13 we're up to today.

14 Anybody have any great suggestion on how to most  
15 efficiently deal with the document -- the exhibits?

16 MR. KEACH: Thank you, Your Honor.

17 I actually think we covered it, but both with  
18 respect to -- I have received the Irving railroad's  
19 exhibits. I think it is fair to say that we probably won't  
20 be introducing any other exhibits other than the ones they  
21 have, although I'll reserve on that. It'll be at most one  
22 or two, if there's anything. But I think that covers the  
23 universe. And certainly the stipulation covers the full  
24 universe of potential exhibits, all of which are deemed  
25 admitted, and we'll make sure to the extent they're not



1 otherwise admitted that they come in before we great.

2 THE COURT: Great. And thank you. I've just been  
3 notified that I have forgotten to introduce -- we may have  
4 people on --

5 MR. KEACH: Oh, okay.

6 THE COURT: Hello, good afternoon. This is Judge  
7 Peter Cary in the Montreal Maine & Atlantic Railway case.  
8 Is there anybody on the telephone that would like to enter  
9 their appearance in this afternoon's hearings?

10 COURTCALL: I'm sorry, Your Honor, no one is  
11 scheduled to dial in for it.

12 THE COURT: Thank you.

13 MR. CAWOOD: You're welcome.

14 THE COURT: (Indiscernible) all this advanced  
15 technology. Got it. Okay. We're set. Sorry, Mr. Keach.

16 MR. KEACH: Not at all.

17 The -- as I said, to the extent not otherwise  
18 introduced in the flow of testimony we'll make sure the  
19 Court has copies of any exhibits that are on the stipulation  
20 that are not otherwise introduced.

21 THE COURT: Okay.

22 MR. KEACH: The -- and in terms of order of  
23 presentation, Mr. Lepene and I talked ahead of time, and  
24 this is their claim, they'll start first and we'll respond.  
25 So his direct witnesses will be first, I'll cross, and then

1 we'll go on from there.

2 THE COURT: Wonderful. Thank you.

3 Mr. Lepene?

4 MR. LEPENE: Thank you, Your Honor.

5 Again, Your Honor, for the record, Alan Lepene  
6 with the law firm of Thompson Hine on behalf of the New  
7 Brunswick Southern Railway Company and the Maine Northern  
8 Railway Company.

9 And as Your Honor has noted in terms of the  
10 stipulation that we have submitted, the purpose of this  
11 hearing is to address whether the claims asserted by the  
12 Irving Railroad -- and I'm going refer to both New Brunswick  
13 Southern Railway Company and Maine Northern Railway Company  
14 as the Irving railroad.

15 THE COURT: Okay.

16 MR. LEPENE: These are railroads that are  
17 affiliated with J.D. Irving, Limited, and so that there is  
18 no confusion with respect to other parties that have been  
19 involved in the Chapter 11 proceeding of the Montreal Maine  
20 & Atlantic Railway, these are companies that are not related  
21 to Irving Oil.

22 The -- as I indicated, the issue here is whether  
23 the claims that we have asserted qualify as six-month claims  
24 entitled to priority under Section 1171(b) of the Bankruptcy  
25 Code.

1           The trustee filed his objection, we filed a  
2 response. I did see today filed just about an hour and a  
3 half or two hours ago a reply that the trustee has filed.  
4 I've had a chance to look at that briefly, I haven't had an  
5 opportunity to study that in any detail, but I think in  
6 terms of the papers that have been filed and the arguments  
7 that will be presented and the evidence that will be  
8 presented we'll be able to flesh out this issue of  
9 entitlement to status as six-month claims entitled to  
10 priority under Section 1171(b) of the Bankruptcy Code.

11           If I might, Your Honor, I'd like to provide just a  
12 brief opening statement and then call our first witness.

13           THE COURT: Sure.

14           MR. LEPENE: In terms of our position, Your Honor,  
15 I think we know what the standard is in terms of whether  
16 claims qualify as six-month claims entitled to priority  
17 under Section 1171(b). The standard is laid out very  
18 clearly in the First Circuit's opinion in the Boston and  
19 Maine case. And the standard is quite clear. Was the claim  
20 incurred within six months prior to the commencement of  
21 reorganization? Were the services for which payment is  
22 sought necessary to the ongoing operation of the railroad?  
23 And were the services provided with the expectation that  
24 they would be paid for out of current operating revenue of  
25 the debtor railroad rather than in reliance on the general

1 creditworthiness of the railroad?

2 THE COURT: Is that a subjective test at that  
3 point? And if the Irving railroads get up and say, well  
4 that's definitely what we believed, then it's game over and  
5 the trustee --

6 MR. LEPENE: Well we would certainly --

7 THE COURT: -- automatically loses?

8 MR. LEPENE: We would certainly like to believe  
9 that, Your Honor, but I think we're realistic enough to know  
10 that there needs to be evidence in terms of the  
11 understanding between the parties as to what the expectation  
12 was.

13 So, I'm not going to stand up here and suggest to  
14 you that we simply put on the testimony of the witnesses for  
15 the Irving railroads and say, well this is what we expected  
16 and therefore, as you say, game over. It's clearly not that  
17 simple. But it is a function of what the evidence will  
18 show, the agreements and understandings of the parties were  
19 in connection with the provision of services to the  
20 railroad. And that's what we're about, that's what we're  
21 going to present evidence to address.

22 Going through the standards, and I think Your  
23 Honor has actually focused on the issue that we're probably  
24 going to pay the most attention to, but let me address the  
25 other two very briefly.

1 THE COURT: Sure.

2 MR. LEPENE: I don't believe there is any dispute  
3 that the Irving railroad provided the services in question  
4 within six months prior to the reorganization. And we'll  
5 produce evidence, we have the invoices, the invoices  
6 indicate the various dates that services were provided, so,  
7 I don't think we're going to have to spend much time dealing  
8 with that.

9 As to the issue of whether the services were  
10 necessary to the ongoing operation of the Montreal Maine &  
11 Atlantic Railway, I would note a copy of things.

12 In his objection the trustee argues that the First  
13 Circuit has determined as a matter of law that interlying  
14 claims of the type that are asserted by the Irving railroads  
15 do not qualify as six-month claims. Now -- and he's I think  
16 pretty much repeated that argument in the reply that he  
17 filed this morning. And this argument is based on a  
18 statement that is made in a First Circuit opinion in the  
19 Boston and Maine case that addressed what are referred to as  
20 per diem claims.

21 Those claims, Your Honor, are charges that are  
22 assessed on a daily basis by one railroad to another  
23 railroad for the use of its cars. And the trustee claims in  
24 his objection that the claims for per diem charges are  
25 really the same type of claim as the interlying claims

1 asserted by the Irving railroads in this case. And, Your  
2 Honor, that's one of the few points on which we can agree.  
3 I think the interlying claims are essentially similar to the  
4 per diem claim that is were asserted by the Irving -- excuse  
5 me -- by the interlining railroads in the Boston and Maine  
6 case.

7 The problem with the trustee's argument is that  
8 he's misread the Boston and Maine decision in that regard.

9 In the case that he cites, and this was really the  
10 first of two cases that the First Circuit addressed in terms  
11 of the Boston and Maine reorganization. The first case  
12 dealt with the issue of whether the per diem claims were  
13 required to be paid immediately during the course of the  
14 reorganization. And we've addressed this in our brief and I  
15 know the Court has read our brief, so I'm not going belabor  
16 the point, but that was the issue that was in front of the  
17 court in that case. That case had nothing to do with the  
18 question of whether the per diem claims would qualify as  
19 six-month claims entitled to priority under Boston and  
20 Maine's plan of reorganization. It simply was not an issue  
21 that was addressed in that particular case.

22 The issue was addressed in the second Boston and  
23 Maine decision, and that of course is the decision that we  
24 all rely upon for guidance in terms of understanding what is  
25 required to qualify -- what is required for a claim to

1 qualify as a six-month priority claim.

2           And ironically the very same per diem claims that  
3 were addressed by the First Circuit in the first Boston and  
4 Maine decision were the claims that were addressed in the  
5 second Boston and Maine decision. And the court held in  
6 that case that those claims were the types of claims that  
7 would qualify for priority if the other conditions were  
8 satisfied. They had to be incurred within six months of the  
9 commencement of reorganization and they had to be furnished  
10 with the expectation that they would be paid out of current  
11 operating revenue rather than a reliance on the general  
12 creditworthiness of the debtor.

13           What is most illuminating in the second opinion of  
14 the First Circuit is that they talk about the disastrous  
15 consequences. Those aren't my words, those are the First  
16 Circuit's words. The disastrous consequences that would  
17 flow from a failure to pay interlying claims. And what  
18 would those consequences be? The potential for a stoppage  
19 of traffic, which would have a devastating impact not only  
20 on rail operations but on the public at large.

21           So again, the First Circuit addressed the per diem  
22 claims, recognized that they were interlying claims, if you  
23 will, claims for services provided by one railroad to  
24 another railroad, and the First Circuit recognized that  
25 claims of that type -- these are the same claims that are

1 being asserted by the Irving railroads -- do in fact  
2 represent claims for services that aren't necessary to the  
3 ongoing operation of a railroad.

4 Now the trustee argues in his reply that the  
5 services really weren't necessary, because if the Irving  
6 railroads refused to accept traffic -- an interchange of  
7 traffic from the MMA that there were alternate routes that  
8 could have been pursued.

9 The evidence will show that without being able to  
10 interchange traffic with the Irving railroads the MMA would  
11 have lost essentially the entire Saint John market, which is  
12 where the oil that was being produced in North Dakota was  
13 being transported to over several years, you know, prior to  
14 the unfortunate accident that had occurred, and there was a  
15 source of tremendous revenue for the MMA.

16 If they would have been forced to choose  
17 alternative routes they would not have been competitive in  
18 terms of being able to successfully obtain the business from  
19 the shippers in North Dakota, and they would have lost that  
20 particular business. There simply was no practical, easable  
21 (sic) way for them to be to deliver product, deliver the oil  
22 to Saint John without interchanging with the Irving  
23 railroads.

24 And so the fact of the matter is that this would  
25 have had a devastating impact on MMA's operations. And I



1 don't think that the standard is necessarily to show that  
2 they would have been put out of business. Would it have had  
3 a substantial negative impact on their operations? I think  
4 the evidence will show that that absolutely would have been  
5 the case. And the second element I think is clearly  
6 satisfied.

7 So, Your Honor, that leaves us with the question  
8 of whether the Irving railroads delivered the services to  
9 the debtor with the expectation that they would be paid for  
10 out of current operating revenue of the MMA or whether they  
11 were relying upon the MMA's general creditworthiness. And  
12 as I think -- and as I mentioned before, I think Your Honor  
13 has focused on that, I think that's primarily what we're all  
14 about here in terms of the issues that we need to address.

15 Now, Your Honor, what the evidence will show is  
16 that the Irving railroads were determined to avoid credit  
17 risk with this particular debtor in the MMA with the  
18 successor to the Bangor & Aroostook railroad. The  
19 operations -- the real assets of the MMA were acquired out  
20 of bankruptcy. Obviously a troubled history with respect to  
21 that railroad.

22 From the inception of the relationship between the  
23 Irving railroads and the MMA, which began in 2003, so some  
24 ten years before the unfortunate accident in 2013, from the  
25 inception of that relationship, Your Honor, the Irving

1 railroads were unwilling to rely on the general  
2 creditworthiness of the MMA. The evidence will show that  
3 because they were unwilling to rely on the creditworthiness  
4 of the MMA they entered into an arrangement with the MMA  
5 that involved the Irving paper companies, which are  
6 companies that are affiliated with the Irving railroads, and  
7 that which happened to be among the largest customers of the  
8 MMA.

9 Now what they did in terms of entering into this  
10 arrangement was to set up a process under which the parties  
11 would exchange cash payments on a weekly basic. Again, this  
12 is driven by the fact that from the beginning Irving  
13 railroads were not satisfied, were not willing to rely on  
14 the creditworthiness of the MMA in terms of doing business  
15 with them.

16 So what happened here, and this is what the  
17 evidence will show, is that the parties would determine on a  
18 weekly basis how much the Irving paper companies -- again,  
19 these are affiliates of the railroads --

20 THE COURT: Right.

21 MR. LEPENE: -- how much the Irving paper  
22 companies owe the MMA for freight charges that had been  
23 incurred by the MMA in carrying freight for the Irving paper  
24 companies, and the parties would determine how much the MMA  
25 owed the Irving railroad for freight services. And much of

1 the freight services that were owed by the MMA to the Irving  
2 railroads actually involved freight from the Irving paper  
3 companies that was being shipped from their mills in Canada  
4 to other destinations. And so you have this relationship  
5 where on a weekly basis the parties would exchange payments  
6 among each other.

7 Now the arrangement was what it was. The label  
8 that you put on that arrangement -- and I note it in the  
9 reply that was filed this morning in terms of how the  
10 trustee wants to characterize the arrangement -- I think  
11 labels are really irrelevant. The issue is what actually  
12 transpired with respect to this arrangement? And what  
13 transpired was that the Irving paper companies on a weekly  
14 basis would pay in cash, it'd be done by wire transfers,  
15 what they owed to the MMA and the MMA would pay in cash  
16 through a wire transfer what it owed to the Irving railroads  
17 in terms of freight services.

18 The expectation of the parties was that the Irving  
19 railroads would be paid out of the cash that was collected  
20 by the MMA from the Irving paper companies, and in most of  
21 the weeks that this was done, the fact is the Irving paper  
22 companies were paying more to the MMA than the MMA was  
23 turning around and paying concurrently to the Irving  
24 railroads.

25 So was this an arrangement under which the Irving

1 railroads were relying on the general creditworthiness of  
2 the MMA? Absolutely not. What they were relying on, the  
3 source of their payment, the source of the payment for the  
4 Irving railroads in terms of who was owed by the MMA was  
5 essentially the cash that was being paid to the MMA by the  
6 Irving paper companies.

7 Now this arrangement worked very well for a number  
8 of years until we had this development, all attributable to  
9 the (indiscernible) that was going on in North Dakota and  
10 the oil that was -- crude oil that was being generated, and  
11 then it started to get shipped to the refineries in Saint  
12 John, New Brunswick, and as a result of this massive  
13 increase in terms of the oil shipments and therefore the  
14 freight revenue that was generated as a result of these  
15 shipments, the freight charges that were owed by the MMA to  
16 the Irving railroads -- because again, this traffic was  
17 interchanged, it would come from North Dakota essentially on  
18 Canadian Pacific, would get interchanged with the MMA, and  
19 then they would carry it, would interchange with the Irving  
20 railroads and then onto the refineries in Saint John.

21 THE COURT: Just going to ask a quick question, I  
22 don't mean --

23 MR. LEPENE: Yes.

24 THE COURT: -- to be rude or cut off --

25 MR. LEPENE: Yes.

1 THE COURT: -- where we're going with this.

2 This is wonderfully illuminating for me and  
3 helpful. What I'm wondering is whether or not this is more  
4 like summing up closing argument and putting everything  
5 together at the end after the evidence is produced. So, I  
6 just throw that out.

7 MR. LEPENE: Okay.

8 THE COURT: I'm okay with a quick sort of glimpse  
9 of where we're going to go, but I'm wondering as to whether  
10 it'd be better off towards the conclusion of testimony.

11 MR. LEPENE: Okay, Your Honor. I will be brief in  
12 getting through this.

13 One of the reasons again, Your Honor, I only  
14 received the reply from Mr. Keach at about 11 o'clock this  
15 morning and don't know whether the Court had an opportunity  
16 to read it, but the concern that I had frankly was a lot of  
17 this -- this is laid out in terms of Mr. Keach's arguments,  
18 I wanted to be able to respond to this and put everything in  
19 contents.

20 THE COURT: That's fair enough. To answer your  
21 question I was on the bench in another contested 11 --  
22 Chapter 11 until I don't know what time, but after 10:59 I  
23 think I was on the bench probably 'til closer to a little  
24 afternoon, I did see this at 1:15 and I read it as closely  
25 as I could from 1:15 on, and I was going to give you an

1 opportunity, to the extent needed, to respond. But --  
2 because I don't want to cut off your rights -- but I'm in a  
3 similar boat.

4 MR. LEPENE: Okay. I'm pleased to hear that  
5 actually, Your Honor.

6 I'm going to then cut through this, and I would  
7 agree, we can get to the evidence.

8 Just a few additional points that I'll make very  
9 briefly, and I think you are, if you've looked at their  
10 reply and you've read our papers, you know that that swap  
11 arrangement then was modified. Actually it was a new  
12 arrangement in addition to the swap arrangement that just  
13 dealt with the oil payments, and the evidence will show that  
14 what the parties agreed to was that when the MMA received  
15 payment through what is referred to as the interlying  
16 settlement system, as soon as they got that payment they  
17 would turn around and pay the Irving railroads their share.

18 So again, we think the evidence shows that's --  
19 that we were providing services with the expectation that we  
20 would paid out of current operating revenue, not relying on  
21 the general creditworthiness of the MMA.

22 Now let me just skip to the last point and then  
23 we'll give Mr. Keach an opportunity and we can -- if he  
24 cares to make an opening statement and we can then move to  
25 the evidence.

1           They raise the issue -- Mr. Keach raises the  
2           issue, well you couldn't have been relying upon general  
3           operating revenue because there was a security interest  
4           involved held by Wheeling and Lake Erie Railroad and they  
5           had a security interest in the accounts receivable to secure  
6           a \$6 million line of credit.

7           THE COURT: But the existence of a security  
8           interest doesn't necessarily conclude that, correct?

9           MR. LEPENE: Absolutely, and that's our position.

10           And the thing that I would point out, Your Honor,  
11           which I think is most forceful, in every one of the cases  
12           that go back over 150 years in which priority was  
13           established for 6-month claims there were security interests  
14           that were in place in favor of secured creditors that  
15           secured the operating revenue of the railroad.

16           So if Mr. Keach -- I have the greatest respect for  
17           Mr. Keach, he's good, but he's not that good. If he's  
18           correct --

19           MR. KEACH: Oh, yes, I am. We'll get to that.

20           THE COURT: I'm sorry, was that a proffer?

21           (Laughter)

22           THE COURT: No.

23           MR. LEPENE: Yeah, my proffer is he's not that  
24           good.

25           MR. KEACH: Well, we'll see.

1 MR. LEPENE: If he's correct then 150 years of  
2 case law was decided incorrectly.

3 Bottom line, the evidence is going to show that  
4 the Irving railroads and the claims of the Irving railroads  
5 satisfy all of the requirements for priority that have been  
6 established by the First Circuit and that we are entitled to  
7 priority status under Section 1171(b) of the Bankruptcy  
8 Code.

9 Thank you very much. Thank you for your  
10 indulgence, Your Honor.

11 THE COURT: Sure. Thank you.

12 Mr. Keach?

13 MR. KEACH: Thank you, Your Honor. And I will  
14 actually try to make this opening brief, since we're well  
15 into the afternoon and I know our time is somewhat short.

16 Let me respond to that last point first, not the  
17 point about my ability or lack thereof, but the point about  
18 the secured claims.

19 Unfortunately I think Mr. Lepene, who's otherwise  
20 very capable, is also misreading 150 years worth of railroad  
21 case law and the six-month rule. The reason that a lot of  
22 those old cases actually had secured claims in them was  
23 because there was a time, and this is actually still true in  
24 some circuits, where the presence of a security interest,  
25 indeed the presence of a first security interest in another



1 party was a prerequisite to an award under the six-month  
2 rule.

3 Under one of the doctrines they used to justify  
4 the rule, in fact it was a requirement that the court find  
5 that the funds were diverted away from the six-month  
6 creditors to the payment of a senior lien, and therefore in  
7 the absence of a senior lien under that particular subset of  
8 the doctrine you had no six-month rule.

9 So not uncommon of course that the cases would  
10 involve security interests in that context.

11 The Boston and Maine decision that we all adore  
12 and argue from, largely because it probably raises as many  
13 questions as it provides answers, solved at least in the  
14 First Circuit that issue. It essentially said, no, the so-  
15 called diversion or mortgage v. diversion rule isn't a basis  
16 for the rule in the First Circuit, nor is the doctrine of  
17 necessity, which exists for other reasons. The standard is  
18 the standard that Mr. Lepene has articulated and I think  
19 which we agree on. And for that reason the sort of presence  
20 or absence of secured claims in those cases going back over  
21 150 years is while interesting largely irrelevant to our  
22 inquiry today, and we'll get to what we think the  
23 significance is of the Wheeling security interest in this  
24 case.

25 We're not arguing that the mere presence of a

1 security interest is per se a problem, we're arguing that  
2 the existence of the known security interest and the nature  
3 of the known security interest in this case prevents the  
4 reliance upon which they premise their case.

5 THE COURT: Right. Because in this case there's  
6 nothing easy for the Court. This is got to be a fact  
7 driven, testimony -- evidence driven matter.

8 MR. KEACH: I think so with the exception of the  
9 issue on the interlying payments, which I'll get to. And  
10 also now let me revert back to the order in which Mr. Lepene  
11 presented his case.

12 We do believe that with respect to interlying  
13 payments, which form the bulk of their claims, that they  
14 lose as a matter of law.

15 The second opinion that Brother Lepene referred to  
16 simply doesn't support his proposition at all. But more  
17 importantly that decision was under the preexisting  
18 bankruptcy act provision. 1171(b) comes along and  
19 incorporates much of the precode case law, but not all of  
20 it. And most importantly in a Bankruptcy Code case, which  
21 we've cited in the clean industries, looks back at both the  
22 Boston and Maine opinions, and addressing specifically not  
23 the issue of per diem car payments, but specifically the  
24 issue of interlying balances, and what we have in this case  
25 are unquestionably interlying balances.

1                   What the Southern Bankruptcy Court for the  
2 Southern District of New York said and looking at both the  
3 Boston and Maine decisions and looking at Congress's intent  
4 under 1171(b) said, quote:

5                   "Congress in enacting the bankruptcy Code  
6 expressly rejected a proposal that debtor railroads be  
7 required to pay interlying balances, stating that to do  
8 so would distort the central bankruptcy principal of a  
9 quality of treatment of unsecured creditors."

10                   And that's really what's at issue here, right?  
11 The issue is whether or not the Irving railroads have a  
12 priority over all of the other unsecured creditors who also  
13 supplied goods and services and they're not paid for them,  
14 many of whom supplied them frankly throughout a longer  
15 period of time.

16                   So the fact of the matter is that interlying  
17 balances aren't 1171(b) payments, precisely for the reason  
18 that under modern railroad law, number one, they couldn't  
19 have refused us if they had wanted to in going over their  
20 tracks, and secondly, because of the interlying payment  
21 system had they been members of the interlying system there  
22 would have been no risk to them in our doing so.

23                   Irving railroads find themselves in the position  
24 they're in because they, for clearly self-interested  
25 reasons, opted out of the interlying payment system and

1 instead decided to create a situation where first and  
2 foremost they put themselves in a position of a secured  
3 creditor, and secondly, then put themselves in a position  
4 where MMA collected interlying payments from the system for  
5 their benefit, and they then were relying on the interlying  
6 payment system in terms of credit extension.

7 The fact of the matter is that -- and we'll get to  
8 the specifics, because neither Mr. Lepene's argument nor  
9 mine are testimony, and the testimony is way more important  
10 on this -- but what -- the chronology is something that  
11 Mr. Lepene and I don't disagree on.

12 But what happen to begin with largely because --  
13 and you'll here from Mr. Hansen momentarily -- largely  
14 because of the history of Bangor & Aroostook, Mr. Hansen was  
15 leery about continuing to do business with the successor,  
16 and as a consequence and because Mr. Hansen is an employee  
17 of J.D. Irving, which is the parent that controls --  
18 commonly controls all of these entities, including Irving  
19 Paper, and since Irving Paper was a major customer of the  
20 railroad, of MMA, what he decided to put in place,  
21 notwithstanding an agreement incidentally -- the original  
22 agreement between MMA and the Irving railroads had standard  
23 credit terms, net 21-day terms -- notwithstanding the  
24 agreement to have everything done on net 21-day terms, we  
25 decided to set up a secured credit relationship.

1           And Mr. Lepene just told you it's not the labels  
2           that matter, it's how they handled things. Well the reason  
3           he doesn't want the labels is because the label that his own  
4           client put on this relationship was that it was a secured  
5           creditor/debtor relationship.

6           THE COURT: It sounds like somebody worried about  
7           a general creditworthiness.

8           MR. KEACH: Well, I think it sounds like somebody  
9           who's taking collateral, which they did. And like most  
10          people who take collateral, they're not relying on our  
11          creditworthiness, they were actually relying on their  
12          collateral.

13          Importantly what Mr. Hansen testified to -- and  
14          one of the reasons you got our reply this morning was being  
15          we're both doing depositions until last night -- but one of  
16          the things he said in his deposition was that while he  
17          pulled the Dunn & Bradstreet report on MMA, he didn't really  
18          take into account anything that was in it. He could have  
19          cared less frankly about the general creditworthiness or  
20          cash flow of any other financial characteristic of MMA  
21          because he was relying on the collateral arrangement that he  
22          had structured. And what you'll hear about is essentially  
23          what he created, which is documented in some emails, was a  
24          triangular setoff arrangement by agreement. And I'm not  
25          making this up, these are his exact words, so you know as

1 far as I'm concerned if we were going to do business it was  
2 going to be done on a secured basis.

3 THE COURT: This is yesterday's deposition?

4 MR. KEACH: Yesterday's deposition. And what  
5 happened, Your Honor, was that Irving Paper, under the  
6 common control of J.D. Irving, generally owed to MMA more  
7 money than MMA owed to the Irving railroads, right, this was  
8 the triangular setoff. And so what Mr. Hansen testified to,  
9 and I presume he will be consistent in his testimony today,  
10 is that he, through the parent common control of the  
11 entities, held onto the payment otherwise due from Irving  
12 Paper to MMA until such time as MMA made the payments due to  
13 the Irving railroads at which point he would release the  
14 wire from Irving Paper to MMA. When I asked, what would you  
15 have done if MMA had not paid? He said, I simply would have  
16 kept the money that was from Irving Paper.

17 Given the fact that he has admitted he wasn't  
18 relying on anything in the Dunn & Bradstreet report, that  
19 they didn't otherwise get any financial statements from us,  
20 they have no financial reporting, through this entire  
21 initial period it's clear they weren't relying on our  
22 creditworthiness or our cash flow or anything else. What  
23 they were relying on was their ability to control the  
24 payments from one of our largest customers because they were  
25 under common control. That's what they were relying on.

1           Why did this go wrong? Well the reason it went  
2 wrong for them and the reason they're the only railroad here  
3 by the way that has an unsecured claim, is that the -- they  
4 were not members of the ISS. And what happened was as the  
5 oil shipments became the dominant component of MMA's  
6 business, what that meant was that under the  
7 collateralization arrangement that they had created was that  
8 they became progressively undersecured, something they  
9 hadn't anticipated. And the reason for that, Your Honor,  
10 was that the amounts due to MMA and incidentally due to the  
11 Irving railroads under the ISS system for the oil shipments,  
12 became a much larger component of the business.

13           THE COURT: And as you look at the exhibits to the  
14 proof of claim you see the growing --

15           MR. KEACH: Right.

16           THE COURT: -- of the amount of (indiscernible) or  
17 whatever you would like to call it.

18           MR. KEACH: Right. Exactly, Your Honor.

19           And so what happened was it was no longer true  
20 that the Irving paper entities owed, you know, in other  
21 words --

22           THE COURT: Right.

23           MR. KEACH: -- were -- had more to pay us than was  
24 owed by us to them. In other words there was an imbalance  
25 that was ultimately under collateralized.

1 Well what did they do about that? What happened  
2 at the time, and it's fair to say that this original  
3 situation was set up because Irving -- the Irving railroads  
4 not being members of ISS, I think Mr. Hansen would agree,  
5 that he had very little mileage about the way ISS worked and  
6 as a consequence didn't want to rely on it.

7 Through conversations with Mr. Simpson in light of  
8 this growing imbalance he learned more about ISS, and  
9 essentially what was created and continued was that MMA  
10 would collect from the ISS as a participating member of ISS  
11 not only the amounts that were due to it for traffic over  
12 its track or its interchange activity, but also the amounts  
13 that would otherwise have been due to the Irving railroad.

14 Now the way the ISS works, and this is all in  
15 Judge Haynes' excellent opinion in Bangor & Arrostook at 320  
16 B.R. 226, sadly I think neither of us cited it and we  
17 probably should have because it contains the best  
18 explanation I know of of the ISS system and particularly the  
19 way it operates, and we'll get to the significance of that  
20 case in a second, but what happened under these  
21 circumstances was that by essentially saying that they would  
22 agree as to this spread, the amount not covered by the  
23 Irving Paper payments, that they would wait until MMA  
24 collected money from the ISS and then within five days after  
25 MMA collected money from the ISS they would remit that money



1 to the Irving railroads. Essentially that was an agreement  
2 to credit terms that could be as long as 70 or more days.  
3 Because the way the -- remember as to the oil shipments I  
4 guess as we all know from other activity in this case  
5 Canadian Pacific was the originating carrier of the oil  
6 shipments.

7 The way the ISS works is that the originating  
8 carrier is then responsible for paying all of the receiving  
9 railroads along the line. The originating carrier is  
10 responsible to pay those railroads whether or not the  
11 originating carrier collects from the customer ultimately,  
12 whether that customer is the shipper or the ultimate  
13 destination. But that responsibility for CP to pay doesn't  
14 exist until the weigh bills clear the system, and that can  
15 be from the time that the trains run over people's tracks to  
16 the time that that happens, it can be a period as long as 70  
17 or more days.

18 And so essentially we now had a two-part  
19 arrangement. Reliance on the collateral, and you know, once  
20 you've collected from the ISS system, the money that would  
21 otherwise be payable to us, turn it over to us. And again,  
22 by definition a net 60, 70, 75-day period of time.

23 More importantly, Your Honor, and as this will  
24 come out in testimony and then I'll wrap up, by not being a  
25 member of ISS and by creating this system, but certainly

1 being knowledgeable about ISS, I'm sure Mr. Simpson will be  
2 able to tell us that he has lots of knowledge about the way  
3 ISS works, by not being a member and by setting up this  
4 arrangement the Irving railroads agreed and virtually  
5 insured that they would be last in line at all times with  
6 respect to ISS. Because the way the ISS works is all of the  
7 other participants have to get paid first. So everybody  
8 else who was a member got paid out of the system ahead of  
9 this final drop of money to us, and that's the decision they  
10 made. That's the decision they made when they didn't want  
11 to be a member of the ISS, because they didn't want to take  
12 on the credit risk of being an originating railroad, and  
13 that's the risk they took on when they decided to create  
14 this system. But it is by any definition an extension of  
15 credit, and it is by any definition a fairly massive  
16 extension of credit.

17 I would submit to you though that they're not  
18 relying -- because again they never cared about our  
19 financials -- they're not relying necessarily on our cash  
20 flow or anything else, they're relying on the collateral  
21 (indiscernible) fidelity essentially as a collection agent  
22 under the ISS system.

23 THE COURT: And by not being -- not participating  
24 in the ISS system MMA would assert they essentially  
25 developed an unsecured creditor relationship with MMA where

1 MMA could take care of its other obligations of the ISS  
2 ahead of taking care of the Irving railroads.

3 MR. KEACH: Not only whether we could but by  
4 necessity it was going to occur.

5 THE COURT: By financial necessity.

6 MR. KEACH: And by the manner in which the ISS  
7 system worked, right? So in other words --

8 MR. KEACH: Requiring you to take -- to --

9 MR. KEACH: -- in other words if we owed money to  
10 other railroads as a consequence of that, you know,  
11 transcontinental shipment they were going to get paid first.

12 And more importantly -- and again, this is in the  
13 Bangor & Aroostook opinion, which I think is definitely  
14 worth a read, one of the things that -- the primary holding  
15 in that case by the way, the important holding in that case  
16 is that the ISS system does not create sort of mutual trust  
17 relationships.

18 THE COURT: Right.

19 MR. KEACH: In other words, when the money was  
20 paid to us it was our money, we had complete dominion over  
21 the money, we didn't hold the money in trust for anybody.

22 THE COURT: No fiduciary obligations that arise --

23 MR. KEACH: No fiduciary obligation, the money  
24 belongs to the estate, and you have a bankruptcy that  
25 intervenes.

1           But -- and importantly I think one of the  
2 motivators behind Judge Haynes' decision in that respect was  
3 that there was nothing about that system that should give  
4 those claimants priority other unsecured creditors. He  
5 looked at the policy implications of treating it as a trust  
6 system and decided it would be unfair among the trust -- you  
7 know, in and among the trust analysis, which was primary for  
8 unsecured creditors to be subordinated to those claims and  
9 trusts.

10           I would submit to you, Your Honor, that if it were  
11 so obvious that interlying payments were 1171(b) claims  
12 there would have been no reason for the Bangor & Aroostook  
13 decision because they weren't even arguing the trust. If  
14 they were going to be paid on top of everybody else any way  
15 what would have been the point? The fact is as a matter of  
16 law they're not. And so I end where I began. So let me  
17 stop there.

18           I'll in summary, you know, we have basically three  
19 arguments and they're summarized in our brief and I won't  
20 belabor them. One, we don't think these payments qualify as  
21 a matter of law or fact as 1171(b) payments.

22           We think it is abundantly clear that at no time  
23 were the Irving railroads relying on MMA's cash flow or its  
24 credit other than the fact that they were extending us  
25 credit through the system. They relied by their own choice

1 on their collateral arrangement, and then when that  
2 collateral arrangement did not suffice they relied on our  
3 fidelity and collecting for them from the ISS system. None  
4 of those things make them fit will be 1171(b) realm.

5 And for that reason awarding them a priority would  
6 be, we think, grossly unfair to the other unpaid unsecured  
7 credits in the case.

8 THE COURT: Thank you very much, Mr. Keach.

9 MR. KEACH: Thank you.

10 THE COURT: All right. I have a great foundation  
11 now and I'm ready to hear the evidence.

12 MR. LEPENE: Okay, Your Honor, thank you. Irving  
13 railroads will call Karl Hansen as a witness. And, Your  
14 Honor --

15 THE COURT: And I should tell all the witnesses if  
16 you see me today looking over here and typing it's not  
17 because I'm not interested, it's -- all the dockets in this  
18 case -- all the documents in this case are right here, I  
19 usually am looking at something that's relevant and trying  
20 to print it out. Thank you.

21 MR. LEPENE: Thank you, Your Honor. I have  
22 exhibits that we've premarked that I'll be showing the  
23 witness. May I approach the bench?

24 THE COURT: Yes, please. Why don't you come right  
25 around here and there's the witness stand, and you'll find

1 water and a cup right up there for you.

2 THE CLERK: Raise your right hand.

3 KARL HANSEN, WITNESS, SWORN

4 THE CLERK: Please be seated. Spell your last  
5 night for the record.

6 THE WITNESS: My name is Karl, K-A-R-L, Hansen,  
7 H-A-N-S-E-N.

8 THE COURT: Good afternoon and thank you for  
9 coming.

10 DIRECT EXAMINATION

11 BY MR. LEPENE:

12 Q Good afternoon, Mr. Hansen. Mr. Hansen, where do you  
13 reside?

14 A I reside in Saint John, New Brunswick, Canada.

15 Q And by whom are you employed?

16 A J.D. Irving, Limited.

17 Q And what is the business that J.D. Irving, Limited is  
18 engaged in?

19 A J.B. Irving, Limited is engaged in operating of several  
20 companies. We're into lumber, we're into paper, we're into  
21 shipping boats, we're into railways, farming. Numerous  
22 operations.

23 Q Is J.D. Irving, through its affiliates, engaged in the  
24 paper business?

25 A Yes, we are.

1 Q Can you identify the companies affiliated with J.D.  
2 Irving that are engaged in the paper business?

3 A There's Irving Paper Ltd., there's Irving Pulp and  
4 Paper, there's Lake Utopia Pulp and Paper, and there's  
5 Irving Tissue.

6 Q Okay. And from time to time during the course of this  
7 examination I may be referring to the Irving paper  
8 companies, and in particular Irving Paper and Irving Pulp  
9 and Paper.

10 A Correct.

11 Q Okay. Is J.D. Irving, Limited also engaged in the  
12 railroad business?

13 A Yes, J.D. -- yes, we are.

14 Q And what affiliates of J.D. Irving, Limited are engaged  
15 in the railroad business?

16 A NB Southern Railway, Maine Northern Railway, Eastern  
17 Maine Railway.

18 Q All right. And is J.D. Irving, Limited related in any  
19 way to the Irving Oil Company?

20 A We are not.

21 Q Now what is your position, Mr. Hansen, at J.D. Irving,  
22 Limited?

23 A I am a general manager corporate credit and financial  
24 for all the Irving companies.

25 Q How long have you held that position?

1 A Thirty-two years.

2 Q And have you held that position from the time that you  
3 joined the J.D. Irving, Limited company?

4 A Yes, I have.

5 Q Okay. Do you have a college degree?

6 A Yes, I do.

7 Q From what institution?

8 A University of New Brunswick.

9 Q Okay. And what was your -- the nature of your degree?

10 A Business administration from the University of New  
11 Brunswick and a credit and financial analysis from the  
12 Institute of Canadian Bankers.

13 Q Okay. Now you indicated that you have a role as  
14 general manager corporate credit and finance for all of the  
15 J.D. Irving companies?

16 A Yes.

17 Q Okay. And what are your duties and responsibilities in  
18 that capacity?

19 A In that capacity I set all the credit procedures,  
20 credit policy, all the people that do the granting of credit  
21 and the collection of accounts receivable all report to  
22 myself.

23 Q Now you mentioned New Brunswick Southern Railway  
24 Company and Maine Northern Rail Company as two of the  
25 railroads that are affiliated with J.D. Irving Ltd; is that



1 correct?

2 A That is correct.

3 Q And again, I'm going to from time to time refer to  
4 those as the Irving railroads, is that all right?

5 A Yes.

6 Q Okay. Now do you have a role with the Irving  
7 railroads?

8 A The role I have with the Irving railroads is I would in  
9 conjunction with their general manager set the credit  
10 policy, set the manner in which we're going to be extending  
11 or not extending credit. We would -- I also employ the  
12 people that do the actual collection of the accounts and  
13 administrating of all their accounts receivable.

14 Q Mr. Hansen, are you familiar with the debtor in this  
15 case, the Montreal Maine & Atlantic Railway Ltd.?

16 A Yes, I am.

17 Q When did you first become acquainted with -- I'll refer  
18 to the debtor as MMA if that's all right -- when did you  
19 first become acquainted with the MMA?

20 A January 2003.

21 Q And what were the circumstances under which you first  
22 became aware of the MMA?

23 A The Irving railway companies were planning on doing  
24 business with MMA by virtue of hauling freight.

25 Q And the -- in terms of hauling freight what do you have

1 reference to when you say hauling freight?

2 A Well the -- they were -- the Irving railways were going  
3 to do business with MMA in changing -- interchanging  
4 projects that are coming into New Brunswick from their rail  
5 lines.

6 Q So would that involve the interchange of traffic  
7 between the two railroads?

8 A Yes, it would.

9 Q Did the Irving paper companies also have a relationship  
10 with the MMA?

11 A Yes, they did.

12 Q And do you know when that relationship began?

13 A That would have began when MMA, I believe it was 2003  
14 as well, when they became into existence.

15 Q Okay. And MMA came into existence, do you know the  
16 circumstances under which they came into existence?

17 A Yes, they bought the assets of a bankrupt company.

18 Q And what was that company?

19 A Bangor & Aroostook.

20 Q Okay. Now you say that the Irving paper companies have  
21 a business relationship with the MMA?

22 A That's correct.

23 Q And starting in 2003?

24 A That is correct.

25 Q And what was the nature of that relationship?

1 A Irving Paper would hire MMA to freight their product to  
2 their destinations.

3 Q Okay. Now are you generally familiar with something  
4 that is known as the interlying settlement system or ISS?

5 A I'm aware of it and have brief or limited knowledge of  
6 it.

7 Q Okay. In terms of your knowledge of it what is it?

8 A It is a clearinghouse and a mechanism in which  
9 intertraffic or interrail companies would get paid.

10 Q Okay. Does that mechanism or system involve the  
11 settlement of accounts receivable and accounts payable among  
12 participants in the ISS?

13 A Yes, it does.

14 Q And are you aware of how often settlements of those  
15 accounts receivable and accounts payable are made?

16 A Monthly.

17 Q And are you aware of when payments are made from the  
18 ISS to participating railroads of the net amount of those  
19 particular settlements?

20 A Usually --

21 MR. KEACH: Your Honor --

22 THE COURT: I'm sorry, one second, please. Is  
23 there an objection?

24 MR. KEACH: I've been happily letting some normal  
25 leading go through because it was largely preliminary, but

1 that question is highly leading. It seems to me he should  
2 restructure and ask the question so that the witness will  
3 supply the information.

4 THE COURT: Sure. Do you mind, Mr. Lepene,  
5 repeating the question?

6 MR. LEPENE: Yeah. Well that's fine, Your Honor.

7 BY MR. LEPENE:

8 Q Are you aware generally of the mechanism for  
9 settlements within -- that are made among participating  
10 railroads within the ISS?

11 A Yes, I am.

12 Q Okay. And what's your understanding of that?

13 A That the ISS would have been paid money by the lead  
14 rail company, the one that was invoicing the customer, they  
15 would keep their share, send the difference into ISS who  
16 would in turn on the second of every month disburse the  
17 money to participating railways.

18 Q All right. So the payments to disbursing to the  
19 participating railroads are made when?

20 A The second day of each month.

21 Q Second business day of each month?

22 A Yes.

23 Q Okay. Now did the MMA to your knowledge participate in  
24 the ISS?

25 A Yes.

1 Q Did the Irving railroads participate in the ISS?

2 A No.

3 Q And why did the Irving railroads not participate in the  
4 ISS?

5 A The Irving railways didn't participate because we  
6 didn't really have the knowledge or the capacity financial  
7 wise and otherwise the people to do it.

8 Q Was the decision not to participate in the ISS  
9 influenced in any way by an evaluation of the  
10 creditworthiness of the MMA?

11 A Absolutely not.

12 Q Now, Mr. Hansen, you testified earlier that the Irving  
13 railroads interchange traffic with the MMA; is that correct?

14 A That's correct.

15 Q What would have been the impact on MMA's operations if  
16 it was unable to interchange traffic with the Irving  
17 railroads?

18 A It would have been devastating. Their operations just  
19 would be a nightmare.

20 Q And why is that?

21 A Well they virtually wouldn't have an alternative. My  
22 view would be they would be landlocked, there would be no  
23 way to get the product to the final destination.

24 Q Did the Irving railroads have agreements and  
25 understandings in place to address their relationship with

1 the MMA?

2 A Yes, they did.

3 Q Are you familiar with some of the agreements and  
4 understandings that govern that relationship?

5 A Yes, I am.

6 Q Okay.

7 MR. LEPENE: Your Honor, if I might approach the  
8 witness with some exhibits?

9 THE COURT: Yes.

10 MR. LEPENE: And if you could give me just a  
11 minute here to pull them out.

12 THE COURT: Sure. And does Mr. Keach have a copy  
13 of the exhibits?

14 MR. LEPENE: He does.

15 THE COURT: Okay. Thank you.

16 MR. KEACH: Thank you. I do, Your Honor. Thank  
17 you.

18 (Pause)

19 MR. LEPENE: Thank you, Your Honor. May I  
20 approach the witness?

21 THE COURT: Yes, please.

22 MR. LEPENE: Thank you.

23 BY MR. LEPENE:

24 Q All right. Mr. Hansen, I'm going to direct your  
25 attention first to the exhibit that is marked as Irving

1 Exhibit 1. Do you have that in front of you?

2 A Yes, I do.

3 Q Can you identify that document?

4 A Commercial agreement dated January the 9th, 2003.

5 Q And are you familiar with that agreement?

6 A Yes, I am.

7 Q Who are the parties to that agreement?

8 A Montreal Maine & Atlantic Railway Ltd., Eastern Maine  
9 Railway Company, and New Brunswick Southern Railway Company  
10 Ltd.

11 Q And who or what is Eastern Maine Railway?

12 A It's a sister company of the NB Southern Railway.

13 Q All right. So again affiliated with J.D. Irving,  
14 Limited?

15 A That is correct.

16 Q Okay. What was the purpose of this particular  
17 agreement?

18 A It was to establish the hauling of freight for MMA.

19 Q Did it address payment terms or freight traffic  
20 interchange with the MMA?

21 A Yes, it did.

22 Q And what does it provide with respect to payment terms?

23 A It provides 21 days from invoice.

24 Q Now you testified previously that the Irving paper  
25 companies also had a business relationship with the MMA?

1 A That is correct.

2 Q Okay. And that also began in 2003?

3 A That is correct.

4 Q Okay. And I believe you testified that the Irving  
5 paper companies utilized the MMA to haul freight for the  
6 paper companies?

7 A That's correct.

8 Q Okay. Now at the time these relationships began, and  
9 this would be -- they began in 2003; is that right?

10 A Correct.

11 Q Did you have concerns about these particular  
12 relationships -- business relationships?

13 A Yes, I did.

14 Q And what were the concerns?

15 A Concerns as my job payment. I had major concern that  
16 the company would have a hard time to pay me.

17 Q And did you do something or take certain action to seek  
18 to address those concerns?

19 A Yes, I authorized and entered into an agreement with  
20 MMA whereby, my terminology, we would do swaps on a weekly  
21 basis.

22 So basically Irving Paper and Irving Pulp and Paper's  
23 funds would flow into my department, and once a week we'd  
24 get a hold of MMA and we'd agree that simultaneously I'd  
25 send them their wire transfer, they would the same second



1 send the wire transfer back to me for monies owed to NB  
2 Southern.

3 Q And how frequently were these swaps undertaken?

4 A Weekly.

5 Q Okay. Generally in terms of the amount of cash that  
6 was being sent from or on behalf of the paper companies to  
7 the MMA and the amount of cash that was being sent from MMA  
8 to the railroads, which was the larger amount of cash to be  
9 disbursed, generally speaking?

10 A The Irving Paper and Irving Pulp and Paper's money was  
11 by far more than the --

12 Q Greater than the money that was coming back to the  
13 railroads?

14 A Correct.

15 Q Okay. And this was being done virtually  
16 simultaneously?

17 A Yes.

18 Q Okay. And again, what was the reason for entering into  
19 this particular agreement with the MMA?

20 A Well, I was determined I was not going to take a credit  
21 risk, I was not relying on their credit to insure we got  
22 paid.

23 Q Let me direct your attention to what has been marked as  
24 Irving Exhibit 2. And can you identify that document for  
25 me?

1 A This is an email from Joanne Kelter (ph) who works for  
2 myself at J.D. Irving, Limited to Brenda Tarr (ph) who works  
3 for MMA.

4 Q And it's dated when?

5 A This email is dated August the 10th, 2011.

6 Q And then is there a response from Brenda Tarr to that  
7 email?

8 A Yes, Brenda Tarr is responding to Joanne saying  
9 everything is okay with me for our usual transfers.

10 Q Okay. And so is this typically the way the arrangement  
11 was memorialized?

12 A This is correct.

13 Q Okay.

14 A We --

15 Q And -- go ahead.

16 A We simply send an email off to MMA advising them what  
17 monies we had available for them along with asking them to  
18 pay the monies that they -- that our records indicated they  
19 owe NB Southern.

20 Q Okay. And so in Joanne Kelter's email to Brenda Tarr,  
21 dated August 10, 2001 at 1:03 p.m. and it says, "Good  
22 afternoon. This week we will be sending the following  
23 payments along." Would those then list serving Paper --  
24 Irving Pulp and Paper and J.D. Irving, would that be the  
25 cash that Irving Paper was sending to the MMA?

1 A That is correct.

2 Q And then it says, "In return we are seeking payment for  
3 the following." Do you see that?

4 A Yes.

5 Q And is that the cash that the MMA would be sending  
6 back?

7 A That is correct.

8 Q To the Irving railroads?

9 A Correct.

10 Q Okay. And then Ms. Tarr indicates that that was okay  
11 insofar as the usual transfer was concerned?

12 A Correct.

13 Q Thank you.

14 THE COURT: Just one question I have for you. So  
15 are there two actual transfers?

16 THE WITNESS: Yes, we would --

17 THE COURT: Over and back -- it wasn't as if you  
18 would reduce the Irving companies total by the Irving  
19 railroads company?

20 THE WITNESS: No. No. We had that option of  
21 course, I could have made that agreement with them but I  
22 didn't because that agreement is too messy.

23 THE COURT: Okay. Thank you.

24 BY MR. LEPENE:

25 Q So the -- following up on the judge's question. The

1 way it worked was exchanges of cash?

2 MR. KEACH: Your Honor, it'd be actually good if  
3 you would let him describe how it worked as opposed to  
4 telling him how it works and asking him to acknowledge it.

5 THE COURT: Fair enough question.

6 MR. KEACH: Thank you.

7 THE WITNESS: How it worked is we would agree on a  
8 certain day that the Irvings would send X number of dollars  
9 by way of wire transfer, at the same time MMA would agree to  
10 wire transfer back the amount we were looking for at the  
11 same day -- same time.

12 BY MR. LEPENE:

13 Q Okay. Then if you would take a look at Irving  
14 Exhibit 3. Can you identify that?

15 A Yeah. This Exhibit 3 is a response from Brenda Tarr  
16 dated October 27, 2011 to Joanne Kelter in regards to the  
17 swap.

18 Q Okay. And again, this is another email that is  
19 illustrative of the way this arrangement was memorialized?

20 A That is correct.

21 Q And then if you would look at Irving Exhibit 4. Can  
22 you identify that?

23 A This is an email from Brenda Tarr dated February the  
24 16th, 2012 to Joanne Kelter responding to Joanne from an  
25 email that she had sent to Brenda Tarr.

1 Q And with respect to the message from Brenda Tarr to  
2 Joanne Kelter that is dated February 16th, 2012, do you see  
3 that?

4 A Yes.

5 Q And this indicates there was an issue with respect to a  
6 holiday in the United States, President's Day. Do you see  
7 that?

8 A That is correct, yes.

9 Q And so the request was made to delay the swap for one  
10 day so that the Banks would be open on both sides of the  
11 border?

12 A Correct.

13 Q Are these emails representative of the emails that  
14 would have been exchanged between the parties that would  
15 have memorialized the arrangement?

16 A That is correct.

17 Q Okay. Now did there come a time when problems arose  
18 with this swap payment process?

19 A Yes, there was.

20 Q And when was that?

21 A If memory serves me I think it was June or July of  
22 2012.

23 Q And what caused the problem?

24 A The problem was one of the transportation of oil. The  
25 amount became quite excessive, monies owed to NB Southern

1 Railway by MMA that they didn't fall under nor MMA didn't  
2 have the capacity to pay when they were supposed to be paid.

3 Q Now the -- can you describe when you say the shipment  
4 of oil, how did that operate?

5 A Well the shipment of oil would have been coming out of  
6 the Dakotas by CT, they would hit MMA's line, they would  
7 interchange with MMA, then the oil would come -- the train  
8 would come down through until it hit NB Southern's line, NB  
9 Southern would transport it from then into Saint John, New  
10 Brunswick. And the cost, our share, Irving's share, it  
11 would bring it from where we interfaced into Saint John  
12 became quite excessive, quite high.

13 Q Okay. Now let me direct your attention to Irving  
14 Exhibit 5. Do you have that?

15 A Yes, I do.

16 Q And at the top of that it's an email from Ian Simpson  
17 to Ellis Ryan dated October 22, 2015, that's just a month  
18 ago. Do you see that?

19 A Yeah.

20 Q All right. So is that just conveying the underlying  
21 email within the Irving organization?

22 A That is correct.

23 Q Okay. So I want to direct your attention to the  
24 underlying email which is from Robert Grindrod (ph) to Ian  
25 Simpson. Do you see that?

1 A I do.

2 Q And the date of that email is?

3 A June 4th, 2012.

4 Q And the subject of the email is?

5 A Revision of the settlement terms between NBSR and MMA.

6 Q Okay. And is it your understanding that this  
7 represented a proposal from the MMA regarding a revision to  
8 settlement terms as between NBSR, the New Brunswick Southern  
9 Railway, and MMA?

10 A Yes, it is.

11 Q And looking at the email does Mr. Grindrod give a  
12 reason for why a revision to the settlement terms is  
13 necessary?

14 A Well the volume was getting excessive, quite high, and  
15 they just couldn't afford to have the cash to pay it.

16 Q All right. Now turning to the attachment, and that's  
17 titled what?

18 A Revision of payment terms of NBSR needed.

19 Q Okay. And if you take a look at the first paragraph is  
20 that a correct statement that the existing terms were --  
21 between the parties were established by the commercial  
22 agreement signed on January 9, 2003?

23 A That is correct.

24 Q Okay.

25 THE COURT: Exhibit 1, correct?

1 MR. LEPENE: Yes, it is Exhibit 1, Your Honor,  
2 that is correct.

3 THE COURT: Okay. Thanks. And Mr. Keach, there's  
4 no dispute about that; is that correct?

5 MR. KEACH: That Exhibit 1 is the original  
6 commercial agreement?

7 THE COURT: That -- yeah, that the reference here  
8 revision --

9 MR. KEACH: No, there's no dispute about that.

10 THE COURT: Thanks. Just making sure the facts.

11 BY MR. LEPENE:

12 Q Now, Mr. Hansen, would you take a look at the second  
13 paragraph where Mr. Grindrod describes the present terms  
14 under the commercial agreement in terms of the provisions of  
15 the invoices each Wednesday to MMA, do you see that?

16 A Yes.

17 Q Okay. So the -- do you see the first bullet point  
18 there?

19 A Yes.

20 Q "For all freight handled by NBSR up to the second  
21 preceding Friday, the invoice is issued 12 days after the  
22 applicable Friday." Do you see that?

23 A Yes.

24 Q Is that consistent with your understanding of the  
25 provisions of the commercial agreement?



1 A No.

2 Q Excuse me?

3 A No.

4 Q Okay. What was your understanding?

5 A That we would be paid --

6 Q No, the -- this says when the invoice is issued.

7 A Oh.

8 Q The first bullet point.

9 A Could be, I have -- I don't know.

10 Q Okay. What were the terms of payment under the  
11 commercial agreement as you understood it?

12 A Under the commercial agreement 21 days from receipt of  
13 invoice.

14 Q Okay. And is that consistent with the second bullet  
15 point in Mr. Grinrod's proposal?

16 A Correct.

17 Q Okay. Do you see the third bullet point for originated  
18 and local traffic MMA invoices the customers for the total  
19 freight charges due, the bulk of the invoices go to the  
20 Irvings? Do you see that?

21 A Yes.

22 Q Is that correct?

23 A Yes.

24 Q Okay. And do you see the fourth bullet point,  
25 "Typically payment is received in from 21 to 28 days" --

1 A Yes.

2 Q -- "for the originated or local traffic not a problem"?

3 A Yes.

4 Q Okay. And the bulk of the payments that are received  
5 in would come from whom?

6 A They'd come from me.

7 Q From you personally or from --

8 A No.

9 Q -- the Irving paper companies?

10 A From the Irving Paper Company.

11 Q Okay. Then the next bullet point on received traffic,  
12 "The freight charges must be apportioned through the  
13 interlying settlement system." Is that a correct statement,  
14 is that consistent with your understanding?

15 A That is correct.

16 Q Okay. "MMA typically does not receive payment through  
17 the ISS for 45 to 60 days after handling the car on  
18 average." Is that --

19 A That is correct.

20 Q -- consistent with what you understood?

21 A Yes.

22 Q Okay. "As a consequence MMA is expected to make  
23 payment to NBSR on traffic settled to ISS approximately 15  
24 to 30 days before receiving payment." Is that --

25 A That's correct.

1 Q -- consistent with your understanding?

2 A Yes.

3 Q Okay. Then Mr. Grindrod says, "When this system was  
4 established most of the traffic moving was either originated  
5 or local between the two carriers." And that would of  
6 course go back to 2003. Is that consistent with your  
7 understanding?

8 A That is correct.

9 Q "In either case the vast majority of the traffic was  
10 paid for by the shipper at approximately the same time as  
11 MMA made payment to NBSR."

12 A That is correct.

13 Q And that's consistent with the swap arrangement that  
14 was in place?

15 A Yes, it was.

16 Q Okay. And the next paragraph says, "The traffic mix  
17 has changed and now consists of a large amount of traffic  
18 originated elsewhere and settled through the ISS." Is that  
19 consistent with your understanding --

20 A That is correct.

21 Q -- as you described previously?

22 A Yes.

23 Q Okay. Now, I'm going to direct your attention then to  
24 the next page, the third paragraph from the bottom, the  
25 paragraph that begins on April 2, 2012. Joe Migonigal (ph)

1 propose an alternative approach to the payment terms. Do  
2 you see that?

3 A Yes, I do.

4 Q Okay. And then the next sentence says, "In this  
5 proposal MMA suggested that NBSR would be paid within 30  
6 days in all cases where MMA is the billing party, local and  
7 originated traffic." Do you see that?

8 A Yes, I do.

9 Q Now would that local and originated traffic include the  
10 oil shipments that were coming in from North Dakota that was  
11 originated by the Canadian Pacific?

12 A No, it does not.

13 Q Okay. And then it says, "On all other traffic MMA  
14 proposed to make a settlement payment to NBSR within five  
15 days of receipt of payment from the ISS system." Do you see  
16 that?

17 A I see that, yes.

18 Q Okay. Is that consistent with your understanding of  
19 what Mr. Grindrod had proposed?

20 A Yes, it is.

21 Q Okay. I'm going direct your attention next to Irving  
22 Exhibit 6. Can you identify that document?

23 A Yes, it's an email from Ryan Ellis to Joanne Kelter,  
24 subject of oil movement invoices.

25 Q Okay. And is there an email that appears right below

1 that?

2 A Yes, there's an email from Don Gardner (ph) to Ryan  
3 Ellis dated July the 26th, 2012 regarding oil movement  
4 invoices.

5 Q Okay. Now who is Donald Gardner?

6 A He worked for MMA.

7 Q Okay. And who is Ryan Ellis?

8 A Ryan Ellis works for NB Southern Railway.

9 Q Okay. And in the email from Mr. Gardner to Mr. Ellis  
10 dated July 26th, the statement is made:

11 "Ryan, as we discussed and as was noted in an  
12 email April 3rd by Joe Migonigal and on June 4th by Bob  
13 Grindrod, MMA will pay for the oil movement once  
14 payment is received through ISS."

15 Do you see that?

16 A Yes, I do.

17 Q Okay. Now do you see that Mr. Ellis responded -- or  
18 excuse me -- forwarded this email to Joanne Kelter?

19 A Yes.

20 Q And who is Joanne Kelter?

21 A Joanne Kelter would be the credit manager for NB  
22 Southern Railway, and she works for me.

23 Q Okay. And Mr. Ellis says, "I will discuss with Ian  
24 when he is back from vacation next week. I'm guessing he  
25 may have agreed to this with Bob Grindrod." Do you see

1 that?

2 A I do.

3 Q Okay. Let me then ask you to look at Irving Exhibit 7.

4 And can you identify this document?

5 A This is a document from Joanne Kelter dated July 26,  
6 2012 to Don Gardner of MMA, copies going to Ryan Ellis and  
7 Brenda Tarr regarding oil movement.

8 Q Okay. Now did you discuss this email that had been  
9 sent by Don Gardner regarding MMA's intention to pay for the  
10 oil movement once payment was received through the ISS? Did  
11 you have occasion to discuss that with Joanne Kelter?

12 A Yes, I did.

13 Q Okay. And what was the nature of that discussion?

14 A The nature of that discussion is she came in to see me  
15 with the email that she had received from Ryan Ellis in  
16 connection with the Don Gardner spelling of that  
17 Mr. Grindrod had recommended this and that she wants to know  
18 if I would agree to it. So at that stage I just discussed  
19 it with Ian Simpson, and --

20 Q And who is Ian Simpson?

21 A He's is general manager of the railway.

22 And any way, once I was briefed a bit on what this ISS  
23 was I felt comfortable enough that monies would be coming  
24 into MMA without any hiccups, so to speak, and that shortly  
25 thereafter within a matter of days I would be paid our

1 share.

2 Q And when you refer to our share what are you referring  
3 to?

4 A The monies owed by MMA for the transportation of oil on  
5 our lines.

6 Q All right. Turning your attention to Irving Exhibit 8.  
7 Can you look at that, please.

8 A Yes.

9 Q And can you identify this document?

10 A Email from Ryan Ellis to Don Gardner and Brenda Tarr  
11 and Jim Speed (ph), subject is the swap.

12 Q And looking at the email from Ryan Ellis dated  
13 August 30th to Don Gardner where it says, "Agreed the  
14 payments for the oil trains will follow the ISS settlements  
15 which take place during the first week of each month." Do  
16 you see that?

17 A Yes, I do.

18 Q And was that consistent with the agreement that had  
19 been reached between the Irving railroads and the MMA?

20 A Yes, it is.

21 Q Turning your attention then to Irving Exhibit 9.

22 A That's an email from Don Gardner to Ian Simpson, the  
23 subject of which is ISS crude payments.

24 Q And the email from Mr. Gardner to Mr. Simpson dated  
25 January 3rd, 2013 where Mr. Gardner wishes Mr. Simpson a

1 Happy New Year, and then says:

2 "It appears that there was a Canadian holiday  
3 yesterday. Tomorrow therefore is the second business  
4 day for Canada which gave CN and CP an extra day to pay  
5 what is due. All other North American railroads  
6 settled today. If we receive funds timely I will send  
7 off the payment immediately."

8 Do you see that?

9 A Yes, I do.

10 Q Is that consistent with the agreement that the Irving  
11 railroads had with the MMA?

12 A Yes, it is.

13 Q Turning your attention to Irving Exhibit 10. Can you  
14 identify that?

15 A It's an email from Don Gardner to Ian Simpson and Ryan  
16 Ellis, a copy of which went to Robert Grindrod, subject of  
17 November oil payment.

18 Q And looking specifically at the email from Mr. Gardner  
19 to Mr. Ellis dated January 4th, 2013 at 5:55 p.m., do you  
20 see that at the bottom of the first page?

21 A I do, yes.

22 Q Mr. Gardner say:

23 "Ryan, I sit frustrated that we have received no  
24 funds in our account at this moment from the ISS. They  
25 allegedly were sent at 10:30 this morning through the



1 Bank of Montreal but we have not received them. I am  
2 told that we will likely see funds on Monday and they  
3 issue a back dated credit memo to today. I am pretty  
4 confident that we will send \$975,128.14 on Monday."

5 Do you see that?

6 A I do.

7 Q And then Mr. Simpson sent an email on that Monday to  
8 Mr. Gardner at 10:05 a.m., do you see that?

9 A I do.

10 Q And it says, "Don, did everything get pushed through  
11 today on the crude payments?" Do you see that?

12 A I do.

13 Q And then Mr. Gardner emailed Mr. Simpson and Mr. Ellis  
14 on January 7th at 11:25 a.m. Do you see that?

15 A I do.

16 Q And it says:

17 "Gentlemen, bank has acknowledged receipt within  
18 the last five minutes, not without some encouragement,  
19 another story. We have instituted the transfer to NBSR  
20 from CIBC in Montreal."

21 Do you see that?

22 A Yes, I do.

23 Q Is that consistent with the agreement that was reached  
24 between MMA and the Irving railroads?

25 A Yes, it is.

1 Q Now, Mr. Hansen, did the New Brunswick and Southern  
2 Railway Company rely upon the agreements that is referenced  
3 in these emails?

4 A Yes, we did.

5 Q And what did New Brunswick Southern Railway do in  
6 reliance upon the agreement referenced in these emails?

7 A We continued shipping and interconnecting with them on  
8 the freight movements.

9 Q Oh, that would have been the provision of interlying  
10 freight services?

11 A Yes.

12 Q Did the New Brunswick and Southern Railway provide --  
13 well strike that, let me rephrase it.

14 Did the Irving railroads provide interlying freight  
15 services to the MMA during the six-month period preceding  
16 MMA's bankruptcy?

17 A Yes, we did.

18 Q Okay. Based upon the agreement that is referenced in  
19 the emails that you've just identified as well as your  
20 understanding of the agreement that was reached between the  
21 MMA and the Irving railroads, what was New Brunswick  
22 Southern Railway's expectation regarding payment by MMA for  
23 freight services provided in connection with oil shipments?

24 A Our expectation was that we would be paid immediately  
25 after they were paid from the ISS system.

1 Q Okay. Handing you -- or I already handed to you. If  
2 you take a look at Exhibit 11 -- Irving Exhibit 11. Do you  
3 see that?

4 A Yes, I do.

5 Q What is this exhibit?

6 A This is an analysis of the Montreal Maine & Atlantic  
7 swap history.

8 Q Okay. And was this prepared at your direction?

9 A Yes, it was.

10 Q And what does it show?

11 A What it shows is payments made between NB Southern and  
12 -- payment -- what it shows is payments that the Irving  
13 companies were paying to MMA and MMA's payments back to NB  
14 Southern.

15 Q Okay. And does this document identify the payments  
16 related to oil shipments?

17 A Yes, it does.

18 Q Are those the ones that are marked in yellow?

19 A Yes, they are.

20 Q Now each of these payments for oil indicate based on  
21 the date having been made during the first full week of the  
22 month other than November 16th and December 14th of 2012.  
23 Do you see that?

24 A Yes.

25 Q And do you know what the circumstances were that were

1 related to those particular payments?

2 A Yes. MMA decided that they wanted to deduct monies  
3 they felt was owed to them from the paper company and they  
4 held up the monies as a result of that.

5 Q And was that in -- consistent with the agreement that  
6 had been reached between the Irving railroads and the MMA?

7 A No, it's not consistent with the agreement.

8 Q Okay. And was that pointed out to the MMA?

9 A Yes, it was.

10 Q And was that subsequently corrected so that that  
11 practice did not thereafter occur?

12 A That is correct.

13 Q With respect to all of the other payments, were those  
14 made within days following the second business day of each  
15 month?

16 THE COURT: All of the other payments meaning  
17 those in yellow?

18 MR. LEPENE: In yellow, yes.

19 THE COURT: Thank you.

20 THE WITNESS: Yes, they were.

21 BY MR. LEPENE:

22 Q And again, the -- what is the significance of the  
23 second business day of the month? What happens on the  
24 second business day of the month in connection with the  
25 interlining settlement system?

1 A Well that's when MMA would have received monies under  
2 the ISIS -- or ISS system.

3 Q Now of the total amount of NBRIS, New Brunswick  
4 Southern's proof of claim, approximately how much is owed  
5 for freight services provided in connection with oil  
6 shipments that were made within six months of MMA's  
7 bankruptcy?

8 A Approximately 1.5 million.

9 Q Okay. In providing freight services in connection with  
10 the interchange of traffic with the MMA did the Irving  
11 railroads rely upon MMA's general creditworthiness?

12 MR. KEACH: Your Honor, objection. Calls for a  
13 legal conclusion. He's already testified on a number of  
14 circumstances about what they were relying on in particular  
15 factual circumstances, what Mr. Lepene is now asking  
16 (indiscernible) to conclude from that based on the legal  
17 assumption.

18 MR. LEPENE: Your Honor, if I might respond to  
19 that?

20 THE COURT: Yes.

21 MR. LEPENE: That's not a legal conclusion at all,  
22 that's an issue of fact as to whether they relied on the  
23 general creditworthiness of the MMA or whether the  
24 expectation was that they would be paid from current  
25 operating revenue of the railroad. I don't understand how

1 that becomes a legal conclusion.

2 MR. KEACH: Yet, Your Honor -- I mean more  
3 importantly it's also a completely devoid of foundation  
4 because his actual testimony was that he relied not at all  
5 on the general creditworthiness of MMA.

6 So there's no -- absolutely no foundation for the  
7 witness to make the conclusion, because his testimony  
8 contradicts it. But --

9 THE COURT: So what I'm going to do is I'm going  
10 to allow the question and I'm going overrule the objection,  
11 but in -- we don't have a jury, and as we get to the legal  
12 argument and the legal consequence of the answer that we're  
13 going to get, Mr. Keach, the door is wide open for you at  
14 that point.

15 MR. KEACH: Thank you, Your Honor.

16 THE COURT: Thank you. Mr. Lepene?

17 MR. LEPENE: Thank you, Your Honor.

18 BY MR. LEPENE:

19 Q Mr. Hansen, in providing freight services in connection  
20 with the interchange of traffic with the MMA did the Irving  
21 railroads rely upon MMA's general creditworthiness?

22 A Absolutely not.

23 Q What did the Irving railroads rely upon?

24 A We relied on them being paid out of the ISS system,  
25 which I felt was secure, and that meant I would be paid

1       shortly thereafter.

2       Q       And were you secure that they could rely upon receiving  
3       money from the ISS system?

4       A       That is correct.

5       Q       Mr. Hansen, did anyone ever advise you that MMA's  
6       ability to pay the Irving railroads was dependent upon MMA  
7       being able to draw down on a line of credit with Wheeling  
8       and Lake Erie Railroad?

9       A       No.

10      Q       Were you aware that the MMA had a line of credit with  
11      the Wheeling and Lake Erie Railroad?

12      A       No, I was not.

13      Q       To your knowledge did anyone ever advise anybody  
14      associated with J.D. Irving or any of its affiliates that  
15      MMA's ability to pay the Irving railroads was dependent upon  
16      MMA being able to draw down on a line of credit with  
17      Wheeling and Lake Erie Railroad?

18      A       No, nobody advised us.

19      Q       All right. Okay. Mr. Hansen, I'm going and you to  
20      take a look at what I believe are exhibits -- Irving  
21      Exhibits 12 and 13, those are the big binders. Can you  
22      identify Irving Exhibit 12?

23      A       I don't -- do I have it here?

24      Q       Do you not have -- did I not give you the big --

25      A       No, I got 11, that's it.

1 THE COURT: Do you have anything that looks like  
2 this?

3 THE WITNESS: No, I don't. My --

4 MR. LEPENE: I've got it. I apologize. May I  
5 approach?

6 THE COURT: Yes, please.

7 (Pause)

8 BY MR. LEPENE:

9 Q Okay. Mr. Hansen, can you identify Irving Exhibit 12?

10 A Yes, it's invoices in support of the proof of claim of  
11 New Brunswick Southern Railway Company Ltd.

12 Q Okay. Would you look at the first page. Do you see  
13 that?

14 A Yes.

15 Q Is this a list of invoices that were outstanding as of  
16 the date of bankruptcy -- the date of MMA's bankruptcy  
17 petition?

18 A Yes, it is.

19 Q Okay. And then the invoices that are attached that  
20 make up the rest of the exhibit, are those the invoices that  
21 were sent by the New Brunswick Southern Railway Company to  
22 the MMA?

23 A Yes, they are.

24 Q Okay. If you would take a look at Irving Exhibit 13.  
25 Do you see the first two pages?



1 A Yes.

2 Q Does this represent a listing of the invoices that were  
3 outstanding in -- that had been issued by the Maine Northern  
4 Railway Company to the MMA as of the date of MMA's  
5 bankruptcy?

6 A Yes, it is.

7 Q And are copies of the invoices attached?

8 A They are.

9 Q Okay. Now were these particular statements prepared in  
10 the ordinary course of the business of the Irving railroads?

11 A Yes, they are.

12 Q Do you accurately reflect the amounts owed by MMA to  
13 the Irving railroads?

14 A Yes, they do.

15 Q And do the dates shown accurately reflect the dates  
16 invoiced were issued by the Irving railroads to MMA?

17 A Yes.

18 Q And the attached invoices, were those taken from the  
19 business records of the Irving railroads?

20 A Yes, they were.

21 Q Do the invoices accurately reflect the dates freight  
22 and other services were provided to the MMA by the Irving  
23 railroads?

24 A Yes, it does.

25 MR. LEPENE: That's all I have at this time, Your

1 Honor.

2 THE COURT: Why don't we just for classification  
3 on the record, all these exhibits were stipulated to for  
4 admissibility expect for 12, 13, and 11, and so, Mr. Keach,  
5 any objection to the -- let's do the exhibit I think that's  
6 just supposed to help us all, the two-page Excel  
7 spreadsheet.

8 MR. KEACH: Yeah, Your Honor, I have no objection  
9 to its admission, it's just a summary essentially of other  
10 records of which we have had access to.

11 THE COURT: Perfect. And then how about the 12  
12 and 13, any objection?

13 MR. KEACH: No objection. The amounts in the  
14 stipulation were derived from the invoices. We had a  
15 opportunity to review the invoices and that's the basis of  
16 the stipulation.

17 THE COURT: Okay. Thank you very much.

18 MR. LEPENE: Thank you, Your Honor.

19 (Irving Exhibit Nos. 11, 12, and 13 were admitted)

20 MR. KEACH: Your Honor, I'm going to suggest, can  
21 we take about a five-minute break?

22 THE COURT: Sure. Let me just check, Ms. Keith  
23 was saying something. Great minds think alike. She was  
24 asking the same. Why don't we take a five-minute break and  
25 be back at 3:20.

1 MR. KEACH: Thank you, Your Honor.

2 THE COURT: What'll be in a brief recess.

3 THE CLERK: All rise.

4 (Recessed at 3:14 p.m.; reconvened at 3:23 p.m.)

5 THE CLERK: All rise.

6 (Pause)

7 CROSS-EXAMINATION

8 BY MR. KEACH:

9 Q Mr. Hansen, good afternoon.

10 A Good afternoon.

11 Q Would you for my benefit repeat your title with J.D.

12 Irving?

13 A I am the general manager corporate credit and finance.

14 Q And in that capacity do you handle corporate finance  
15 and credit matters not only for J.D. Irving but all of its  
16 wholly-owned subsidiaries?

17 A Yes, I do.

18 Q And among those wholly-owned subsidiaries were the  
19 Irving railroads that we have referred to today?

20 A Yes, they are.

21 Q As well as the various Irving paper entities that have  
22 been referred to, correct?

23 A That is correct.

24 Q How many people do you have working for you at J.D.  
25 Irving on the credit and -- corporate credit and control

1 side?

2 A Thirteen.

3 Q Okay. And you testified earlier that one of the  
4 reasons that the Irving railroads opted out of ISS was that  
5 the Irving entities did not have the capacity to handle  
6 participation in the ISS. Did you mean that you didn't have  
7 the resource capacity despite the 13 people who work for  
8 J.D. Irving?

9 A That's correct.

10 Q So the 13 people who otherwise handled credit matters  
11 for multiple paper companies and multiple railroads couldn't  
12 have handled participation in the ISS?

13 A That is correct.

14 Q When did you actually first become aware of the fact  
15 that something called ISS existed?

16 A When it was brought to my attention from Ian Simpson  
17 when it was proposed to Ian by Mr. Grindrod, so that would  
18 have been some time in July -- or June or July of 2012 I  
19 think.

20 Q All right. So you did business with MMA or I should  
21 say the Irving empire did business with MMA for nine years?

22 A That's correct.

23 Q And during that entire nine-year period you had no idea  
24 what the ISS was?

25 A Never heard of it.

1 Q And so it's fair to say that any decision you made at  
2 least with respect to your credit decision, any decision  
3 that was made by Irving not to participate in ISS for that  
4 nine-year period was not a function of your recommendation,  
5 correct?

6 A That is correct.

7 Q Was it -- and do you know who did recommend that you  
8 not participate in ISS?

9 A I personally don't know, no.

10 Q Okay. So you really have no idea why you didn't  
11 participate in ISS for those nine years?

12 A That is correct.

13 Q I want to go to something you said early in your  
14 testimony. You indicated that from your -- in your opinion  
15 if the Irving railroads were to refuse to interchange with  
16 MMA that -- or had refused to interchange with MMA that that  
17 would have been devastates to MMA's business. Do you recall  
18 your testimony?

19 A That's correct.

20 Q Okay. Do you know how many track miles MMA owns or  
21 owned before it sold them?

22 A No, I do not.

23 Q Do you know where those tracks go?

24 A No, I do not.

25 Q Do you know which customers those tracks serviced?

1 A I do not.

2 Q And you refer to do the fact that the railroad might be  
3 landlocked -- excuse me -- do you know which customers it  
4 would not have been able to service?

5 A They would not have been able to service the Irving  
6 companies.

7 Q And do you know other than the Irving companies which  
8 customers it would not have been able to service?

9 A I do not.

10 Q So you really have no idea what the impact would have  
11 been on MMA's business, you just know it wouldn't have been  
12 able to service your company, correct?

13 A Correct.

14 Q Are you familiar with Central Maine Quebec Railroad?

15 A Yes, I am.

16 Q Do you know they're the successor to MMA with respect  
17 to the former track miles that MMA owned?

18 A Correct.

19 Q And do you know that they're not shipping oil to the  
20 Irving Oil Company and refinery in New Brunswick?

21 A I know that, yes.

22 Q All right. And yet they're continuing to operate are  
23 they not?

24 A Yes, they are.

25 Q Okay. With respect to the swap arrangement that you

1 have described, and I think actually in response to Judge  
2 Cary's question, you indicated that from your understanding,  
3 you, as the officer of J.D. Irving, had the option of simply  
4 setting off the amount owed to MMA by the Irving paper  
5 companies against any amount that was owed to the Irving  
6 railroads, correct?

7 A That's correct.

8 Q And in fact as you told me last night if MMA at any  
9 time had not paid the amounts due to the Irving railroads,  
10 again prior to the oil shipments we're talking now, you  
11 simply would have paid yourself from the amounts due from  
12 the paper companies, correct?

13 A No, I didn't say that.

14 Q But you said you would have withheld the wires,  
15 correct?

16 A That is correct.

17 Q And if notwithstanding your withholding the wires they  
18 had not paid what would you have done?

19 A I would have held the wire until they paid.

20 Q And if they hadn't paid at all would you have offset  
21 against the amounts due given that you had the option to do  
22 so?

23 A No.

24 Q And why not?

25 A Well as I explained to the judge it's too messy.

1 Q And why is it too messy?

2 A Well because it's an accounting nightmare, because my  
3 records may not reflect their records when it comes to  
4 analysis of the payments.

5 Q Right. But you have no doubt that you had the ability  
6 to do so?

7 A Oh, I certainly had the ability, yes.

8 Q Okay. And in fact the reason you felt this arrangement  
9 was secure was because you had the ability to set off if you  
10 needed to, right?

11 A I controlled the money.

12 Q Right. And the reason you were secure in this  
13 arrangement is because you controlled the money and because  
14 Irving Paper almost always owed MMA more money than MMA owed  
15 the railroads, correct?

16 A Correct.

17 Q Now you've testified with respect to when you became  
18 less comforted by this secured credit arrangement and that  
19 was when the oil shipments began to be a greater percentage  
20 of the total shipments handled by MMA; is that correct?

21 A That's correct.

22 Q Okay. And the reason you became less comfortable was  
23 because as the oil shipments became of greater portion of  
24 the MMA traffic it was true from that point forward that the  
25 Irving paper companies now no longer owed more to MMA than



1 the other way around and in essence you were under  
2 collateralized at that point, correct?

3 A Correct.

4 Q And it's at that point in time that you discussed with  
5 Mr. Simpson the way is ISS worked, right?

6 A Correct.

7 Q And let's just take the oil shipments, for example.  
8 CP, Canadian Pacific, which we'll refer to as CP, as you  
9 understand was the originating railroad, right, with respect  
10 to those shipments?

11 A Correct.

12 Q And that means that CP was the first railroad to ship  
13 them and was responsible for making sure that those  
14 shipments arrived at their ultimate destination, correct?

15 A Correct.

16 Q Okay. And there might have been a number of railroads'  
17 tracks that CP went over from North Dakota until those  
18 shipments eventually arrived at the Irving oil refinery in  
19 New Brunswick, correct?

20 A Correct.

21 Q So there may have been a series of interchange  
22 arrangements between CP and various railroads along the way,  
23 correct?

24 A Correct.

25 Q Who did you understand was liable to pay -- let me back

1 up for a second and just ask one foundational question.

2 Do you understand the term receiving railroad?

3 A No, I don't.

4 Q If I told you that there's the originating railroad  
5 which we've just agreed was CP, that the receiving railroads  
6 were the railroads along the way that received the freight.

7 A Uh-huh.

8 Q Would that make sense to you?

9 A Yeah.

10 Q Okay. Do you know who was ultimately responsible to  
11 pay the receiving railroads in the scenario that we just  
12 talked about?

13 A In my opinion it's ISS.

14 Q Okay. Do you have an understanding about the ISS  
15 system that under the ISS system and the circumstance we  
16 just described that even if CP had not collected from the  
17 people who had agreed to pay it that CP was responsible to  
18 pay all of the receiving railroads the amounts they were  
19 due?

20 A No, the way I understand it is that CP were responsible  
21 to pay the money into ISS. They are not responsible to pay  
22 every individual carrier. ISS are responsible to pay all  
23 the interconnecting lines.

24 Q Right. But who has to put the money into ISS?

25 A CP.

1 Q And did CP have to put that money in even if the person  
2 it was shipping to didn't pay it?

3 A Correct, yes.

4 Q Okay. And if all of the receiving railroads along the  
5 path are members of ISS all of those receiving railroads get  
6 paid through the ISS system, correct?

7 A Correct.

8 Q And they're comforted by the fact that they're going to  
9 get paid because CP has to put the money in whether it  
10 collects or not, right?

11 A Right.

12 Q And the only reason why the Irving railroads were not  
13 similarly secure was because Irving had decided not to be a  
14 member of ISS, correct?

15 A Correct.

16 Q And in fact because the Irving railroads are not  
17 members of ISS you had to have a participating railroad in  
18 ISS collect the money that otherwise would have been paid to  
19 you had you been a member, correct?

20 A Correct.

21 Q And you decided that that party would be MMA, correct?

22 A Correct.

23 Q Okay. I'm going to -- and I assume these are all still  
24 in front of you -- ask you to take a look at Irving  
25 Exhibit 5.

1 A Irving Exhibit 5. Okay.

2 Q Now, I'll just ask you to turn to the second page,  
3 which is the term sheet entitled at the top revision of  
4 payment terms with NBSR needed. Do you see that?

5 A Yeah.

6 Q And you went through a whole series of emails with  
7 Mr. Lepene, and I won't repeat that exercise, but the  
8 consequence of that email traffic was that the Irving  
9 railroads agreed to these terms and conditions, correct?

10 A Correct.

11 Q Yes?

12 A Yes.

13 Q Okay. And I want to -- I want you to look at the  
14 bullets on that page, the bullet points. Do you see them?

15 A What are you referring to as bullet points?

16 Q Well little dots, the paragraphs next to the little  
17 dots.

18 A Okay.

19 Q Okay? And I think one, two, three, four, the fifth one  
20 down is a paragraph that begins with unreceived traffic.  
21 See that?

22 A Yes.

23 Q And would you agree with me that unreceived traffic  
24 means when MMA and the Irving railroads are receiving  
25 railroads under the scenario that you and I just talked

1 about rather than originating railroads, correct?

2 A Correct.

3 Q Okay. And that was largely true of the oil shipments  
4 because CP was the originating railroad?

5 A Correct.

6 Q All right. And so what you are being told in this term  
7 sheet and what you agreed to is the following.

8 "Receive traffic the freight charges must be  
9 apportioned through the interlining settlement system.  
10 MMA typically does not receive payment through ISS for  
11 45 to 60 days after handling the car on average."

12 Do you see that?

13 A Yes.

14 Q All right. So you understood and agreed that there  
15 would be a 45 to 60-day delay, at a minimum, between the  
16 time you handled freight and the time you would be paid,  
17 correct?

18 A Yes, correct.

19 Q And then the arrangement with respect to the other  
20 traffic, traffic on which either of you was an originating  
21 carrier, the so-called local traffic, that was going to  
22 continue to be protected by your secured credit arrangement  
23 through the swap, correct?

24 A It was protected by the swap arrangement.

25 Q Right. So you had essentially two categories. You

1 were protected by the -- your secured credit arrangement  
2 with respect to the local traffic, correct?

3 A I was protected on the local traffic by the swap, yes.

4 Q Right. And with respect to the oil shipments you  
5 understood that notwithstanding the fact that your railroad  
6 had handled the traffic that you were going to have to wait  
7 45 to 60 days from the time that obligation was incurred to  
8 get paid once MMA collected on the ISS system?

9 A Correct.

10 Q Okay. You mentioned that you were -- you felt secure  
11 after talking to Mr. Simpson about the second half of that  
12 arrangement, the ISS payments. Why is it that you felt  
13 secure about the ISS?

14 A Well, I felt secure because ISS would have the money  
15 from the originating carrier, that the funds owed to MMA by  
16 the originating carrier would be given to them through the  
17 ISS system and they would have the money. So, I felt  
18 comfortable that the money would go from ISS into MMA and  
19 that they would get the money. I have no problems thinking  
20 they would not get the money.

21 Q Right.

22 A And that gave me comfort that at least if they had the  
23 money then they had to give it to me shortly thereafter.

24 Q Right. Because CP was paying the money in and ISS was  
25 paying it out, correct?

1 A Correct.

2 Q And those were the two entities that you were relying  
3 on?

4 A Yes.

5 Q When we talked last night, Mr. Hansen, you indicated  
6 that you pulled a Dunn & Bradstreet report on MMA when you  
7 first began to do business with them, correct?

8 A That is correct.

9 Q And that under your system you automatically received  
10 Dunn & Bradstreet reports on them continually when there  
11 were any changes, correct?

12 A Correct.

13 THE COURT: And then that date would be 2003  
14 initially doing business with them?

15 THE WITNESS: Correct.

16 THE COURT: Thank you.

17 BY MR. KEACH:

18 Q And you received them automatically under your system  
19 through the entire time you were doing business with MMA,  
20 correct?

21 A Correct.

22 Q And as we discussed last night you're aware that Dunn &  
23 Bradstreet reports show liens on assets, right?

24 A Correct.

25 Q And you read those Dunn & Bradstreet reports?

1 A Yes.

2 Q Okay. You also told me last night that you didn't rely  
3 on the Dunn & Bradstreet reports, that you didn't really  
4 care frankly what was in them because you were comfortable  
5 that you were relying on your swap system, your secured  
6 credit system, and you were relying on your comfort with  
7 ISS, and that's why you were doing business, not anything  
8 that was in the D&B, correct?

9 A That's correct.

10 Q Mr. Hansen, I'm going to ask you to take a look at  
11 Irving Exhibit 9. And Irving Exhibit 9, notwithstanding the  
12 header at the top, appears to be an email from Mr. Gardner  
13 to Mr. Simpson, correct?

14 A Yes, correct.

15 Q I'm talking about the top email on the page.

16 A Yes.

17 Q And the note by Mr. Gardner to Mr. Simpson is that  
18 because of this holiday, CN and CP had an extra date of pay  
19 what is due. Do you see that?

20 A That is correct, yes.

21 Q And this is consistent with your understanding, right,  
22 that Canadian National and CP were the parties paying into  
23 the ISS, in turn the money would then come out of ISS and  
24 arrive in your hands, correct?

25 A Correct.



1 Q And, Mr. Hansen, I asked you last night if you knew  
2 whether or not Maine Northern or New Brunswick Southern or  
3 any of the Irving railways had the legal right to refuse  
4 traffic from an interchanging railroad. Do you recall that  
5 question?

6 A Yes, I do.

7 Q And you told me you had no idea whether they could or  
8 they couldn't, right?

9 A That's correct.

10 Q Is that still your answer?

11 A No, I asked Ian last night, and he said, no, that --

12 THE COURT: Excuse me. Ian is in no way counsel,  
13 correct?

14 MR. KEACH: No, Ian is I assume, Mr. Simpson.

15 THE COURT: Fair enough, just wanted to make sure.  
16 Please go ahead.

17 THE WITNESS: Yeah. And he informed me last night  
18 that, no, that we couldn't just simply refuse to haul.

19 BY MR. KEACH:

20 Q That you could not?

21 A Yes.

22 Q Okay.

23 MR. KEACH: Nothing further, Your Honor.

24 THE COURT: Thank you. Any redirect?

25 MR. LEPENE: Very short, Your Honor.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

REDIRECT EXAMINATION

BY MR. LEPENE:

Q Mr. Hansen, who is responsible for making the decision whether to participate -- whether New Brunswick Southern Railway or Maine Northern Railway would participate in the ISS?

A That would be a decision made between Ian Simpson and probably Jim Irving.

Q Okay. You wouldn't have any role in that decision, would you?

A Absolutely none.

MR. LEPENE: May I have one minute, Your Honor?

THE COURT: Yes.

(Pause)

MR. LEPENE: Nothing further, Your Honor.

THE COURT: Thank you very much. You have no recross?

MR. KEACH: No recross, no.

THE COURT: Thank you. You may step down, thank you for your testimony.

THE WITNESS: Do I leave all of this stuff up here?

THE COURT: Yeah, why don't you leave it right there. Mr. Lepene, any --

MR. LEPENE: Yes. We will call next Ian Simpson

1 to the stand, Your Honor.

2 THE COURT: Thank you. And any sense, just a  
3 timing -- I'm sorry, you wish to --

4 MR. LEPENE: Your Honor, you raise a very good  
5 question because Mr. Hansen was raising the same question  
6 with me. He has a six hour drive back to Saint John, I  
7 believe. I think Mr. Simpson will be very short, in terms  
8 of his testimony, I'm not sure about the length of the  
9 cross-examination.

10 THE COURT: Are the two of them driving together?

11 MR. LEPENE: No, they are not.

12 THE COURT: Would Mr. Hansen would like to be  
13 excused?

14 MR. LEPENE: I think Mr. Hansen would like to be  
15 excused, but may I ask a question of Mr. Keach?

16 THE COURT: Sure.

17 MR. LEPENE: Thank you.

18 (Counsel confer)

19 MR. LEPENE: Can I have one moment, Your Honor?

20 THE COURT: Sure.

21 MR. LEPENE: I would like to get Mr. Hansen out of  
22 here if we could.

23 MR. KEACH: And I have no problem with Mr. Hansen  
24 being excused.

25 (Pause)

1 MR. LEPENE: Your Honor, if I might?

2 THE COURT: Yes.

3 MR. LEPENE: I think we have moved our exhibits  
4 into evidence. They've been admitted, is that?

5 THE COURT: Yes, that's --

6 MR. LEPENE: If not, I will move them.

7 MR. KEACH: I think they're all admitted by  
8 stipulation, and the ones that weren't, I had no objection  
9 to.

10 MR. LEPENE: Okay.

11 THE COURT: So we can clarify the ones that were,  
12 11, 12 and 13, everything else was in, all of those are in  
13 without objection.

14 MR. LEPENE: Okay. With that, we will wish Mr.  
15 Hansen a safe trip back to Saint John.

16 THE COURT: Safe drive, Mr. Hansen, thank you for  
17 your testimony.

18 THE CLERK: Please raise your right hand.

19 IAN SIMPSON, WITNESS, SWORN

20 THE CLERK: Please be seated, state your name for  
21 the record.

22 THE WITNESS: My name is Ian Simpson, S-i-m-p-s-o-  
23 n.

24 THE COURT: Thank you for coming today, Mr.  
25 Simpson.

1 THE WITNESS: Yep.

2 DIRECT EXAMINATION

3 BY MR. LEPENE:

4 Q Mr. Simpson, by whom are you employed?

5 A The Brunswick and Maine Railways, specifically it's the  
6 New Brunswick Southern Railway, the Eastern Main Railway and  
7 the Main Northern Railway.

8 Q And how long have you held those positions?

9 A For a little over 11 years.

10 Q Do you have a college degree?

11 A Yes, I have a business degree from Acadian University,  
12 and a masters of business from the University of Western  
13 Ontario.

14 Q Okay. And briefly, could you give us your employment  
15 history prior to your employment by the, what I'm going to  
16 refer to as the Irving Railroads, as we've referred to them  
17 in -- during Mr. Hansen's testimony?

18 A I spent six years out of university with a McKane Foods  
19 Company on the transportation side, and 12 years with a J.D.  
20 Irving Trucking Company, Sunberry Transport, and then the  
21 last 11 years with the railway.

22 Q Okay. And what are your duties and responsibilities  
23 with the railroad?

24 A So I have full responsibility of all aspects of the  
25 railroad, the financial, operational, safety, customer

1 revenue, administration.

2 Q And what is your title again?

3 A General manager.

4 Q And you indicated that those railroads include New  
5 Brunswick Southern Railway Company, the Main Northern  
6 Railway Company, and the Eastern Maine Railway Company?

7 A Yes.

8 Q Now, are you familiar with the -- what's been referred  
9 to as the ISS or Interlying Settlement System?

10 A Yes, I wouldn't be an expert by any means, but yes, I  
11 am certainly familiar with.

12 Q Okay. And can -- what is your understanding of how the  
13 Interlying Settlement System works?

14 A It's for members, for railroads who are part of the  
15 ISS, that's a central clearinghouse. There is one billing  
16 railroad, there may be multiple interlying railroads, also  
17 member of ISS railroads that could be part of a particular  
18 shipment, the car load that moves across the country.

19 And once per month, all of the receivables, payables  
20 get netted out through the ISS program, and the net amounts,  
21 some railroads pay in, some railroads get receivables out,  
22 but it's all netted out. It's a way to simplify the billing  
23 process for shippers across North America.

24 Q Did the MMA participate in the ISS?

25 A Yes, they did.

1 Q Okay. Did the Irving Railroads participate in the ISS?

2 A No.

3 Q And why not?

4 A Well, you have to go back a little bit to the history  
5 of our company. We're a little bit unique, in that we  
6 interchange with more than one railroad, specifically we  
7 interchange a lot of our business with CU, with the Pan Am  
8 Railway, and with, at the time, the MMA.

9 Prior to the MMA forming in 2003, the CN arrangement  
10 that we had with them, the CN were the ISS billing railroad,  
11 Pan Am were the ISS billing railroad. That was the  
12 situation they wanted, it was a situation our customers  
13 wanted, and we were comfortable with that, we were fine with  
14 that, it was very consistent.

15 Q And let me just interrupt when you use the term billing  
16 railroad, can you tell us what you mean by that?

17 A Yeah. So if in the case when we're talking about as  
18 discussed earlier, the Irving Railroads or sorry, the Irving  
19 customer, Irving Paper as an example, they may have freight  
20 going to Chicago as an example. There are different moving  
21 options. They could go through the CM to get to Chicago, it  
22 could go Pan Am to get to Chicago, it could go the MMA to  
23 get to Chicago.

24 We would provide our rate to those three railroads, who  
25 in turn had the commercial relationship with the shippers,

1 in this case, Irving Paper. And we would get paid through  
2 the ISS settlement from those three railroads. We didn't  
3 get -- we weren't in the ISS settlement, but those three  
4 railroads were in the ISS, and they in turn paid us, and it  
5 simplified the process for the shippers.

6 Q Now, you were I think explaining why the decision was  
7 made not to participate in the ISS.

8 A So there's a lot to be a member of the ISS. So you  
9 have to have, when we talk about resources, there's a lot of  
10 expertise needed. If we were to become an ISS railroad  
11 after CN and Pan Am, and then ultimately MMA all were ISS as  
12 well, there'd be a significant duplication of efforts that  
13 really made no sense.

14 There's a lot of expertise needed in the system itself  
15 that could be learned; however, you also have a credit  
16 related issue, it's having a relationship with all the other  
17 railroads in North America, setting rates with all the other  
18 railroads, the car ordering process, so there's a lot to it.

19 Now, when the other partner railways are already an ISS  
20 carrier, it's quite redundant for us to do the same thing,  
21 and we're not unique in this. I mean, not every railroad in  
22 North America is an ISS railroad.

23 Q Was the decision not to participate in the ISS  
24 influenced in any way by the credit worthiness of the MMA?

25 A No.



1 Q Now, there's been testimony that the Irving Railroads  
2 interchange traffic with the MMA. You heard some of that  
3 testimony --

4 A Yes.

5 Q -- from Mr. Hansen. Can you just describe to the Court  
6 exactly what was involved in terms of that interchange of  
7 traffic?

8 A So railroads generally unless there's other  
9 arrangements, but generally the railroads haul the traffic,  
10 haul the rail carriers on their railroads, with their  
11 locomotives. They get to a point where it's the end of  
12 their line, it's usually an interchange point, usually a  
13 yard, a common yard.

14 And the locomotives are decoupled, the train is put  
15 into a pre-determined siding, and the other railroad that  
16 you interchange with hooks on to those railcars and then  
17 they continue and that to go through North America.

18 On the other side of it, that same interchange carrier,  
19 if it was the MMA and Brownville Junction in this particular  
20 case, they would have a train with railcars destined for  
21 customers on our line, they would decouple their locomotives  
22 from that train, we would hook onto that, and when we would  
23 bring it onto our railroad.

24 Q What would have been the impact on MMA's operations if  
25 it was unable to interchange traffic with the Irving

1 Railroad?

2 A I think it would've been significant.

3 Q And how so?

4 A Significant in a negative way. We saw the business  
5 from the Main Northern and the New Brunswick Southern  
6 Railway that was interchanged each and every day with the  
7 MMA. And we also had a good understanding of the general  
8 business on their railroad.

9 And, you know, we comprised a significant piece. And  
10 we know the MMA also had from a commercial standpoint, from  
11 a sales and earnings standpoint, put a lot of effort into  
12 attracting and trying to attract more business in and out of  
13 Saint John on our railroad.

14 Q Did the MMA in that regard directly solicit the Irving  
15 Paper Companies for business?

16 A Yes.

17 MR. KEACH: Your Honor, objection, foundation,  
18 personal knowledge of the witness.

19 THE COURT: Okay.

20 MR. KEACH: He hasn't testified he knows anything  
21 about Irving Paper or MMA.

22 THE COURT: Mr. Lepene, do you want to ask a few  
23 questions?

24 MR. LEPENE: Yes. Yes, certainly.

25 BY MR. LEPENE:

1 Q Do you have, Mr. Simpson, an understanding of the  
2 business relationship that existed as between the MMA and  
3 the Irving Paper Companies?

4 A Yes, I know it very well. You know, all the -- again,  
5 we're unique in that we have three railroads that our  
6 railroad interchanges with. And so any business in and out  
7 of Saint John, any business in and out of the Main Northern  
8 Railway, we would handle it, whether it's originating in  
9 Saint John on our railroad or terminating on the railroad.

10 So a shipper like Irving Paper, again might go back and  
11 have three railcars shipping today, we would pick all three  
12 cars up. One could go CN, one could go Pan Am, one could go  
13 the MMA. So we would see that. We would do the interchange  
14 with those three respective railroads.

15 The pricing, the other railroads involved, we would not  
16 see that. And that was a good way to keep things  
17 competitive, and gave the shippers, I mean, in and out of  
18 region many more options.

19 Q Do you know whether the MMA solicited the Irving Paper  
20 Companies for business?

21 A Yes.

22 Q And how do you know that?

23 A In some cases I've been in the same meeting with them,  
24 or they've called in advance, senior people, such as Bob  
25 Grindrod, their President, even their Chairman, Mr. Burkhardt

1 (ph), their Vice-President of Sales and Marketing, Mr.  
2 Migonigal, they would tell us, we're coming to Saint John  
3 next week, we're going to see the following customers, and  
4 with the goal to try to get more business.

5 Q Are you familiar with the company that acquired the  
6 rail assets from the MMA out of bankruptcy?

7 A Yes.

8 Q And what is the name of that railroad?

9 A The Central Maine and Quebec Railroad, the CMQR.

10 Q Okay. Do you know whether the CMQR has a business  
11 relationship with the Irving Paper Companies?

12 A Yes, they do.

13 Q Are the Irving Paper Companies a substantial customer  
14 of the CMQR?

15 A I would say they are, yes. I don't know the specific  
16 number relative to all their other shippers, but it would be  
17 business that would be important to them that they're trying  
18 to grow.

19 Q Would there have been alternative routes that MMA could  
20 have utilized in order to transport oil that it had picked  
21 up from Canadian Pacific in order to get that oil to Saint  
22 John, New Brunswick if it did not interchange that traffic  
23 with the MMA -- excuse me, with the Irving Railroads?

24 A The final destination at the refinery has to be  
25 delivered by us, we're the only railroad there. But we do

1 cede the traffic from, like I said earlier Pan Am, MMA or  
2 CN. The direct, the most direct route was coming from  
3 Montreal to Saint John by Lac Megantic, so -- but the  
4 business was moving on all three railroads. I'm not sure if  
5 I answered the question completely but.

6 Q You heard the testimony previously from Mr. Hansen  
7 regarding the arrangement that had been reached with the MMA  
8 regarding the receipt of payments for freight services  
9 associated with oil shipments immediately upon MMA's receipt  
10 of payment from the ISS. Do you recall that testimony?

11 A Yes.

12 Q And there was testimony regarding various e-mails that  
13 were exchanged.

14 A Yes.

15 Q You were a party to some of those e-mails, correct?

16 A Correct.

17 Q Did the New Brunswick Southern Railway Company rely  
18 upon the agreement that had been reached with the MMA that  
19 it would be paid it, being the New Brunswick Southern  
20 Railway Company would be paid immediately its charges for  
21 services related to oil shipments upon MMA's receipt of  
22 payment out of the ISS?

23 A We absolutely did. We expected prompt payment, because  
24 when ISS -- when they received their money from the ISS,  
25 they were receiving their share and our share, and that's

1 all we were looking for. When they got paid, we were to be  
2 paid.

3 Q And that was the agreement that was in place with the  
4 Montreal Main & Atlantic?

5 A That is correct.

6 Q That was an agreement that you worked out initially  
7 with Mr. Grindrod?

8 A Mr. Grindrod approached me, we spoke, and then he put  
9 it subsequently in writing in the e-mail, and it was of  
10 great help to their railroad to have that in place.

11 Q In providing freight services in connection with the  
12 interchange of traffic with the MMA, did the Irving  
13 Railroads rely upon MMA's general creditworthiness?

14 A No. You know, the important thing was we did a lot of  
15 business back and forth, and the swaps were very important  
16 to have in place.

17 Q And as far as the oil shipments were concerned?

18 A On the oil shipments, we were relying on the ISS  
19 payments.

20 Q Did anyone ever advise you that MMA's ability to pay  
21 the Irving Railroads was dependent upon MMA being able to  
22 draw down on a line of credit with the Wheeling and Lake  
23 Erie Railway Company?

24 A No, I wasn't familiar with that.

25 Q Did you even know there was a line of credit with the

1 Wheeling and Lake Erie Railway Company?

2 A Only if things I would have read, just anecdotally, but  
3 I -- as far as how it worked or -- I had no knowledge of.

4 MR. LEPENE: Can I have one minute, Your Honor?

5 THE COURT: Yes.

6 MR. LEPENE: Thank you.

7 (Pause)

8 MR. LEPENE: That's all the questions I have at  
9 this time, Your Honor.

10 THE COURT: Thank you very much. Mr. Keach, any  
11 cross?

12 MR. KEACH: Yeah, briefly, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. KEACH:

15 Q Mr. Simpson, good afternoon.

16 A Good afternoon, Mr. Keach.

17 Q With respect to your knowledge of the ISS system, when  
18 using the -- and you were during Mr. Hansen's testimony,  
19 correct?

20 A Yes.

21 Q So you heard me describe the example of the CP  
22 shipments --

23 A Correct.

24 Q -- eventually arriving at the refinery, correct?

25 A Yes.

1 Q All right. In that circumstance, and let's assume CP  
2 is the originating carrier, CP pays money into the ISS  
3 system, correct?

4 A Correct.

5 Q All right. Does CP keep its share out first assuming  
6 -- well, let me back up. Assuming CP has collected from  
7 whoever was liable, right, it doesn't pay the entire amount  
8 into the system, right, it keeps its share and pays the  
9 balance under the system?

10 A That part I don't know.

11 Q But in any event, they pay money into the system, and  
12 the clearinghouse then does what with the money?

13 A They would have the -- all the payables and receivables  
14 from all of the interlying or the ISS carriers, would be put  
15 into the clearinghouse, all the receivables then netted out,  
16 and then a net check would be put in that.

17 So in that example, I would think CP would have to put  
18 their share in as well.

19 Q And then the consequence of that is that all of the  
20 parties who are participating members of the ISS get paid  
21 through that system, correct?

22 A That is correct.

23 Q And all of those people get paid in the distribution  
24 first before anybody who's outside the system gets paid,  
25 correct?



1 A That would be correct.

2 Q All right. So by opting out, and having MMA collect  
3 for you, you virtually ensure that you would be last in line  
4 for those payments, right?

5 A Opting out though is more than the decision as it  
6 relates to the credit.

7 Q No, I understand that.

8 A I explained earlier how --

9 Q Mr. Simpson, I understand that --

10 A Right.

11 Q -- I'm asking one simple question.

12 By opting out of the system, you ensured you would be  
13 last, right, just with respect to the payments? I  
14 appreciate you had other reasons, and we'll get to those,  
15 but --

16 A Yeah, yeah.

17 Q -- you ensured you would be last with respect to the  
18 payments, correct?

19 A Well, we -- yes, that's correct.

20 Q All right. Now, with respect to the system you said  
21 with respect to what you were relying on, is that you  
22 expected that when MMA received money from the system, you  
23 would get quote, our share of the system, what did you mean  
24 -- our share of the money. What did you mean by that?

25 A The amount owed to us with accrued shipments, and the

1 share being the haulage amount that was agreed upon that we  
2 would be paid.

3 Q All right. And that's the amount you would have been  
4 paid through the system had you been a member of the system,  
5 correct?

6 A Correct.

7 Q You weren't looking to MMA's share of that collection  
8 or a payment, correct?

9 A We were looking for our share that was owed to us.

10 Q Okay. And it would've been owed by the CP or by the  
11 system, but you chose essentially to have MMA collect the  
12 money and rely on MMA to remit, in accordance with the  
13 arrangement that I went through with Mr. Hansen, correct?

14 A Yes.

15 Q And as I said to Mr. Hansen, and as he agreed, you  
16 understood that that meant that you were not going to be  
17 paid for 60 or more days after the freight was actually  
18 handled, correct?

19 A That is correct.

20 Q All right.

21 A We knew that the member companies specifically the  
22 Class I's, BNSF, CP, CSXT would be originating railroads in  
23 those cases, and all those ISS carriers, it's very important  
24 that they pay in each month.

25 Q Okay.

1 A So there was a question of the days that it would take  
2 to get paid, but the money would be there.

3 Q Because the other carriers would pay it in?

4 A The other carriers were paying in, and the MMA as a  
5 member ISS carrier, they also had to keep their accounts  
6 clear and have any money they were paying into the other ISS  
7 carriers there by the second business day of each month.

8 Q Right. And they had to keep their accounts clear with  
9 all of the other ISS carriers, right?

10 A That's correct.

11 Q It was important for them to pay all of those people  
12 first to be a member of ISS, correct?

13 A Correct.

14 Q In response to Mr. Lepene's question, he asked you  
15 about the bringing of the oil to the Irving Refinery in New  
16 Brunswick.

17 A Yes.

18 Q And you indicated that the route used through MMA's  
19 tracks and through your tracks, was the most direct route.  
20 I assume by that answer, you meant that it wasn't the only  
21 route though, right?

22 A It was the only route from -- the only way MMA could  
23 get traffic into Saint John would be through us.

24 Q Well, everybody had to go through you, correct?

25 A For the final delivery, yes.

1 Q Right. But it wasn't necessarily the case that they  
2 couldn't have just interchanged with other railroads and  
3 generated the same result, it just would've been more  
4 indirect, correct?

5 A (No response)

6 Q You mentioned that you interchanged at that final point  
7 with Pan Am, correct?

8 A We did bring oil directly from some of those same  
9 origin railroads, CP, BNSF, CSXT into Saint John via Pan Am,  
10 and via CN. But they were competing against the MMA, so  
11 they have MMA route the traffic and then turn it over to one  
12 of those railroads economically would not have made any  
13 sense.

14 Q Well, do you know MMA's business relationship with Pan  
15 Am? Are you familiar with it?

16 A Pretty familiar, yes.

17 Q Well, they do interchange with Pan Am, don't they?

18 A Not on business like this they wouldn't.

19 Q Well, they do interchange with Pan Am, though, don't  
20 they?

21 A Local traffic, yes, they do.

22 Q Right. And they could have here, you're just saying  
23 you don't think it would've been as good business as doing  
24 business with you. But you're not telling me it's  
25 impossible --

1 A It's --

2 Q -- in fact, you know it's not impossible.

3 A It's not a practical route for the MMA to interchange  
4 with Pan Am.

5 Q But they could have done it, though, couldn't they?

6 A I guess technically they could, I'm not quite sure how  
7 that would work.

8 Q But technically they could have, right?

9 A I'm not sure if that was still a question. From a  
10 shipper perspective, it would not make economic sense when  
11 they could go directly with Pan Am or directly with CN, why  
12 would you bring another railroad into the mix, it just adds  
13 cost, complexity and that's the advantage of having multiple  
14 railroads competing for your business.

15 Q So you're saying it might not have been the best  
16 business, not that they couldn't get there, in your opinion?

17 A Correct.

18 MR. KEACH: Your Honor, can I have a moment?

19 (Pause)

20 Q Mr. Simpson, you mentioned you were familiar with the  
21 relationship between MMA and the Irving Paper entities,  
22 correct?

23 A Yes.

24 Q Do you know what happened to that relationship after  
25 the derailment on July 6th?

1 A Could you be more specific? I'm not sure what you  
2 mean.

3 Q Did you stop doing business with MMA following the  
4 derailment at some point? Did Irving Paper, excuse me, stop  
5 doing business with MMA after the derailment at some point?

6 A No. There would still have been clay coming in from  
7 Searsport, but as far as outbound volume, there was no  
8 terminating points for Irving Paper on the MMA line with the  
9 halt, with the track not working through Lac Megantic.

10 Q Right. So you -- Irving Paper did not ship product,  
11 outgoing product on MMA, correct?

12 A To my knowledge, no, there was no way to get to market.

13 Q Do you know if the MMA continued to operate  
14 continuously after the derailment until it was sold?

15 A Aspects of it. They were not continuous through the  
16 main line. The main line was severed.

17 Q Well, it was severed in Canada, right? It was severed  
18 at Lac Megantic.

19 A Yes, the main line between --

20 Q It was severed at Lac Megantic, right?

21 A Yes, but that halted traffic between their main line  
22 and the United States, the main line in Quebec.

23 Q You understand that the lines in Canada were owned by  
24 MMA Canada, not by MMA, right?

25 A Yes.

1 Q Okay. So with respect to MMA, the U.S. railroad, you  
2 do understand it operated continually even after you stopped  
3 doing business with it, correct, through the paper  
4 companies?

5 A I'm not sure of your question.

6 Q MMA did not cease to operate --

7 A Right.

8 Q -- when Irving Paper stopped shipping paper products on  
9 MMA's line, correct?

10 A There was no where to deliver the -- there was no  
11 customer on the MMA line in the United States for them to  
12 ship paper to.

13 Q I'm not trying to quibble with your decision not to  
14 ship. But your decision not to ship did not close down MMA,  
15 did it?

16 A Your decision timed with Irving Paper?

17 Q Irving Paper's decision not to ship did not cause the  
18 discontinuation of service generally that was being provided  
19 by MMA to other customers.

20 A I'm not sure I can answer that with any expert --

21 Q Do you --

22 A I don't operate Irving Paper.

23 Q All right.

24 A I can tell you how the freight moved. There was no  
25 freight destined for MMA delivery points, so there's no

1 paper that went to delivery, but there was clay that  
2 originated in Searsport, Maine on the MMA that continued to  
3 move to Irving Paper in Saint John via the MMA and our  
4 railroad.

5 Q And I'm asking a really simple question. The entire  
6 railroad did not shutdown just because Irving Paper stopped  
7 shipping paper products, right?

8 A Correct.

9 Q And do you know if MMA was -- or MMA Canada were  
10 hauling any oil after the derailment?

11 A Being oil that -- if there was any residual oil that  
12 was stranded between Lac Megantic and Brownville Junction, I  
13 will say days after the explosion, that had not yet reached  
14 our railroad, that would be the only crude that had moved  
15 after the accident and to this day, that's the only crude  
16 that's moved on the MMA.

17 Q Right. Other than that, MMA and MMA-C did not haul  
18 anymore oil, correct?

19 A Correct.

20 Q And yet again, as you just said, MMA did not cease to  
21 operate as a railroad, correct?

22 A Correct.

23 MR. KEACH: Nothing further, Your Honor.

24 THE COURT: Thank you very much. Mr. Lepene, any  
25 redirect?



1 MR. LEPENE: Yes, I'll be brief, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. LEPENE:

4 Q Mr. Simpson, with respect to the question that Mr.  
5 Keach asked about Irving Paper deciding not to ship product  
6 following the derailment and the effect of that did not  
7 cause a discontinuance of service by the MMA, they didn't go  
8 out of business. Do you recall him asking you that  
9 question?

10 A Yes.

11 Q The decision by Irving Paper, however, not to ship  
12 would have resulted in a significant reduction in revenue  
13 for the MMA, would it not?

14 A I would think so, yes.

15 Q And similarly, with respect to the fact that the MMA  
16 did not after the accident carry oil it's -- the fact that  
17 it didn't carry any oil would've resulted in a significant  
18 reduction in revenue for the MMA; is that correct?

19 A Yes. The crude was a significant piece of their  
20 business base.

21 MR. LEPENE: That's all I have, Your Honor.

22 THE COURT: Thank you.

23 MR. KEACH: Nothing further, Your Honor.

24 THE COURT: Thank you for your testimony. You may  
25 step down, and he may be finally excused also, right?

1 MR. LEPENE: He may be excused. I've made not  
2 quite that drive, but a similar one many times, and I  
3 sympathize.

4 MR. KEACH: Actually, Your Honor, unfortunately  
5 depending on whether Mr. Caruso is called to the stand, I'm  
6 not prepared to excuse Mr. Simpson, and he's approaching me  
7 right now, so I say that with great trepidation. What time  
8 is your flight?

9 THE COURT: Did -- any further --

10 MR. KEACH: Let me have one minute, Your Honor,  
11 and hopefully we can --

12 MR. LEPENE: If it helps his decision-making  
13 process, Your Honor, I'm not intending to call Mr. Caruso at  
14 this point.

15 THE COURT: Okay.

16 (Pause)

17 MR. LEPENE: Your Honor, I don't have further  
18 witnesses.

19 THE COURT: Wonderful.

20 MR. LEPENE: It sounds like we have no further  
21 witnesses.

22 THE COURT: Okay. So no further witnesses from,  
23 I'll call it Irving Railroad side, Mr. Keach?

24 MR. KEACH: No, we're not going to present any  
25 further witnesses at this point, Your Honor.

1 I have a suggestion in light of the hour and in  
2 light of people's schedules, and that is that we do have the  
3 remainder of the stipulated exhibits that we would  
4 introduce. My suggestion is that we mark those and submit  
5 them either by courier or electronically, and that way we  
6 won't all have to wait around for us to do that.

7 I mean, we've agreed on what they are. I'll  
8 certainly supply Mr. Lepene with copies, so that he can  
9 verify them. But rather than hold the Court up, and hold  
10 everybody up, I know it's been a long day for the Court, and  
11 some other matters as well, we would propose to do that  
12 unless Mr. Lepene has a dying desire to close, I would  
13 suggest that we submit post-trial briefs, if we wish to  
14 within a certain number of days and close in that fashion.

15 THE COURT: Let me just deal with -- I think that  
16 makes great sense. Let me just check on the exhibits.

17 So the trustee doesn't have any exhibits other  
18 than the A through U under No. 7 of the stipulation,  
19 correct?

20 MR. KEACH: Well, we're going to put in all the  
21 exhibits that are in the stipulation, Your Honor. We're  
22 just going to put them in because they were agreed to be  
23 admitted by stipulation, they're not attached to any  
24 particular witness.

25 THE COURT: Fair enough.

1 MR. KEACH: I just want to put them in the issue  
2 of completeness and the stipulation.

3 THE COURT: Great. Is there anything in addition  
4 to those exhibits that you need to put in?

5 MR. KEACH: No.

6 THE COURT: Okay. Mr. Lepene?

7 MR. LEPENE: Well, Your Honor, I don't know about  
8 a dying desire, I hate to use that term when it relates to  
9 myself, but I would like the opportunity to briefly address  
10 the evidence that you've heard today and some of these  
11 issues, just to put all of this into context. And what I  
12 would ask if you could give us five minutes to collect our  
13 thoughts, and then I would propose to be very brief in that  
14 regard.

15 THE COURT: Sure. So let me just follow-up now.  
16 I'm -- we're here to hear this, this is a significant claim  
17 and we want to make sure it gets resolved, and get the  
18 process that's due to you.

19 In addition to what you'd like to say today, do  
20 you anticipate wishing to file anything in writing?

21 MR. LEPENE: Well, I think again I have not had an  
22 opportunity to carefully review the reply that Mr. Keach  
23 filed an hour and a half before the hearing, so I would like  
24 to reserve the right, I mean, after I've had a chance to  
25 really study the paper to perhaps submit something with

1 respect to our position.

2 THE COURT: Fair enough. So would you like five  
3 minutes to gather your thoughts, and then you want to also  
4 at that point provide some oral --

5 MR. LEPENE: Yes.

6 THE COURT: -- summing of what we heard today?

7 MR. LEPENE: Yes, I would like to do that, Your  
8 Honor.

9 THE COURT: And what are your thoughts of how long  
10 you'd like to orally sum up?

11 MR. LEPENE: I think ten minutes max, Your Honor,  
12 I just -- I have I think at this point just a few points  
13 that I would like to make for the Court's benefit and then  
14 we can all depart for the weekend.

15 THE COURT: And, Mr. Keach, how long do you wish  
16 to orally sum up, if at all?

17 MR. KEACH: I -- well, I won't be able to resist  
18 if Mr. Lepene goes, but I'm sure I can do it in ten minutes  
19 or less, probably five minutes or less.

20 THE COURT: Fair enough. Just I want to make  
21 arrangements with the CSOs and --

22 MR. KEACH: And understanding that 5 o'clock is a  
23 magic hour at times, I think we can both assure you we'll be  
24 well out of here before 5.

25 MR. LEPENE: Without a doubt, Your Honor.

1 THE COURT: Wonderful. It's a lawyer's commitment  
2 I've heard right there.

3 All right. So why don't we take a brief break and  
4 be back by 4:30, does that give you time?

5 MR. LEPENE: That would be fine, Your Honor.

6 THE COURT: Court will be in recess.

7 THE CLERK: All rise, please.

8 (Recessed at 4:22 p.m.; reconvened at 4:35 p.m.)

9 (Call to Court)

10 THE COURT: Mr. Lepene.

11 MR. LEPENE: Thank you, Your Honor, and thank you  
12 for taking the time this afternoon to hear us.

13 THE COURT: Absolutely, it's an important issue.

14 MR. LEPENE: Just several points that I would like  
15 to make and I will be brief.

16 The first point again raised in the trustee's  
17 objection and in their reply as I understand it and read it  
18 this afternoon or early -- late morning, I should say, do  
19 interlying claims like this qualify.

20 And we've submitted papers with respect to this.  
21 We think the trustee has simply misread the Boston and Maine  
22 decisions, but we would also point out and we did cite this  
23 in our paper, the fact is, the per diem claims in the Boston  
24 and Maine case following the decision of the First Circuit  
25 were recognized by the district court in the plan of

1 reorganization that was confirmed in the Boston and Maine  
2 case, as being six month claims that were entitled to  
3 priority.

4 So this idea that per diem claims which the  
5 trustee concedes are equivalent to the claims that we are  
6 asserting here, the underlying claims, as a matter of  
7 controlling law in the First Circuit, are not recognized as  
8 six month claims is just flat out wrong. That's just not  
9 the law.

10 Mr. Keach cites also the McClain Industries case,  
11 he mentioned it in his argument, it's not a railroad  
12 reorganization case. It's a Chapter 11 of a steamship  
13 company. And he refers -- and this is a decision of the  
14 Bankruptcy Court, Southern District of New York, so we're  
15 not talking about anyone within the First Circuit --

16 THE COURT: Right.

17 MR. LEPENE: -- but the congressional provision  
18 that he is talking about that wasn't adopted, addressed the  
19 same question that the First Circuit had dealt with in the  
20 first Boston and Maine case, which is whether these types of  
21 claims would be entitled or required to be paid immediately  
22 during the course of the reorganization. It wasn't intended  
23 to address the question of the six month priority rule.

24 So McClain Industries has no relevance, no bearing  
25 whatsoever.

1           Your Honor, I think again we're down to the issue  
2 of reliance on the general credit of the MMA, or whether the  
3 expectation of the parties is or was that we would be paid  
4 out of current operating revenue.

5           You heard all of the testimony in that regard.  
6 You have the exhibits. I would just make a few points.  
7 When you -- when someone relies on general credit, they  
8 don't identify the specific source of the payment from which  
9 they are expecting to be paid. General credit -- and the  
10 First Circuit in adopting that standard, words matter. It  
11 was an issue of whether you provide the services in reliance  
12 on general credit or whether you were providing the services  
13 with the expectation that they would be paid out of current  
14 operating revenue. That's the standard that you've got to  
15 deal with because that's what the First Circuit tells us.

16           General credit considerations, when someone is  
17 providing services in reliance on general credit, they don't  
18 identify the specific source of payment. What they do is  
19 they assess the overall financial condition of the company.

20           You heard the evidence. We didn't assess the  
21 financial condition of the company because we weren't  
22 relying on the MMA's general credit. Here, the parties  
23 specifically identified the specific source of payment, and  
24 it was operating revenue.

25           The other point I want to make is you have to



1 separate out the swap and the oil payments, they are two  
2 separate matters. Even if the swap arrangement could be  
3 characterized as Mr. Keach would like to characterize it as  
4 the extension of secured credit, you know, we were taking  
5 collateral with respect to that, that's got nothing to do  
6 with the agreement that dealt with the payment for the oil  
7 shipments, nothing to do with that whatsoever.

8 And with respect to the oil shipments, the parties  
9 were very specific, that with respect to that, we would be  
10 paid immediately following the payment that was received by  
11 the MMA from the ISS. That's the evidence that you heard.  
12 There is no evidence in this record to the contrary,  
13 absolutely none.

14 Now, the fact and Mr. Keach made a point of this,  
15 that the other railroads who participate in the ISS in terms  
16 of those that were involved in the movement of oil from  
17 North Dakota to Saint John, they would -- because they're  
18 participants in the ISS, they get their share first.

19 I think you heard questions along those lines.  
20 That has nothing to do with the standard that you have to  
21 consider in deciding this question. It's not a function of  
22 what the other railroads got out of the ISS, the function of  
23 what the MMA got out of the ISS. Because what the MMA got  
24 out of the ISS is their operating revenue, that they earned,  
25 and the agreement that was reached, the expectation of the

1 parties, both on the part of the MMA and on the part of the  
2 Irving Railroads was that we would be paid immediately  
3 following their receipt of payment.

4 That is the evidence. It is uncontroverted. It  
5 establishes without a doubt that the expectation was that we  
6 would paid out of current operating revenue.

7 Last point. Mr. Keach made a point, well, there  
8 was such a delay with respect to our getting paid. The fact  
9 that there was a delay again, Your Honor, is irrelevant to  
10 the standard that the First Circuit has indicated you have  
11 to evaluate in deciding this question.

12 If there wasn't any delay, if cash would've been  
13 paid in advance, or on delivery, we wouldn't be here. Of  
14 course there's going to be a delay in payment. Any time you  
15 consider this question, there will be a delay in payment.  
16 It doesn't matter how long the delay in payment occurred,  
17 the question is, as the First Circuit has told us, what was  
18 the expectation of the parties.

19 Did they expect the payment would be made out of  
20 current operating revenue, or did the claimant rely upon the  
21 general credit of the railroad? The evidence here is  
22 absolute, there is no evidence to support any conclusion at  
23 all other than the agreement and expectation of the parties,  
24 was that we would be paid out of current operating revenue,  
25 and therefore, we qualify as a six month claim entitled to

1 priority under Section 1171(b) of the Bankruptcy Code.

2 To me, Your Honor, it's open and shut, thank you.

3 THE COURT: Thank you for that by the way. So I  
4 think everybody's in agreement that the Boston and Maine  
5 cases, establish the standard, right?

6 MR. LEPENE: Well, that the second Boston and  
7 Maine establishes the standard.

8 THE COURT: And in the second Boston and Maine  
9 case, I know it's unfair to do it this way, but just teeing  
10 it up in case you wish to supplement your closing argument  
11 in writing later --

12 MR. LEPENE: Uh-huh.

13 THE COURT: -- but the Court says on page 1380,  
14 "However, if payment is claimed under the Fosdick principle,  
15 the existence of current debt fund must be demonstrated."  
16 That -- is that an additional element that I need to worry  
17 about?

18 MR. LEPENE: No, no, absolutely not, Your Honor.  
19 The fact is, the First Circuit is unique, okay. The -- and  
20 they were going through -- it's a wonderful opinion, it  
21 takes a long time to parse through it, but -- and it's a  
22 great history lesson in terms of 19th Century receivership  
23 law.

24 The fact of the matter is, in the Second Circuit  
25 and the Third Circuit, and these cases are cited in the

1 Boston Maine decision, they determined based upon Fosdick,  
2 that in order for there to be six month priority, you had to  
3 have a current expense fund. And because in, this was the  
4 Penn Central and the New Haven, in those cases, there was no  
5 current expense fund, therefore, no six month priority.

6 The district court in this, in the Boston Maine  
7 case said, well, the Second Circuit, and Third Circuit,  
8 they're right, got to have a current expense fund, and if  
9 you don't have a current expense fund and there was none in  
10 the Boston Maine case, you don't get the priority.

11 And what the First Circuit said is, that the  
12 Second Circuit and Third Circuit got it wrong, that if you  
13 look at all of the cases and it goes back to where the  
14 Miltenberger versus Logansport case, and says there are two  
15 separate alternative independent bases for establishing six  
16 month priority.

17 Interestingly enough, the Fosdick case would have  
18 supported, if there had been a current expense fund, we  
19 would've been able to argue that we had an equitable lien,  
20 and we would've been ahead of the Federal Railroad  
21 Administration, potentially the Wheeling and Lake Erie, but  
22 if there's no current expense fund you don't get an  
23 equitable lien. That was the principle of restitution that  
24 the Court in the Boston Maine case was talking about.

25 Miltenberger, the First Circuit says in Boston

1 Maine totally separate principle. It's a principle of  
2 recognizing that claims that arise from services that are  
3 provided within six months prior to reorganization are  
4 entitled to be treated as administrative expense claims  
5 because they enabled the railroad to continue to operate as  
6 long as you meet the three standards; got to be incurred  
7 within six months, got to be necessary for the operation of  
8 the railroad, and the -- you know, the services that were  
9 provided had to have been provided not in reliance on  
10 general credit, but with the expectation that they would be  
11 paid out of current operating revenue. And the evidence  
12 here establishes all three.

13 THE COURT: That 1171(b) excepted how a  
14 creditor would be normally treated, right?

15 MR. LEPENE: Absolutely.

16 THE COURT: And can you see an example of a  
17 creditor that wouldn't satisfy most of those requirements?

18 MR. LEPENE: Absolutely. We have the rare case.  
19 This is not going to open the floodgates to creditors coming  
20 in and making claims. We are the rare case, based on the  
21 evidence that you heard, most creditors, most creditors  
22 simply ship their product or provide their services, they  
23 don't go through the pains that the Irving Railroads went  
24 through here.

25 There is no evidence with respect to seeking to

1 avoid credit risks. They just go ahead and they provide  
2 their product, and so what are they doing, they are relying  
3 on the general credit of the railroad.

4 If we had done that, Your Honor, we wouldn't be in  
5 front of you, being able to assert that we're entitled to  
6 priority. We didn't rely on the general credit. The  
7 evidence establishes that we didn't rely on the general  
8 credit. The evidence establishes that we expected to be  
9 paid for when they got paid out of the ISS.

10 So what is the payments that they received out of  
11 the ISS, that's their operating revenue. We meet the  
12 standards, Your Honor, the evidence establishes it, and  
13 we're entitled to priority.

14 THE COURT: Thank you very much.

15 MR. LEPENE: Thank you.

16 MR. KEACH: Thank you, Your Honor, I will be brief  
17 as promised.

18 First, there is one thing we do agree on, the  
19 Fosdick principle is not relevant. That was an alternative  
20 theory that I think is dead in the First Circuit, so I think  
21 we can agree on that.

22 And I --

23 THE COURT: See, this was worthwhile. We got an  
24 agreement.

25 MR. LEPENE: I agreed that he was good, Your

1 Honor.

2 MR. KEACH: And it's just going to get better. I  
3 admire Mr. Lepene's ability to make silk from a sow's ear  
4 here, but nothing could be further from the truth, in that  
5 the evidence establishes as meeting any of the requirements  
6 of 1171(b).

7 The only way that the Irving Railroads can even  
8 with a straight face argue that they meet the 1171(b)  
9 standards is by reducing it to no standard at all.

10 As Your Honor just pointed out, under their  
11 articulation of the standard, everybody would qualify.  
12 Every railroad that wasn't paid, every creditor extending  
13 any kind of goods or services within the entire six month  
14 period would qualify. That's not the standard.

15 Like most priorities, and incidentally, the Boston  
16 Maine case definitively does not establish they're entitled  
17 to an administrative claim. You can only get there by  
18 actually ignoring what happened after the remand to the  
19 First Circuit went to the district court, and as was true  
20 back then, the district court confirmed the railroad's plan.

21 If you look at the description of the plan in that  
22 case, and we've cited it in other places and here, the plan  
23 itself lays out the priorities. Number one, the interlying  
24 payments are not there, and number two, the 1171(b) priority  
25 is subordinate to all of the other priority claims, and

1 subordinate to the administrative claims.

2 So that -- there is absolutely no basis upon which  
3 you can read that set of cases to make 1171(b)  
4 administrative claims. It's just a gross misreading of the  
5 decision, but also not terrible relevant to what we're  
6 talking about today.

7 Your Honor, if we're going to make any sense out  
8 of the requirements of 1171(b), when a party extends credit  
9 to the debtor on credit terms, that is an objective  
10 indication, the only one I know of, that you are relying on  
11 the credit of the railroad.

12 Now, Mr. Lepene in an attempt to rescue this case  
13 says, well, they identified the sources of payment. Well,  
14 that's true, except they identified virtually all of the  
15 debtor's business as sources of payment, because if you look  
16 at the amounts owed by the Irving Paper Companies and you  
17 look what was coming into the interlying system, as Mr.  
18 Hansen admitted, because that was his problem, you're  
19 talking about the business.

20 But what Mr. Hansen said unequivocally, I asked  
21 him, and he said the exact words that are in the transcript,  
22 that he wasn't relying on the cash flow of the MMA at all.  
23 Not at all.

24 Prior to the shipments of oil, he was relying on  
25 his collateral arrangement. He said specifically if MMA had



1 refused to pay, he was protected by his offset right. He  
2 was just going to take the Irving Paper money which he  
3 controlled and pay himself. That is the absence of reliance  
4 on our cash flow. He wasn't relying -- he didn't care  
5 whether we paid him or not, because he was just going to  
6 take the Irving Paper money and pay himself.

7 THE COURT: Didn't he say that it would be an  
8 administrative -- an accounting nightmare for him to do so?

9 MR. KEACH: He said it would be messy, and it's  
10 always messy when a creditor sets off, but that doesn't  
11 change the fact that you're relying on your collateral.  
12 It's messy when a secured creditor forecloses its  
13 collateral, but I don't think any of us would say that a  
14 secured creditor is relying on cash flow as opposed to its  
15 collateral, right. They're just a secured creditor with  
16 their foreclosure right, and however messy it might have  
17 been, he made it very clear, he wanted nothing to do with  
18 relying on either the credit of the company or the cash flow  
19 or any other financial characteristic, because he was  
20 protecting himself with his collateral arrangement. That  
21 was why he was doing it. Largely because, as he admitted,  
22 he had no understanding of the way ISS worked.

23 When the oil grew and it created a different set  
24 of circumstances, his collateral was now insufficient, he  
25 was under collateralized, they entered into the arrangement

1 they entered into. What was that arrangement? Well, first  
2 and foremost as Judge Haynes' decision in (indiscernible)  
3 points out, all right, this their share/our share stuff is  
4 legally irrelevant. When you're not a petitioning member of  
5 the ISS and the payment goes out to the ISS member from ISS,  
6 they have dominion over that money, right.

7 So what were they really saying here? What they  
8 were really saying when they entered into this arrangement,  
9 as they documented, as proposed by the debtor, they were  
10 extending 60 to 75 day credit terms. When the debt was  
11 incurred, i.e., when they actually supplied the interlying  
12 services from that time, to the time there was payment, was  
13 60 to 75 days.

14 They went from 21-day credit terms per agreement  
15 to 60 to 75 day credit terms per agreement, to be paid out  
16 of ISS collection. They had absolutely no security that it  
17 was going to be paid out of the ISS collection. That was  
18 MMA's money, just like their other money was MMA's money,  
19 they weren't designated to that source. MMA didn't even  
20 have to pay them from that money. Because MMA, under Judge  
21 Haynes' opinion and under the law had complete dominion over  
22 that money.

23 All that arrangement did, now that Mr. Hansen  
24 understood the ISS system, was make him comfortable doing  
25 what he was doing before, extending credit to MMA. And this

1 time, he was extending 60 to 75 day credit. To say that the  
2 delay is irrelevant is to reduce the standard to no standard  
3 at all.

4 If the credit terms don't matter, if the objective  
5 indication of an extension of credit and a reliance on  
6 creditworthiness is not that you've extended 60 to 75 day  
7 terms, then there is no standard. I have no idea what the  
8 standard would mean, if it doesn't matter what your credit  
9 terms are.

10 What it would mean is that anybody and everybody  
11 who has a claim in six months would be making the very same  
12 claim that they're making. It would be total floodgates,  
13 and this case would be a very different case. I think it's  
14 pretty telling, we had lots of people render goods and  
15 services. We had lots of people performing interlying  
16 services, we had lots of creditors. None of them are here  
17 claiming 1171(b) priority but the Irving Railroad.

18 That's because it's a hard standard to meet. Most  
19 people, as Mr. Lepene pointed out extend credit. And as Mr.  
20 Hansen admitted, unequivocally, clearly and honestly on  
21 cross-examination, that's exactly what Irving Railroads did.  
22 They extended credit. And that's the be all and end all of  
23 this decision. You don't have to go past one more fact,  
24 they don't meet the test.

25 On top of which, Your Honor, with respect to the

1 Bangor -- excuse me, the Bangor and Aroostook case and the  
2 Boston and Maine case, and McClain, you know, I think we've  
3 argued those ad nauseam, I think the Court can read them on  
4 its own, I think they're very, very clear with respect to  
5 the fact that interlying payments don't meet the test. And  
6 there's a very simple reason.

7 The necessity test, the necessary to the operation  
8 of the railroad test is not meant to be specific to that  
9 railroad. It's an element of the public interest doctrine  
10 and railroad reorganization. What's at interest there is  
11 making sure the railroad continues to operate.

12 The test is, would the withholding of those  
13 services, if there were no doctrine to protect them, shut  
14 the railroad down, all right. So the people who get 1171(b)  
15 priority are people like fuel suppliers. Right, because if  
16 you don't protect fuel suppliers, they don't supply the  
17 stuff that makes the railroad run.

18 If you -- the original 1171(b) payments before  
19 there was a Bankruptcy Code that had a set of priorities in  
20 it, the principle 1171(b) priority was called wages.  
21 Because if you didn't pay the employees, their railroad shut  
22 down.

23 THE COURT: At a time when railroads were the true  
24 arteries of --

25 MR. KEACH: Correct.

1 THE COURT: -- most of our economy. Which isn't  
2 the case anymore, right?

3 MR. KEACH: Sadly true. But, Your Honor, you have  
4 to remember that most of the existing, most of the non-tax  
5 priorities that are built into the 507 priorities now, under  
6 the original railroad reorganizations were 1171(b) claims,  
7 right.

8 So it's not just the stuff that sits out there  
9 now, it's all those claims, employees, employee benefits,  
10 all that stuff, deposits. The fact is, that if you look at  
11 that universe, what's common about them is if you don't  
12 protect those services, the railroad shuts down.

13 As Mr. Simpson and Mr. Hansen admitted, they  
14 didn't have the right to refuse to exchange with the  
15 railroad. They couldn't stop us from running over their  
16 lines if they wanted to. That's the nature of modern  
17 railroading, right, that's the system, because that's the  
18 system that actually exists so that the railroads will run.

19 The ISS exists as a protective mechanism that  
20 makes people, you know, be able to do that. The reason you  
21 have that system. Irving opted out of that system for their  
22 own convenience. Mr. Simpson's testimony was clear. They  
23 had other people who would do it for them, right, Pan Am did  
24 it for them, we did it for them, other people did it for  
25 them, what did it prevent? It prevented them from hiring

1 somebody who sort of knew how to work the system. Mr.  
2 Hansen admitted he didn't know. And it may be saved them a  
3 couple of employees. But that was a choice.

4 The -- but not providing us with interlying  
5 services was not a choice. More importantly even if it had  
6 to be a choice, as was I think clearly testified to, didn't  
7 end the railroad, right. We could continue to operate,  
8 freight was going to continue to get every place it was  
9 getting when we were using their system.

10 What happened to the oil after Lac Megantic until  
11 market conditions basically have slowed down on a lot of  
12 those shipments, it continued to arrive in Saint John, New  
13 Brunswick. It arrived through a Canadian route. The system  
14 wasn't shutdown, right.

15 For the reason you don't protect interlying  
16 payments is because they don't dictate the operation of the  
17 railroad. And they just don't simply fit with the policy  
18 goals of 1171(b). If you allowed interlying payments to  
19 have 1171(b) protection, you would also as I said earlier,  
20 have eviscerated the necessity of Judge Haynes' trust  
21 opinion. Who would have litigated that case? If the  
22 interlying payments were already protected as an  
23 administrative expense, what would've been the point.

24 I mean the point was, they didn't have that  
25 protection. They're not an administrative expense. They're

1 not an 1171(b) priority. The hope of the railroads in that  
2 case was that they could establish some kind of actual or  
3 constructive trust. And as Judge Haynes properly ruled,  
4 there is no such trust. This is a system of debtor/creditor  
5 relationships, and when bankruptcy intervenes, those  
6 creditors who are representing of the interlying system, get  
7 treated just like all the other unsecured creditors.  
8 They're in the same place, in the same line as everybody  
9 else.

10 And what's really at issue in this case, which is  
11 always true of priority disputes, right, within the  
12 bankruptcy priority system, is that this isn't a question of  
13 whether, you know, I get to keep money that he wants. It's  
14 a question of whether he takes money away from other  
15 creditors. That's what this is about.

16 And as the fiduciary of this estate, it's my job  
17 not to let that happen. And in this case, there's just no  
18 1171(b) basis. I think the evidence, particularly Mr.  
19 Hansen's, I think unequivocally honest testimony on cross,  
20 means they don't meet any of the tests. Thank you, Your  
21 Honor.

22 THE COURT: Thank you.

23 MR. LEPENE: Your Honor, may I respond just very  
24 briefly?

25 THE COURT: Sure. But it'll be impossible to get

1 significantly before 5.

2 MR. LEPENE: Well, I did go one minute over. I do  
3 think Mr. Keach was a little long-winded, Your Honor, if I  
4 must say.

5 THE COURT: Mr. Lepene, please.

6 MR. LEPENE: Thank you, Your Honor.

7 First of all the Boston and Maine and the district  
8 court opinion following the First Circuit's opinion in that  
9 case with respect to the per diem claims, Mr. Keach again is  
10 just flat out wrong. Go back and read the district court  
11 opinion, as I'm sure the Court will. The per diem claims,  
12 there were \$3 million of claims, they are specifically  
13 recognized as being six month priority claims.

14 And the plan of reorganization specifically  
15 provided that they would be paid in full and in cash. And  
16 the Court, the district court indicated that it had entered  
17 an order that provided that they would be paid in full and  
18 in cash upon consummation of the plan, based on the Boston -  
19 - based on the First Circuit's opinion in the Boston and  
20 Maine case.

21 With respect to the floodgates, I think I've  
22 addressed that. This does not open the floodgates. This is  
23 a unique case, Your Honor, and the facts demonstrate that.  
24 I won't belabor that point.

25 Again, the swap is separate from the oil



1 shipments, so whatever the testimony is with respect to the  
2 swap doesn't translate to what the decision, your decision  
3 should be in evaluating the evidence as far as the oil  
4 shipments.

5 Now, Mr. Keach's argument that there is, you know,  
6 in effect, it just again, just opens the floodgates, that  
7 the First Circuit's opinion can't be read the way I would  
8 suggest that it must be read. The fact is if you accept Mr.  
9 Keach's argument, there is no then distinction between what  
10 is meant by reliance on general credit and providing  
11 services with the expectation that they would be paid out of  
12 current operating revenue.

13 All of the arguments that Mr. Keach makes in terms  
14 of the various things that vendors do in assessing whether  
15 or not to provide services, that all relates to whether or  
16 not someone is relying on the general credit. That's not  
17 the evidence that is before you here. And if you accept Mr.  
18 Keach's argument, in effect, you are rendering the First  
19 Circuit's opinion meaningless. They drew the distinction  
20 between what is meant by having an expectation of payment  
21 out of current operating revenue and providing services in  
22 reliance on general credit, it must mean something.

23 This is the evidence that establishes what the  
24 distinction is. It doesn't open the floodgates.

25 THE COURT: Okay.

1 MR. LEPENE: The notion that Irving could not  
2 refuse to accept the interchange of traffic, and therefore,  
3 the services they provided were not necessary for the  
4 operation of the railroad, the same principles existed in  
5 the Boston Maine, that's a case from the late '70s.

6 The same principles were in place, that the  
7 railroads were required to accept the interchange of  
8 traffic, that was no issue. But notwithstanding that fact,  
9 what did the First Circuit determine? It determined and it  
10 specifically cited the interlying claims in the opinion as  
11 being the type of claims that are entitled to be recognized  
12 as priority six month priority claims.

13 And so this notion that this case can be resolved  
14 because we -- as we're required to accept the interchange of  
15 traffic has no bearing on the decision that you have to make  
16 in terms of evaluating the evidence.

17 And finally, as far as Bangor and Aroostook is  
18 concerned, the fact that no one in that case raised the  
19 issue of 1171(b) priority again is irrelevant. It's not  
20 addressed in the case. So that decision doesn't stand at  
21 all for the proposition that under the right set of  
22 circumstances, as exists here, someone who provides services  
23 with the expectation that payment would be made out of  
24 current operating revenue is not entitled to priority. That  
25 case doesn't stand for that proposition at all.

1 THE COURT: All right. Thank you. A question I  
2 have for you, since you're the -- the burden's on you  
3 initially at least, what do you want to do as far as -- do  
4 you want to now leave it in my hands to make the decision  
5 based on the evidence I've heard, and the arguments people  
6 have made orally, do you want the chance to brief and put in  
7 closing arguments in a short brief and submit it to me,  
8 what's your preference?

9 MR. LEPENE: Well, again, I would like the  
10 opportunity to review in greater detail than I had the  
11 opportunity to review, the reply that Mr. Keach has  
12 submitted. There are now two papers in front of you on  
13 these issues, I only have one in front of you.

14 So I would suggest either that you accord the  
15 opportunity for post-trial briefs, or once I've had the  
16 opportunity to review his paper in detail, perhaps I can  
17 advise you and I don't know what Mr. Keach's preference is  
18 in this regard, as to whether I would like the opportunity  
19 to be able to submit anything further in writing.

20 But obviously I'm -- just will accept your  
21 decision in that regard as to which alternative you would  
22 prefer.

23 THE COURT: Thank you.

24 MR. LEPENE: Thank you.

25 THE COURT: Mr. Keach, what's your pleasure?

1 MR. KEACH: I think just to lend some certainty to  
2 it, Your Honor, my suggestion is that we do simultaneous  
3 post-trial briefs at our option, I mean, we can certainly  
4 choose not to.

5 THE COURT: Fair enough.

6 MR. KEACH: And I'm amenable to any time frame  
7 that meets the Court's needs and that is convenient for  
8 counsel. I appreciate we're getting into holidays and some  
9 other things, so.

10 THE COURT: Right, but you know, an important  
11 dispute, a large amount of money, why don't we do this then.  
12 Why don't we establish simultaneous briefing schedules and  
13 you can choose whether or not you wish to submit a post-  
14 trial brief. They don't have to be long, but if there's  
15 evidence you want to point to, and if there's an analysis  
16 you want to present, let's talk about timing. What's your  
17 pleasure time on this?

18 MR. LEPENE: We have the holiday coming up, but  
19 perhaps -- certainly no more than two weeks, and I could do  
20 it in a shorter period of time if the Court were to desire  
21 that.

22 THE COURT: No, that works out fine in accordance  
23 with what I have coming up. I was even thinking more than  
24 two weeks, but I don't want to push it out, if you don't  
25 want it out.

1 MR. KEACH: Your Honor, originally I was most  
2 concerned, as you know, about the distribution as a result  
3 of the somewhat surprising developments in the district  
4 court that distribution day has slipped a little bit. And I  
5 know there's Thanksgiving, and then unfortunately I have to  
6 be on the West Coast.

7 If I could suggest December 9, which is a  
8 Wednesday, I think.

9 THE COURT: Yeah.

10 MR. KEACH: As the deadline for simultaneous  
11 briefs, if that works for Mr. Lepene, that would work for  
12 me.

13 THE COURT: I was actually thinking of four weeks,  
14 which puts us right at -- what does that put us at, the  
15 11th?

16 MR. KEACH: The 11th would be that Friday, that  
17 would be fine, too, Your Honor.

18 MR. LEPENE: Is that four weeks, Your Honor?

19 THE COURT: I'm just making sure.

20 MR. LEPENE: That's three weeks I think, but  
21 that's plenty of time.

22 THE COURT: Oh, I'm sorry, that's three weeks.

23 MR. LEPENE: Yeah, that would be plenty of time.

24 THE COURT: I cheated you out of a week.

25 MR. LEPENE: December 10th is fine, as far as I'm

1 concerned.

2 THE COURT: Okay.

3 MR. LEPENE: Your Honor, if you were prepared to  
4 give us four weeks, I'll accept four weeks.

5 MR. KEACH: The only reason I would hesitate, and  
6 I appreciate, I'm not so presumptuous to assume when you're  
7 going to decide it after that, we're going to be making a  
8 distribution probably on December 18th or the following  
9 Monday, and since we're holding back funds for this, to the  
10 extent that we can avoid that, I'd like to. So if we can do  
11 this on the 10th, I would prefer it.

12 THE COURT: Okay. And let me just follow-through  
13 on something. Let's say that I get the briefing in on --  
14 make up a date, whatever date, and I was able to issue a  
15 decision on the 10th, we've only decided stage one of a two  
16 stage thing here, that's if you win a hundred percent --

17 MR. KEACH: Stage one is the only issue that  
18 determines whether I have to withhold money or not.

19 THE COURT: Got it, okay. So I'll let you two --  
20 I'm happy either date. If we do it on the -- initially  
21 you're talking about two weeks, Mr. Keach is pushing for  
22 having it done on the -- you said the 10th?

23 MR. KEACH: December 10th is the Friday --  
24 Thursday.

25 THE COURT: Let's do -- 10th is a Thursday, so

1 it's do it then, and the second thing is, right now it's  
2 phrased as an all or nothing, and that's the way this is  
3 before me, and that's how I'm going to treat it. I don't  
4 see any way to do it but in an all or nothing fashion.

5 So --

6 MR. KEACH: The only thing I would say to that,  
7 Your Honor, and there are wo small repair charges.

8 THE COURT: Right, which are in the stipulation.

9 MR. KEACH: True to my argument as to what  
10 actually qualifies and what doesn't --

11 THE COURT: Right.

12 MR. KEACH: -- I think we're willing to admit that  
13 those two repair charges would actually qualify, because  
14 those are actual services that you -- one needs, right, need  
15 to repair stuff.

16 THE COURT: So we've got about 7,000 that's not --

17 MR. KEACH: So I think a \$7,000 gift that --

18 THE COURT: Do you think on that, we could just  
19 wrap it up and settle it on that? The answer is no?

20 MR. LEPENE: He's smiling, Your Honor, and I'm  
21 glad you're smiling.

22 MR. KEACH: We'll even cut him a check within a  
23 reasonable period of time on the 7 grand, Your Honor.

24 THE COURT: I'm sure you would. Wonderful, but  
25 other than that, do --

1 MR. KEACH: Other than that, I think it is all or  
2 nothing.

3 THE COURT: Okay. So to that end, I throw it out,  
4 if there's some resolution the parties come to between now  
5 and when they submit their briefs, I'm all interested in a  
6 hearing on any type of emergency or expedited basis. I  
7 don't know whether there will be, I'm anticipating there  
8 won't, but I'll let you work to that end. Seeing as I  
9 brought up the Fosdick point so confidently that you're now  
10 thinking that I don't know what I'm doing, and that you're  
11 really willing to figure out a settlement, but all that  
12 aside, as soon as I get the briefs, I'll treat it with all  
13 seriousness that it deserves.

14 I'd like to thank you for your argument, I'd like  
15 to thank you for your briefing, I know this isn't easy, I  
16 know you've been under pressure timewise, and I'll look for  
17 the briefs or some other word from you and we'll go from  
18 there.

19 MR. LEPENE: Thank you, Your Honor.

20 MR. KEACH: Thank you, Your Honor.

21 THE COURT: Thank you. Court will be adjourned.

22 THE CLERK: All rise.

23 (Whereupon these proceedings were concluded at 5:13 PM)

24 \* \* \* \* \*

25



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

T E S T I M O N Y

IRVING'S

WITNESS	EXAM BY	PAGE
Karl Hansen	Mr. Lepene	35
	Mr. Keach	72
	Mr. Lepene	87
Ian Simpson	Mr. Lepene	90
	Mr. Keach	100

E X H I B I T S

PARTY	NO	DESCRIPTION	EVID.
Irving	11	Analysis of MMA Swap History	71
	12	Invoices	71
	13	Invoices	71

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T I O N

We, Dawn South and Sheila Orms, certify that the foregoing transcript is a true and accurate record of the proceedings.

**Dawn South**

Digitally signed by Dawn South  
DN: cn=Dawn South, o=Veritext, ou,  
email=digital@veritext.com, c=US  
Date: 2015.11.30 15:46:21 -05'00'

Dawn South

AAERT Certified Electronic Transcriber CET\*\*D-408

**Shelia G. Orms**

Digitally signed by Shelia G. Orms  
DN: cn=Shelia G. Orms, o=Veritext,  
ou, email=digital@veritext.com, c=US  
Date: 2015.11.30 15:52:59 -05'00'

Sheila Orms, Approved Transcriptionist

Date: November 28, 2015

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

<b>&amp;</b>	<b>14th</b> 64:22	<b>30th</b> 60:13	<b>7th</b> 62:14
<b>&amp;</b> 1:7 4:7,16 6:7 7:20 10:10 14:18 25:14 26:17 27:18 29:15 32:13 33:12 38:15 39:19 44:8 64:6 84:6,10,22,25 85:3 99:4	<b>15</b> 55:23 <b>150</b> 20:12 21:1,20 22:21 <b>16th</b> 49:24 50:2 64:22 <b>1826</b> 2:1 4:9 <b>18th</b> 139:8 <b>19th</b> 120:22 <b>1:03</b> 47:21 <b>1:15</b> 18:24,25 <b>1:33</b> 1:19	<b>320</b> 29:15 <b>330</b> 143:17 <b>35</b> 142:6 <b>3900</b> 3:14 <b>3:14</b> 72:4 <b>3:20</b> 71:25 <b>3:23</b> 72:4 <b>3rd</b> 58:12 60:25	<b>8</b> <b>8</b> 60:6 <b>87</b> 142:8
<b>0</b>	<b>2</b>	<b>4</b>	<b>9</b>
<b>04104</b> 3:6	<b>2</b> 46:24 56:25 <b>20</b> 1:18 <b>2001</b> 47:21 <b>2003</b> 14:23 38:20 39:13,23 44:4 45:2 45:9 52:22 56:6 84:13 92:9 <b>2011</b> 47:5 49:16 <b>2012</b> 49:24 50:2,22 52:3 56:25 58:3 59:6 64:22 73:18 <b>2013</b> 14:24 60:25 61:19 <b>2015</b> 1:18 51:17 143:12 <b>21</b> 25:23,24 44:23 54:12,25 127:14 <b>22</b> 51:17 <b>226</b> 29:16 <b>242</b> 5:6 <b>243</b> 5:6 <b>257</b> 5:9 <b>259</b> 5:10 <b>26</b> 59:5 <b>26th</b> 58:3,10 <b>27</b> 49:16 <b>28</b> 54:25 143:12 <b>2nd</b> 1:15	<b>4</b> 49:21 <b>408</b> 143:8 <b>44114-1291</b> 3:16 <b>45</b> 55:17 82:11,15 83:7 <b>4:22</b> 115:8 <b>4:30</b> 115:4 <b>4:35</b> 115:8 <b>4th</b> 52:3 58:12 61:19	<b>9</b> 52:22 60:21 85:11 85:11 138:7 <b>90</b> 142:9 <b>9729</b> 3:5 <b>975,128.14</b> 62:4 <b>9th</b> 44:4
<b>1</b>	<b>3</b>	<b>5</b>	<b>a</b>
<b>1</b> 44:1 52:25 53:1,5 <b>1.5</b> 66:8 <b>10</b> 47:21 61:13 <b>100</b> 3:4 142:10 <b>10:05</b> 62:8 <b>10:30</b> 61:25 <b>10:59</b> 18:22 <b>10th</b> 47:5 138:25 139:11,15,22,23,25 <b>11</b> 3:3 4:16 7:19 18:14,21,22 64:2,2 68:25 71:4,19 89:12 90:9,21 116:12 142:16 <b>11501</b> 143:19 <b>1171</b> 7:24 8:10,17 21:7 23:18 24:4,17 33:11,21 34:4 120:1 122:13 124:6,8,24 125:3,8 128:17 129:14,18,20 130:6 131:18,19 132:1,18 135:19 <b>11:25</b> 62:14 <b>11th</b> 138:15,16 <b>12</b> 53:21 68:21,22 69:9 71:4,11,19 89:12 90:19 142:17 <b>127</b> 3:15 <b>13</b> 68:21 69:24 71:4 71:12,19 73:7,10 89:12 142:18 <b>13-10670</b> 1:7 4:8 <b>1380</b> 120:13	<b>3</b> 49:14,15 133:12 <b>30</b> 55:24 57:5 <b>300</b> 143:18	<b>5</b> 51:14 80:25 81:1 114:22,24 133:1 <b>507</b> 130:5 <b>537</b> 1:15 <b>5:13</b> 141:23 <b>5:55</b> 61:19	<b>a.m.</b> 62:8,14 <b>aaert</b> 143:8 <b>ability</b> 21:17 27:23 68:6,15 77:5,7,9 99:20 124:3 <b>able</b> 8:8 13:9,18 18:18 31:2 68:7,16 75:4,5,8,12 99:21 114:17 121:19 123:5 130:20 136:19 139:14 <b>absence</b> 22:7,20 126:3 <b>absolute</b> 119:22 <b>absolutely</b> 14:4 17:2 20:9 42:11 67:6,22 87:11 98:23 115:13 118:13 120:18 122:15,18 125:2 127:16 <b>abundantly</b> 33:22 <b>acadian</b> 90:11 <b>accept</b> 13:6 134:8 134:17 135:2,7,14 136:20 139:4 <b>access</b> 71:10 <b>accident</b> 13:14 14:24 109:15 110:16 <b>accord</b> 136:14 <b>account</b> 26:18 61:24 <b>accounting</b> 77:2 126:8
	<b>6</b>	<b>7</b>	
		<b>6</b> 20:6,13 57:22 <b>60</b> 30:22 55:17 82:11,15 83:7 103:17 127:10,13 127:15 128:1,6 <b>6th</b> 106:25	
		<b>7</b> 59:3 112:18 140:23 <b>7,000</b> 140:16,17 <b>70</b> 30:2,16,22 <b>70s</b> 135:5 <b>71</b> 142:16,17,18 <b>72</b> 142:7 <b>75</b> 30:22 127:10,13 127:15 128:1,6	

<p><b>accounts</b> 20:5 37:21                  38:12,13 40:11,11                  40:15,15 104:5,8  <b>accrued</b> 102:25  <b>accurate</b> 143:4  <b>accurately</b> 70:12,15                  70:21  <b>acknowledge</b> 49:4  <b>acknowledged</b>                  62:17  <b>acquainted</b> 38:17                  38:19  <b>acquired</b> 14:19 97:5  <b>act</b> 23:18  <b>action</b> 45:17  <b>activity</b> 29:12 30:4  <b>actual</b> 38:12 48:15                  67:4 132:2 140:14  <b>ad</b> 129:3  <b>addition</b> 19:12                  113:3,19  <b>additional</b> 19:8                  120:16  <b>address</b> 7:11 9:21                  9:24 14:14 42:25                  44:19 45:18 113:9                  116:23  <b>addressed</b> 10:19                  11:10,14,21,22 12:3                  12:4,21 116:18                  133:22 135:20  <b>addressing</b> 23:22  <b>adds</b> 106:12  <b>adjourned</b> 141:21  <b>administrating</b>                  38:13  <b>administration</b>                  37:10 91:1 121:21  <b>administrative</b>                  122:4 124:17 125:1                  125:4 126:8 131:23                  131:25  <b>admire</b> 124:3  <b>admissibility</b> 71:4  <b>admission</b> 71:9  <b>admit</b> 140:12</p>	<p><b>admitted</b> 5:25 6:1                  27:17 71:19 89:4,7                  112:23 125:18                  126:21 128:20                  130:13 131:2  <b>adopted</b> 116:18  <b>adopting</b> 117:10  <b>adore</b> 22:11  <b>advance</b> 96:24                  119:13  <b>advanced</b> 6:14  <b>advantage</b> 106:13  <b>advise</b> 68:5,13                  99:20 136:17  <b>advised</b> 68:18  <b>advising</b> 47:16  <b>affiliate</b> 5:12  <b>affiliated</b> 5:2 7:17                  15:6 36:1 37:25                  44:13  <b>affiliates</b> 15:19                  35:23 36:14 68:14  <b>afford</b> 52:15  <b>afternoon</b> 4:5,6,18                  4:19,23 5:4 6:6                  18:24 21:15 35:8,12                  47:22 72:9,10                  100:15,16 115:12                  115:18  <b>afternoon's</b> 6:9  <b>agent</b> 31:21  <b>ago</b> 8:3 51:18  <b>agree</b> 11:2 19:7                  22:19 29:4,22 45:24                  49:7,9 59:18 81:23                  123:18,21  <b>agreed</b> 19:14 31:4                  58:25 60:13 79:5,17                  81:9 82:7,14 103:1                  103:15 112:7,22                  123:25  <b>agreement</b> 25:21,22                  25:24 26:24 30:1                  44:4,5,7,17 45:19                  46:19 48:21,22                  52:22 53:6,14,25                  54:11,12 60:18</p>	<p>61:10 62:23 63:6,18                  63:20 65:5,7 98:18                  99:3,6 118:6,25                  119:23 120:4                  123:24 127:14,15  <b>agreements</b> 9:18                  42:24 43:3 63:2  <b>ahead</b> 6:23 31:8                  32:2 47:15 86:16                  121:20 123:1  <b>alan</b> 3:18 4:23 7:5  <b>alike</b> 71:23  <b>allegedly</b> 61:25  <b>allow</b> 67:10  <b>allowed</b> 131:18  <b>alternate</b> 13:7  <b>alternative</b> 13:17                  42:21 57:1 97:19                  121:15 123:19                  136:21  <b>amenable</b> 137:6  <b>america</b> 91:23                  93:17,22 94:17  <b>american</b> 61:5  <b>amount</b> 28:16 29:22                  40:18 46:5,7,8                  49:10 50:25 56:17                  66:3 76:4,5 101:7                  102:25 103:1,3                  137:11  <b>amounts</b> 28:10                  29:11,12 70:12                  71:13 76:9,11,21                  79:18 91:20 125:16  <b>analysis</b> 33:7 37:11                  64:6 77:4 137:15                  142:16  <b>anecdotally</b> 100:2  <b>answer</b> 18:20 67:12                  86:10 104:20                  108:20 140:19  <b>answered</b> 98:5  <b>answers</b> 22:13  <b>anticipate</b> 113:20  <b>anticipated</b> 28:9  <b>anticipating</b> 141:7</p>	<p><b>anybody</b> 5:14 6:8                  32:21 68:13 101:24                  128:10  <b>anymore</b> 109:18                  130:2  <b>apologize</b> 69:4  <b>appearance</b> 6:9  <b>appearances</b> 4:13  <b>appears</b> 57:25 61:2                  85:12  <b>applicable</b> 53:22  <b>apportioned</b> 55:12                  82:9  <b>appreciate</b> 102:14                  137:8 139:6  <b>approach</b> 34:23                  43:7,20 57:1 69:5  <b>approached</b> 99:8  <b>approaching</b> 111:6  <b>approved</b> 143:10  <b>approximately</b>                  55:23 56:10 66:4,8  <b>april</b> 56:25 58:12  <b>ar</b> 5:11  <b>argue</b> 22:12 121:19                  124:8  <b>argued</b> 129:3  <b>argues</b> 10:12 13:4  <b>arguing</b> 22:25 23:1                  33:13  <b>argument</b> 10:16,17                  11:7 18:4 25:8                  67:12 116:11                  120:10 134:5,9,18                  140:9 141:14  <b>arguments</b> 8:6                  18:17 33:19 134:13                  136:5,7  <b>aroostook</b> 14:18                  25:14 32:13 33:12                  39:19 129:1 135:17  <b>arose</b> 50:17  <b>arrangement</b> 15:4                  15:10 16:7,8,10,12                  16:25 17:7 19:11,12                  19:12 26:21,24 28:7                  30:19 31:4 34:1,2</p>
---	---	--	---

<p>47:10 49:19 50:15                  56:13 75:25 77:8,13                  77:18 82:19,22,24                  83:1,12 92:9 98:7                  103:13 118:2                  125:25 126:20,25                  127:1,8,23  <b>arrangements</b>                  78:22 94:9 114:21  <b>arrive</b> 85:24 131:12  <b>arrived</b> 78:14,18                  131:13  <b>arriving</b> 100:24  <b>arrostock</b> 29:15  <b>arteries</b> 129:24  <b>articulated</b> 22:18  <b>articulation</b> 124:11  <b>aside</b> 141:12  <b>asked</b> 27:14 86:1,11                  104:14 110:5                  125:20  <b>asking</b> 47:17 49:4                  66:15 71:24 102:11                  109:5 110:8  <b>aspects</b> 90:24                  107:15  <b>assert</b> 31:24 123:5  <b>asserted</b> 7:11,23                  10:14 11:1,4 13:1  <b>asserting</b> 116:6  <b>assess</b> 117:19,20  <b>assessed</b> 10:22  <b>assessing</b> 134:14  <b>assets</b> 14:19 39:17                  84:23 97:6  <b>associated</b> 68:14                  98:9  <b>assume</b> 80:23 86:14                  101:1 104:20 139:6  <b>assuming</b> 101:5,6  <b>assumption</b> 66:17  <b>assure</b> 114:23  <b>atlantic</b> 1:7 4:8,16                  6:7 7:20 10:11                  38:15 44:8 64:6                  99:4</p>	<p><b>attached</b> 69:19 70:7                  70:18 112:23  <b>attachment</b> 52:16  <b>attempt</b> 125:12  <b>attention</b> 9:24                  43:25 46:23 51:13                  51:23 56:23 57:21                  60:6,21 61:13 73:16  <b>attorney</b> 3:12  <b>attract</b> 95:12  <b>attracting</b> 95:12  <b>attributable</b> 17:8  <b>august</b> 47:5,21                  60:13  <b>authorized</b> 45:19  <b>automatically</b> 9:7                  84:9,18  <b>available</b> 47:17  <b>average</b> 55:18                  82:11  <b>avoid</b> 14:16 123:1                  139:10  <b>award</b> 22:1  <b>awarding</b> 34:5  <b>aware</b> 38:22 40:5                  40:14,17 41:8 68:10                  73:14 84:22</p> <hr/> <p style="text-align: center;"><b>b</b></p> <hr/> <p><b>b</b> 1:21 7:24 8:10,17                  21:7 23:18 24:4,17                  33:11,21 34:4 120:1                  122:13 124:6,8,24                  125:3,8 128:17                  129:14,18,20 130:6                  131:18,19 132:1,18                  135:19 142:14  <b>b.r.</b> 29:16  <b>back</b> 20:12 22:20                  23:10,21 46:1,12                  48:6,17 49:10 56:6                  58:24 62:3 64:13                  71:25 78:25 88:6                  89:15 92:4 96:10                  99:15 101:6 115:4                  121:13 124:20                  133:10 139:9</p>	<p><b>balance</b> 101:9  <b>balances</b> 23:24,25                  24:7,17  <b>bangor</b> 14:18 25:14                  29:15 32:13 33:12                  39:19 129:1,1                  135:17  <b>bank</b> 62:1,17  <b>bankers</b> 37:12  <b>bankrupt</b> 39:17  <b>bankruptcy</b> 1:1,14                  1:23 4:2 7:24 8:10                  14:20 21:7 23:18,20                  24:1,5,8 32:24                  63:16 66:7 69:16,16                  70:5 97:6 116:14                  120:1 129:19 132:5                  132:12  <b>banks</b> 50:10  <b>base</b> 110:20  <b>based</b> 10:17 63:18                  64:20 66:16 121:1                  122:20 133:18,19                  136:5  <b>bases</b> 121:15  <b>basic</b> 15:11  <b>basically</b> 33:18                  45:22 131:11  <b>basis</b> 10:22 15:18                  16:5,14 22:15 27:2                  45:21 71:15 125:2                  132:18 141:6  <b>bearing</b> 116:24                  135:15  <b>began</b> 14:23 33:16                  39:12,13 45:2,8,9                  77:19 84:7  <b>beginning</b> 15:12  <b>begins</b> 56:25 81:20  <b>behalf</b> 4:24 7:6 46:6  <b>belabor</b> 11:15 33:20                  133:24  <b>believe</b> 9:8 10:2                  23:12 39:13 45:4                  68:20 88:7  <b>believed</b> 9:4</p>	<p><b>belongs</b> 32:24  <b>bench</b> 18:21,23                  34:23  <b>benefit</b> 25:5 72:11                  114:13  <b>benefits</b> 130:9  <b>bernstein</b> 3:2 4:17  <b>best</b> 29:17 106:15  <b>better</b> 18:10 124:2  <b>big</b> 68:21,24  <b>billing</b> 57:6 91:15                  91:22 92:10,11,15  <b>bills</b> 30:14  <b>binders</b> 68:21  <b>bit</b> 59:22 92:4,5                  138:4  <b>bnsf</b> 103:22 105:9  <b>boat</b> 19:3  <b>boats</b> 35:21  <b>bob</b> 58:12,25 96:24  <b>border</b> 50:11  <b>boston</b> 8:18 10:19                  11:5,8,11,19,22                  12:3,5 22:11 23:22                  24:3 115:21,23                  116:1,20 120:4,6,8                  121:1,6,10,24,25                  124:15 129:2 133:7                  133:18,19 135:5  <b>bottom</b> 21:3 56:24                  61:20  <b>bought</b> 39:17  <b>box</b> 3:5  <b>bradstreet</b> 26:17                  27:18 84:6,10,23,25                  85:3  <b>break</b> 71:21,24                  115:3  <b>brenda</b> 47:2,6,8,20                  49:15,23,25 50:1                  59:7 60:10  <b>brief</b> 8:12 11:14,15                  18:11 21:14 33:19                  40:5 72:2 110:1                  113:13 115:3,15                  123:16 136:6,7                  137:14</p>
--	--	---	--

<p><b>briefed</b> 59:22  <b>briefing</b> 137:12                  139:13 141:15  <b>briefly</b> 8:4 9:25                  19:9 90:14 100:12                  113:9 132:24  <b>briefs</b> 112:13                  136:15 137:3                  138:11 141:5,12,17  <b>bring</b> 51:11 94:23                  105:8 106:12  <b>bringing</b> 104:15  <b>brother</b> 23:15  <b>brought</b> 73:16                  141:9  <b>brownville</b> 94:19                  109:12  <b>brunswick</b> 3:12                  4:10,24 7:7,12                  17:12 35:14 37:8,11                  37:23 39:4 44:9                  51:10 52:8 63:1,5                  63:12,21 66:3 69:11                  69:21 75:20 78:19                  86:2 87:4 90:5,6                  91:5 95:5 97:22                  98:17,19 104:16                  131:13  <b>built</b> 130:5  <b>bulk</b> 23:13 54:19                  55:4  <b>bullet</b> 53:17 54:8,14                  54:17,24 55:11                  81:14,15  <b>bullets</b> 81:14  <b>burden's</b> 136:2  <b>burkhart</b> 96:25  <b>business</b> 13:18,20                  14:2 15:14 25:15                  27:1 28:6,12 35:17                  35:24 36:2,12,15                  37:10 38:24 39:3,21                  41:21 44:25 45:12                  61:3 65:14,23,24                  70:10,19 73:20,21                  74:17 75:11 84:7,14                  84:19 85:7 90:11,12</p>	<p>92:7 95:4,8,12,15                  96:2,6,7,20 97:4,10                  97:17 98:4 99:15                  104:7 105:14,18,23                  105:24 106:14,16                  107:3,5 108:3 110:8                  110:20 125:15,19</p> <p style="text-align: center;"><b>c</b></p> <p><b>c</b> 3:1 4:1 109:17                  143:1,1  <b>call</b> 8:12 28:17                  34:13 87:25 111:13                  111:23 115:9  <b>called</b> 22:15 73:15                  82:21 96:24 111:5                  129:20  <b>calls</b> 66:12  <b>canada</b> 16:3 35:14                  61:4 107:17,23,24                  109:9  <b>canadian</b> 17:18                  30:5 37:12 57:11                  61:2 78:8 85:22                  97:21 131:13  <b>capable</b> 21:20  <b>capacity</b> 37:18,19                  42:6 51:2 72:14                  73:5,7  <b>car</b> 23:23 55:17                  82:11 91:18 93:18  <b>care</b> 32:1,2 85:4                  126:4  <b>cared</b> 26:19 31:18  <b>carefully</b> 113:22  <b>cares</b> 19:24  <b>carrier</b> 30:5,8,9,11                  79:22 82:21 83:15                  83:16 93:20 94:18                  101:2 104:5  <b>carriers</b> 56:5 94:10                  101:14 103:23                  104:3,4,7,9  <b>carry</b> 17:19 110:16                  110:17  <b>carrying</b> 15:23  <b>cars</b> 10:23 96:12</p>	<p><b>caruso</b> 4:20,22                  111:5,13  <b>cary</b> 1:22 4:4 6:7  <b>cary's</b> 76:2  <b>case</b> 1:7 4:8 6:7                  8:19 10:19 11:1,6,9                  11:11,17,17,21 12:6                  14:5 21:2,21 22:24                  23:3,4,5,11,19,20                  23:24 29:20 30:4                  32:15,15 34:7,18,18                  38:15 56:9 92:17                  93:1 94:20 105:1                  115:24 116:2,10,12                  116:20 120:9,10                  121:7,10,14,17,24                  122:18,20 124:16                  124:22 125:12                  128:13,13 129:1,2                  130:2 131:21 132:2                  132:10,17 133:9,20                  133:23 135:5,13,18                  135:20,25  <b>cases</b> 11:10 20:11                  21:22 22:9,20 57:6                  96:23 103:23 120:5                  120:25 121:4,13                  125:3  <b>cash</b> 15:11 16:14,15                  16:19 17:5 26:20                  27:22 31:19 33:23                  46:5,7,8 47:25 48:5                  49:1 52:15 119:12                  125:22 126:4,14,18                  133:15,18  <b>categories</b> 82:25  <b>cause</b> 108:17 110:7  <b>caused</b> 50:23  <b>cawood</b> 6:13  <b>cease</b> 108:6 109:20  <b>cede</b> 98:1  <b>center</b> 3:14  <b>central</b> 24:8 75:14                  91:15 97:9 121:4  <b>century</b> 120:22  <b>certain</b> 45:17 49:8                  112:14</p>	<p><b>certainly</b> 5:23 9:6,8                  30:25 77:7 91:11                  95:24 112:8 137:3                  137:19  <b>certainty</b> 137:1  <b>certified</b> 143:8  <b>certify</b> 143:3  <b>cet</b> 143:8  <b>chairman</b> 96:25  <b>chance</b> 8:4 113:24                  136:6  <b>change</b> 126:11  <b>changed</b> 56:17  <b>changes</b> 84:11  <b>changing</b> 39:3  <b>chapter</b> 3:3 4:16                  7:19 18:22 116:12  <b>characteristic</b> 26:20                  126:19  <b>characterize</b> 16:10                  118:3  <b>characterized</b> 118:3  <b>charges</b> 10:21,24                  15:22 17:15 54:19                  55:12 82:8 98:20                  140:7,13  <b>cheated</b> 138:24  <b>check</b> 71:22 101:16                  112:16 140:22  <b>chicago</b> 92:20,21,22                  92:23  <b>choice</b> 33:25 131:3                  131:5,6  <b>choose</b> 13:16 137:4                  137:13  <b>chorus</b> 4:6  <b>chose</b> 103:11  <b>chronology</b> 25:10  <b>cibc</b> 62:20  <b>circuit</b> 10:13,18                  11:10 12:3,14,21,24                  21:6 22:14,16                  115:24 116:7,15,19                  117:10,15 119:10                  119:17 120:19,24                  120:25 121:7,7,11                  121:12,12,25</p>
---	---	---	---

123:20 124:19 135:9 <b>circuit's</b> 8:18 12:16 133:8,19 134:7,19 <b>circuits</b> 21:24 <b>circumstance</b> 79:15 101:1 <b>circumstances</b> 29:21 38:21 39:16 64:25 66:14,15 126:24 135:22 <b>cite</b> 115:22 <b>cited</b> 23:21 29:16 120:25 124:22 135:10 <b>cites</b> 11:9 116:10 <b>claim</b> 2:1 4:10 5:9 5:10 6:24 8:19 10:25 11:4,25 12:1 28:3,14 66:4 69:10 113:16 119:25 124:17 128:11,12 <b>claimant</b> 119:20 <b>claimants</b> 33:4 <b>claimed</b> 120:14 <b>claiming</b> 128:17 <b>claims</b> 4:12 7:11,23 7:23 8:9,16,16 10:14,15,20,21,23 10:24,25 11:3,12,18 11:19 12:2,4,6,6,17 12:22,22,23,25,25 13:2 20:13 21:4,18 21:22 22:20 23:13 33:8,11 115:19,23 116:2,4,5,6,8,21 122:2,4,20 124:25 125:1,4 130:6,9 133:9,11,12,13 135:10,11,12 <b>clarify</b> 89:11 <b>class</b> 103:22 <b>classification</b> 71:2 <b>clay</b> 107:6 109:1 <b>clean</b> 23:21 <b>clear</b> 8:19 27:21 30:14 33:22 104:6,8	126:17 129:4 130:22 <b>clearinghouse</b> 40:8 91:15 101:12,15 <b>clearly</b> 8:18 9:16 14:5 24:24 128:20 131:6 <b>clerk</b> 4:2 35:2,4 72:3,5 89:18,20 115:7 141:22 <b>cleveland</b> 3:16 <b>client</b> 26:4 <b>close</b> 108:14 112:12 112:14 <b>closely</b> 18:24 <b>closer</b> 18:23 <b>closing</b> 18:4 120:10 136:7 <b>cm</b> 92:21 <b>cmqr</b> 97:9,10,14 <b>cn</b> 61:4 85:18 92:9 92:10 93:11 96:12 98:2 105:10 106:11 <b>coast</b> 138:6 <b>code</b> 7:25 8:10 21:8 23:20 24:5 120:1 129:19 <b>collateral</b> 26:9,10 26:12,21 30:19 31:20 34:1,2 118:5 125:25 126:11,13 126:15,20,24 <b>collateralization</b> 28:7 <b>collateralized</b> 28:25 78:2 126:25 <b>collect</b> 29:10 80:18 102:2 103:11 113:12 <b>collected</b> 16:19 25:4 29:24,25 30:20 79:16 83:8 101:6 <b>collecting</b> 34:3 <b>collection</b> 31:21 37:21 38:12 103:7 127:16,17	<b>collects</b> 30:11 80:10 <b>college</b> 37:5 90:10 <b>come</b> 4:4 6:1 17:17 30:24 34:24 50:17 51:7,8 55:5,6 85:23 141:4 <b>comes</b> 23:18 77:3 <b>comfort</b> 83:22 85:6 <b>comfortable</b> 59:23 77:22 83:18 85:4 92:13 127:24 <b>comforted</b> 77:18 80:8 <b>coming</b> 35:9 39:4 46:12 51:5 57:10 59:23 89:24 97:2 98:2 107:6 122:19 125:17 137:18,23 <b>commencement</b> 8:20 12:9 <b>commercial</b> 44:4 52:21 53:6,14,25 54:11,12 92:25 95:10 <b>commitment</b> 115:1 <b>common</b> 27:6,10,25 94:13 130:11 <b>commonly</b> 25:18 <b>companies</b> 5:3 7:20 15:5,6,18,22,24 16:3,13,20,22 17:6 35:20 36:1,8,24 37:15 38:23 39:9,20 40:9 44:25 45:5,6 46:6 48:18 55:9 64:13 73:11 75:6,7 76:5,12 77:25 95:15 96:3,20 97:11,13 103:21 108:4 125:16 <b>company</b> 3:12,13 4:25 5:1 7:7,8,13,13 36:19 37:3,24,24 39:17,18 41:14 44:9 44:9,12 45:16 48:19 55:10 63:2 65:3 69:11,21 70:4 75:12	75:20 90:19,20 91:5 91:6,6 92:5 97:5 98:17,20 99:23 100:1 116:13 117:19,21 126:18 <b>competing</b> 105:10 106:14 <b>competitive</b> 13:17 96:17 <b>complete</b> 32:20 127:21 <b>completely</b> 67:3 98:5 <b>completeness</b> 113:2 <b>complexity</b> 106:13 <b>component</b> 28:5,12 <b>comprised</b> 5:9,10 95:9 <b>concedes</b> 116:5 <b>concern</b> 18:16 45:15 <b>concerned</b> 27:1 48:11 99:17 135:18 138:2 139:1 <b>concerns</b> 45:11,14 45:15,18 <b>conclude</b> 20:8 66:16 <b>concluded</b> 141:23 <b>conclusion</b> 18:10 66:13,21 67:1,7 119:22 <b>concurrently</b> 16:23 <b>condition</b> 117:19,21 <b>conditions</b> 12:7 81:9 131:11 <b>confer</b> 88:18 <b>confident</b> 62:4 <b>confidently</b> 141:9 <b>confirmed</b> 116:1 124:20 <b>confusion</b> 7:18 <b>congress</b> 1:15 24:5 <b>congress's</b> 24:3 <b>congressional</b> 116:17 <b>conjunction</b> 38:9
--	---	--	--



<p><b>connection</b> 9:19                  59:16 63:23 65:24                  66:5,9 67:19 99:11  <b>consequence</b> 25:16                  29:6 32:10 55:22                  67:12 81:8 101:19  <b>consequences</b> 12:15                  12:16,18  <b>consider</b> 118:21                  119:15  <b>considerations</b>                  117:16  <b>consistent</b> 27:9                  53:24 54:14 55:14                  55:20 56:1,6,13,19                  57:18 60:18 61:10                  62:23 65:5,7 85:21                  92:14  <b>consists</b> 56:17  <b>constructive</b> 132:3  <b>consummation</b>                  133:18  <b>contains</b> 29:17  <b>contents</b> 18:19  <b>contested</b> 18:21  <b>context</b> 22:10                  113:11  <b>continually</b> 84:10                  108:2  <b>continue</b> 82:22                  94:17 122:5 131:7,8  <b>continued</b> 4:9 29:9                  63:7 107:13 109:2                  131:12  <b>continues</b> 129:11  <b>continuing</b> 25:15                  75:22  <b>continuous</b> 107:15  <b>continuously</b>                  107:14  <b>contradicts</b> 67:8  <b>contrary</b> 118:12  <b>control</b> 27:6,10,23                  27:25 72:25  <b>controlled</b> 77:11,13                  126:3</p>	<p><b>controlling</b> 116:7  <b>controls</b> 25:17,18  <b>convenience</b> 130:22  <b>convenient</b> 137:7  <b>conversations</b> 29:7  <b>conveying</b> 51:20  <b>copies</b> 6:19 59:6                  70:7 112:8  <b>copy</b> 10:11 43:12                  61:16  <b>corporate</b> 36:23                  37:14 72:13,14,25  <b>correct</b> 5:6,7 20:8                  20:18 21:1 36:10                  38:1,2 39:22,24                  42:13,14 44:15 45:1                  45:3,7,10 46:14                  47:12 48:1,7,9,12                  49:20 50:8,12,16                  51:22 52:20,23,25                  53:2,4 54:16,22                  55:13,15,19,25 56:8                  56:12,20 65:12 68:4                  72:22,23 73:9,13,22                  74:5,6,12,19 75:12                  75:13,18 76:6,7,12                  76:15,16 77:15,16                  77:20,21 78:2,3,6                  78:11,14,15,19,20                  78:23,24 80:3,6,7                  80:14,15,19,20,21                  80:22 81:9,10 82:1                  82:2,5,17,18,23                  83:2,9,25 84:1,7,8                  84:11,12,15,20,21                  84:24 85:8,9,13,14                  85:20,24,25 86:9,13                  98:15,16 99:5                  100:19,23,24 101:3                  101:4,21,22,25                  102:1,18,19 103:5,6                  103:8,13,18,19                  104:10,12,13,24                  105:4,7 106:17,22                  107:11 108:3,9                  109:8,18,19,21,22                  110:18 112:19</p>	<p>129:25  <b>corrected</b> 65:10  <b>cost</b> 51:10 106:13  <b>couldn't</b> 86:18  <b>counsel</b> 86:12 88:18                  137:8  <b>country</b> 91:18                  143:17  <b>couple</b> 131:3  <b>courier</b> 112:5  <b>course</b> 11:13,23                  22:9 36:6 48:21                  56:6 70:10 116:22                  119:14  <b>court</b> 1:1,14 4:2,5,7                  4:19,22 5:4,8 6:2,6                  6:12,14,19,21 7:2                  7:15 8:13 9:2,7                  10:1 11:15,17 12:5                  15:20 17:21,24 18:1                  18:8,15,20 20:7,20                  20:22 21:11 22:4                  23:5,6 24:1 26:6                  27:3 28:13,16,22                  31:23 32:5,18,22                  34:8,10,15,24 35:8                  40:22 41:4 43:9,12                  43:15,21 48:14,17                  48:23 49:5 52:25                  53:3,7,10 65:16,19                  66:20 67:9,16 69:1                  69:6 71:2,11,17,22                  72:2 84:13,16 86:12                  86:15,24 87:13,16                  87:19,23 88:2,10,12                  88:16,20 89:2,5,11                  89:16,24 94:5 95:19                  95:22 100:5,10                  109:24 110:22,24                  111:9,15,19,22                  112:9,10,15,25                  113:3,6,15 114:2,6                  114:9,15,20 115:1,6                  115:6,9,10,13,25                  116:14,16 120:3,8                  120:13,13 121:6,24                  122:13,16 123:14</p>	<p>123:23 124:19,20                  126:7 129:3,23                  130:1 132:22,25                  133:5,8,10,11,16,16                  134:25 136:1,23,25                  137:5,10,20,22                  138:4,9,13,19,22,24                  139:2,12,19,25                  140:8,11,16,18,24                  141:3,21,21  <b>court's</b> 114:13                  137:7  <b>courtcall</b> 6:10  <b>covered</b> 5:17 29:22  <b>covers</b> 5:22,23  <b>cp</b> 30:13 61:4 78:8,8                  78:12,17,22 79:5,16                  79:17,20,25 80:1,9                  82:4 83:24 85:18,22                  100:21 101:1,2,5,6                  101:17 103:10,22                  105:9  <b>create</b> 25:1 31:13                  32:16  <b>created</b> 26:23 28:7                  29:9 126:23  <b>creating</b> 30:25  <b>credit</b> 14:16 20:6                  25:6,23,25 30:2                  31:12,15,16 33:24                  33:25 36:23 37:11                  37:14,19,20,20 38:9                  38:11 46:20,21                  58:21 62:3 68:7,10                  68:16 72:13,15,25                  72:25 73:10 74:2                  77:18 82:22 83:1                  85:6 93:15,24 99:22                  99:25 102:6 117:2,7                  117:9,12,16,17,22                  118:4 119:21                  122:10 123:1,3,6,8                  125:8,9,11 126:18                  127:10,14,15,25                  128:1,4,5,8,19,22                  134:10,16,22</p>
--	--	--	--



<p><b>creditor</b> 25:3 26:5 31:25 122:14,17 124:12 126:10,12 126:14,15 132:4 <b>creditors</b> 20:14 22:6 24:9,12 33:4,8 122:19,21,21 128:16 132:6,7,15 <b>credits</b> 34:7 <b>creditworthiness</b> 9:1 12:12 14:11 15:2,3,14 17:1 19:21 26:7,11,19 27:22 42:10 66:11 66:23 67:5,21 99:13 128:6 <b>cross</b> 6:25 72:7 88:9 100:11,13 128:21 132:19 <b>crude</b> 17:10 60:23 62:11 109:14,15 110:19 <b>csos</b> 114:21 <b>csxt</b> 103:22 105:9 <b>ct</b> 51:6 <b>cu</b> 92:7 <b>cup</b> 35:1 <b>current</b> 8:24 12:10 14:10 19:20 66:24 117:4,13 119:6,20 119:24 120:15 121:3,5,8,9,18,22 122:11 134:12,21 135:24 <b>customer</b> 25:19 30:11,12 41:14 90:25 92:19 97:13 108:11 <b>customers</b> 15:7 27:24 54:18 74:25 75:3,8 92:12 94:21 97:3 108:19 <b>cut</b> 17:24 19:2,6 140:22</p>	<p><b>d</b></p>	<p><b>debtor's</b> 125:15 <b>december</b> 64:22 138:7,25 139:8,23 <b>decide</b> 139:7 <b>decided</b> 21:2 25:1 25:20,25 31:13 33:6 65:2 80:13,21 139:15 <b>deciding</b> 110:5 118:21 119:11 <b>decision</b> 11:8,23,23 12:4,5 22:11 23:17 31:9,10 33:2,13 42:8 74:1,2,2 87:3,7 87:9 93:6,23 102:5 108:13,14,16,17 110:11 111:12 115:24 116:13 121:1 125:5 127:2 128:23 134:2,2 135:15,20 136:4,21 139:15 <b>decisions</b> 24:3 115:22 <b>decouple</b> 94:21 <b>decoupled</b> 94:14 <b>deduct</b> 65:2 <b>deemed</b> 5:24 <b>definitely</b> 9:4 32:13 <b>definition</b> 30:22 31:14,15 <b>definitively</b> 124:16 <b>degree</b> 37:5,9 90:10 90:11 <b>delay</b> 50:9 82:15 119:8,9,12,14,15,16 128:2 <b>deliver</b> 13:21,21 108:10 <b>delivered</b> 14:8 97:25 <b>delivery</b> 104:25 108:25 109:1 119:13 <b>demonstrate</b> 133:23 <b>demonstrated</b> 120:15</p>	<p><b>depart</b> 114:14 <b>department</b> 45:23 <b>dependent</b> 68:6,15 99:21 <b>depending</b> 111:5 <b>deposition</b> 26:16 27:3,4 <b>depositions</b> 26:15 <b>deposits</b> 130:10 <b>derailment</b> 106:25 107:4,5,14 109:10 110:6 <b>derived</b> 71:14 <b>describe</b> 49:3 51:3 94:5 100:21 <b>described</b> 56:21 76:1 79:16 <b>describes</b> 53:13 <b>description</b> 124:21 142:15 <b>descriptions</b> 5:12 <b>deserves</b> 141:13 <b>designated</b> 127:19 <b>desire</b> 112:12 113:8 137:20 <b>despite</b> 73:7 <b>destination</b> 30:13 42:23 78:14 97:24 <b>destinations</b> 16:4 40:2 <b>destined</b> 94:20 108:25 <b>detail</b> 8:5 136:10,16 <b>determine</b> 15:17,24 135:9 <b>determined</b> 10:13 14:16 46:20 94:15 121:1 135:9 <b>determines</b> 139:18 <b>devastates</b> 74:17 <b>devastating</b> 12:19 13:25 42:18 <b>developed</b> 31:25 <b>development</b> 17:8 <b>developments</b> 138:3 <b>devoid</b> 67:3</p>
---	-----------------	--	---

<p><b>dial</b> 6:11  <b>dictate</b> 131:16  <b>diem</b> 10:20,24 11:4                  11:12,18 12:2,21                  23:23 115:23 116:4                  133:9,11  <b>difference</b> 41:15  <b>different</b> 92:20                  126:23 128:13  <b>direct</b> 6:25 35:10                  43:24 46:23 51:13                  51:23 56:23 57:21                  90:2 98:2,2 104:19  <b>direction</b> 64:8  <b>directly</b> 95:14 105:8                  106:11,11  <b>disagree</b> 25:11  <b>disastrous</b> 12:14,16  <b>disburse</b> 41:16  <b>disbursed</b> 46:9  <b>disbursing</b> 41:18  <b>discontinuance</b>                  110:7  <b>discontinuation</b>                  108:18  <b>discuss</b> 58:23 59:8                  59:11  <b>discussed</b> 58:11                  59:18 78:4 84:22                  92:18  <b>discussion</b> 59:13,14  <b>dispute</b> 10:2 53:4,9                  137:11  <b>disputes</b> 132:11  <b>distinction</b> 134:9,19                  134:24  <b>distort</b> 24:8  <b>distribution</b> 101:23                  138:2,4 139:8  <b>district</b> 1:2 4:3 24:2                  115:25 116:14                  121:6 124:19,20                  133:7,10,16 138:3  <b>diversion</b> 22:15,15  <b>diverted</b> 22:5  <b>doc</b> 2:1</p>	<p><b>dockets</b> 34:17  <b>doctrine</b> 22:8,16                  129:9,13  <b>doctrines</b> 22:3  <b>document</b> 4:9 5:15                  44:3 46:24 57:22                  59:4,5 60:9 64:15  <b>documented</b> 26:23                  127:9  <b>documents</b> 34:18  <b>doing</b> 15:14 24:22                  26:15 38:23 84:14                  84:19 85:7 105:23                  107:3,5 108:3 123:2                  126:21 127:24,25                  141:10  <b>dollars</b> 49:8  <b>dominant</b> 28:5  <b>dominion</b> 32:20                  127:6,21  <b>don</b> 58:2 59:6,9,16                  60:10,13,22 61:15                  62:10  <b>donald</b> 58:5  <b>door</b> 67:13  <b>dots</b> 81:16,17  <b>doubt</b> 77:5 114:25                  119:5  <b>draw</b> 68:7,16 99:22  <b>drew</b> 134:19  <b>drive</b> 88:6 89:16                  111:2  <b>driven</b> 15:12 23:7,7  <b>driving</b> 88:10  <b>drop</b> 31:9  <b>due</b> 27:11,12 28:10                  28:10 29:11,13                  54:19 61:5 76:9,11                  76:21 79:19 85:19                  113:18  <b>dunn</b> 26:17 27:18                  84:6,10,22,25 85:3  <b>duplicate</b> 4:12  <b>duplication</b> 93:12  <b>duties</b> 37:17 90:22  <b>dying</b> 112:12 113:8</p>	<p style="text-align: center;"><b>e</b></p> <p><b>e</b> 1:21,21 3:1,1 4:1,1                  35:7 98:12,15 99:9                  142:1,3,14 143:1  <b>ear</b> 124:3  <b>earlier</b> 42:12 73:3                  92:18 98:1 102:8                  131:19  <b>early</b> 74:13 115:18  <b>earned</b> 118:24  <b>earnings</b> 95:11  <b>easable</b> 13:20  <b>eastern</b> 36:16 44:8                  44:11 90:6 91:6  <b>easy</b> 23:6 141:15  <b>economic</b> 106:10  <b>economically</b>                  105:12  <b>economy</b> 130:1  <b>effect</b> 110:6 134:6                  134:18  <b>efficiently</b> 5:15  <b>effort</b> 95:11  <b>efforts</b> 93:12  <b>either</b> 56:4,9 82:20                  112:5 126:18                  136:14 139:20  <b>electronic</b> 143:8  <b>electronically</b> 112:5  <b>element</b> 14:5                  120:16 129:9  <b>ellis</b> 5:1 51:17 57:23                  58:3,7,8,9,17,23                  59:6,15 60:10,12                  61:16,19 62:13  <b>email</b> 47:1,5,7,16,20                  49:18,23,25 51:16                  51:21,24 52:2,4,11                  57:23,25 58:2,9,12                  58:18 59:8,15 60:10                  60:12,22,24 61:15                  61:18 62:7 81:8                  85:12,15  <b>emailed</b> 62:13  <b>emails</b> 26:23 50:13                  50:13 63:3,6,19                  81:6</p>	<p><b>emergency</b> 141:6  <b>empire</b> 73:21  <b>employ</b> 38:11  <b>employed</b> 35:15                  90:4  <b>employee</b> 25:16                  130:9  <b>employees</b> 129:21                  130:9 131:3  <b>employment</b> 90:14                  90:15  <b>enabled</b> 122:5  <b>enacting</b> 24:5  <b>encouragement</b>                  62:18  <b>engaged</b> 35:18,19                  35:23 36:2,11,14  <b>ensure</b> 102:3  <b>ensured</b> 102:12,17  <b>enter</b> 6:8  <b>entered</b> 15:4 45:19                  126:25 127:1,8                  133:16  <b>entering</b> 15:9 46:18  <b>entire</b> 13:11 27:20                  73:23 84:19 101:7                  109:5 124:13  <b>entities</b> 25:18 27:11                  28:20 72:21 73:5                  84:2 106:21  <b>entitled</b> 7:24 8:9,16                  11:19 21:6 81:3                  116:2,21 119:25                  122:4 123:5,13                  124:16 135:11,24  <b>entitlement</b> 8:9  <b>equitable</b> 121:19,23  <b>equivalent</b> 116:5  <b>erie</b> 20:4 68:8,11,17                  99:23 100:1 121:21  <b>esq</b> 3:8,9,18  <b>essence</b> 78:1  <b>essentially</b> 11:3                  13:11 17:5,17 22:14                  26:22 29:9,21 30:1                  30:18 31:21,24 71:9                  82:25 103:11</p>
--	---	--	--

<p><b>establish</b> 44:18 120:5 124:16 132:2 137:12 <b>established</b> 20:13 21:6 52:21 56:4 <b>establishes</b> 119:5 120:7 122:12 123:7 123:8,12 124:5 134:23 <b>establishing</b> 121:15 <b>estate</b> 32:24 132:16 <b>evaluate</b> 119:11 <b>evaluating</b> 134:3 135:16 <b>evaluation</b> 42:9 <b>event</b> 101:11 <b>eventually</b> 78:18 100:24 <b>everybody</b> 31:7 33:14 104:24 112:10 124:11 128:10 132:8 <b>everybody's</b> 120:4 <b>evid</b> 142:15 <b>evidence</b> 8:7 9:10 9:17,21 10:5 13:9 14:4,15 15:2,17 18:5 19:7,13,18,25 21:3 23:7 34:11 89:4 113:10 117:20 118:11,12 119:4,21 119:22 122:11,21 122:25 123:7,8,12 124:5 132:18 134:3 134:17,23 135:16 136:5 137:15 <b>eviscerated</b> 131:20 <b>exact</b> 26:25 125:21 <b>exactly</b> 28:18 94:6 128:21 <b>exam</b> 142:5 <b>examination</b> 35:10 36:7 72:7 87:1 88:9 90:2 100:13 110:2 128:21 <b>example</b> 78:7 92:19 92:20 100:21</p>	<p>101:17 122:16 <b>excel</b> 71:6 <b>excellent</b> 29:15 <b>exception</b> 23:8 <b>excepted</b> 122:13 <b>excessive</b> 50:25 51:12 52:14 <b>exchange</b> 15:11 16:5 130:14 <b>exchanged</b> 50:14 98:13 <b>exchanges</b> 49:1 <b>excuse</b> 11:4 54:2 58:18 75:3 86:12 97:23 107:4 111:6 129:1 <b>excused</b> 88:13,15 88:24 110:25 111:1 <b>exercise</b> 81:7 <b>exhibit</b> 43:25 44:1 46:24 49:14,15,21 51:14 52:25 53:1,5 57:22 59:3 60:6,21 61:13 64:2,2,5 68:22 69:9,20,24 71:5,19 80:25 81:1 85:11,11 <b>exhibits</b> 5:15,19,20 5:24 6:19 28:13 34:22 43:8,13 68:20 68:21 71:3 89:3 112:3,16,17,21 113:4 117:6 <b>exist</b> 30:14 <b>existed</b> 73:15 96:2 135:4 <b>existence</b> 20:7 23:2 39:14,15,16 120:15 <b>existing</b> 52:20 130:4 <b>exists</b> 22:17 130:18 130:19 135:22 <b>expect</b> 71:4 119:19 <b>expectation</b> 8:23 9:11 12:10 14:9 16:18 19:19 63:22 63:24 66:24 117:3 117:13 118:25</p>	<p>119:5,18,23 122:10 134:11,20 135:23 <b>expected</b> 9:15 55:22 98:23 102:22 123:8 <b>expecting</b> 117:9 <b>expedited</b> 141:6 <b>expense</b> 121:3,5,8,9 121:18,22 122:4 131:23,25 <b>expert</b> 91:10 108:20 <b>expertise</b> 93:10,14 <b>explained</b> 76:25 102:8 <b>explaining</b> 93:6 <b>explanation</b> 29:18 <b>explosion</b> 109:13 <b>expressly</b> 24:6 <b>extend</b> 128:19 <b>extended</b> 128:6,22 <b>extending</b> 33:24 38:10,11 124:12 127:10,25 128:1 <b>extends</b> 125:8 <b>extension</b> 25:6 31:14,16 118:4 128:5 <b>extent</b> 5:25 6:17 19:1 139:10 <b>extra</b> 61:4 85:18</p>	<p><b>failure</b> 12:17 <b>fair</b> 5:19 18:20 29:2 49:5 74:1 86:15 112:25 114:2,20 137:5 <b>fairly</b> 31:15 <b>fall</b> 51:1 <b>familiar</b> 38:14 40:3 43:3 44:5 75:14 91:8,11 97:5 99:24 105:15,16 106:20 <b>far</b> 27:1 46:11 99:17 100:3 107:7 134:3 135:17 136:3 138:25 <b>farming</b> 35:21 <b>fashion</b> 112:14 140:4 <b>favor</b> 20:14 <b>february</b> 49:23 50:2 <b>federal</b> 121:20 <b>felt</b> 59:23 65:3 67:25 77:8 83:10,12 83:14,17 <b>fidelity</b> 31:21 34:3 <b>fiduciary</b> 32:22,23 132:16 <b>fifth</b> 81:19 <b>figure</b> 141:11 <b>file</b> 113:20 <b>filed</b> 8:1,1,2,3,6 10:17 16:9 113:23 <b>final</b> 31:9 42:23 97:24 104:25 105:6 <b>finally</b> 110:25 135:17 <b>finance</b> 37:14 72:13 72:14 <b>financial</b> 26:20 27:19,20 32:5 36:23 37:11 42:6 90:25 117:19,21 126:19 <b>financials</b> 31:19 <b>find</b> 22:4 24:23 34:25 <b>fine</b> 41:6 92:13 115:5 137:22</p>
		<b>f</b>	
		<p><b>f</b> 1:21 143:1 <b>face</b> 124:8 <b>fact</b> 13:1,24 15:12 16:21 22:4 23:6 24:16 25:7 27:17 33:15,21,24 66:22 73:14 75:2 76:8 77:8 80:8,16 83:5 106:2 110:15,16 115:23 118:14 119:8 120:19,24 126:11 128:23 129:5 130:10 134:8 135:8,18 <b>facts</b> 53:10 133:23 <b>factual</b> 66:15</p>	

<p>138:17,25  <b>firm</b> 7:6  <b>first</b> 6:24,25 8:12,18  10:12,18 11:10,10  11:11 12:3,3,14,15  12:21,24 21:6,16,25  22:14,16 25:1 31:7  32:11 38:17,19,21  43:25 52:19 53:17  54:8 60:15 61:20  64:21 69:12,25  73:14 78:12 84:7  101:5,24 104:12  115:16,24 116:7,15  116:19,20 117:10  117:15 118:18  119:10,17 120:19  121:11,25 123:18  123:20 124:19  127:1 133:7,8,19  134:7,18 135:9  <b>fit</b> 34:4 131:17  <b>five</b> 29:24 57:14  62:18 71:21,24  113:12 114:2,19  <b>flat</b> 116:8 133:10  <b>flesh</b> 8:8  <b>flight</b> 111:8  <b>floodgates</b> 122:19  128:12 133:21,22  134:6,24  <b>floor</b> 1:15  <b>flow</b> 6:18 12:17  26:20 27:22 31:20  33:23 45:23 125:22  126:4,14,18  <b>focused</b> 9:23 14:13  <b>follow</b> 60:14 113:15  139:12  <b>following</b> 47:22  48:3,25 65:14 82:7  97:3 107:3 110:6  115:24 118:10  119:3 133:8 139:8  <b>foods</b> 90:18  <b>forced</b> 13:16</p>	<p><b>forceful</b> 20:11  <b>forecloses</b> 126:12  <b>foreclosure</b> 126:16  <b>foregoing</b> 143:3  <b>foremost</b> 25:2 127:2  <b>forgotten</b> 6:3  <b>form</b> 23:13  <b>former</b> 75:17  <b>forming</b> 92:9  <b>forth</b> 99:15  <b>forward</b> 77:24  <b>forwarded</b> 58:18  <b>fosdick</b> 120:14  121:1,17 123:19  141:9  <b>foundation</b> 34:10  67:3,6 95:17  <b>foundational</b> 79:1  <b>four</b> 81:19 138:13  138:18 139:4,4  <b>fourth</b> 54:24  <b>frame</b> 137:6  <b>frankly</b> 18:16 24:14  26:19 85:4  <b>freight</b> 15:22,23,25  16:1,2 17:14 38:24  38:25 39:1 40:1  44:18,19 45:5 54:19  55:12 63:8,10,14,23  66:5,9 67:19 70:21  79:6 82:8,16 92:19  98:8 99:11 103:17  108:24,25 131:8  <b>frequently</b> 46:3  <b>friday</b> 53:21,22  138:16 139:23  <b>fright</b> 16:17 17:15  53:20  <b>front</b> 11:16 44:1  80:24 123:5 136:12  136:13  <b>frustrated</b> 61:23  <b>fuel</b> 129:15,16  <b>full</b> 5:23 64:21  90:24 133:15,17  <b>function</b> 9:17 74:4  118:21,22</p>	<p><b>fund</b> 120:15 121:3,5  121:8,9,18,22  <b>funds</b> 22:5 45:23  61:6,24 62:2 83:15  139:9  <b>furnished</b> 12:9  <b>further</b> 86:23 87:15  109:23 110:23  111:9,17,20,22,25  124:4 136:19</p> <p style="text-align: center;"><b>g</b></p> <p><b>g</b> 1:22 4:1  <b>game</b> 9:4,16  <b>gardner</b> 58:2,5,9  59:6,9,16 60:10,13  60:22,24,25 61:15  61:18,22 62:8,13  85:12,17  <b>gather</b> 114:3  <b>general</b> 8:25 12:11  14:11 15:1 17:1  19:21 20:2 26:7,19  36:23 37:14 38:9  59:21 66:11,23 67:5  67:21 72:13 91:3  95:7 99:13 117:2,7  117:9,12,16,17,22  119:21 122:10  123:3,6,7 134:10,16  134:22  <b>generally</b> 27:6 40:3  41:8 46:5,9 94:8,9  108:18  <b>generated</b> 17:10,14  105:3  <b>gentlemen</b> 62:17  <b>getting</b> 18:12 52:14  119:8 131:9 137:8  <b>gift</b> 140:17  <b>give</b> 18:25 19:23  33:3 43:10 52:11  68:24 83:23 90:14  113:12 115:4 139:4  <b>given</b> 27:17 76:21  83:16  <b>glad</b> 140:21</p>	<p><b>glimpse</b> 18:8  <b>go</b> 7:1 18:9 20:12  28:1 40:25 47:15  54:19 56:6 74:13,23  83:18 86:16 92:4,21  92:22,22 94:17  96:10,12,12,12  104:24 106:11  110:7 122:23 123:1  128:23 133:2,10  141:17  <b>goal</b> 97:4  <b>goals</b> 131:18  <b>goes</b> 114:18 121:13  127:5  <b>going</b> 7:12 9:13,21  9:22,24 10:7 11:15  17:9,21 18:1,9,25  19:6 21:3 22:20  24:19 27:1,2 32:4  32:11 33:14 38:3,10  39:2 43:24 46:20  56:23 57:21 59:6  67:9,9,10,13 68:19  71:20 80:8,23 82:21  83:6 85:10 90:15  92:20 97:3 103:16  111:24 112:20,22  119:14 120:20  122:19 124:2 125:7  126:2,5 127:17  131:8 139:7,7 140:3  <b>good</b> 4:5,6,18,19,23  5:4 6:6 20:17,17,24  35:8,12 47:21 49:2  72:9,10 88:4 95:7  96:16 100:15,16  105:23 123:25  <b>goods</b> 24:13 124:13  128:14  <b>govern</b> 43:4  <b>grand</b> 140:23  <b>granting</b> 37:20  <b>great</b> 5:14 6:1,2  34:10 71:23 99:10  111:7 112:16 113:3  120:22</p>
--	---	---	---

<p><b>greater</b> 46:12 77:19 77:23 136:10 <b>greatest</b> 20:16 <b>grew</b> 126:23 <b>grindrod</b> 51:24 52:11 53:13 56:3 57:19 58:13,25 59:17 61:16 73:17 96:25 99:7,8 <b>grinrod's</b> 54:15 <b>gross</b> 125:4 <b>grossly</b> 34:6 <b>grow</b> 97:18 <b>growing</b> 28:14 29:8 <b>guess</b> 30:4 106:6 <b>guessing</b> 58:24 <b>guidance</b> 11:24</p>	<p>131:2 142:6 <b>hansen's</b> 90:17 100:18 132:19 <b>happen</b> 25:12 132:17 <b>happened</b> 15:7,16 27:5 28:4,19 29:1 29:20 106:24 124:18 131:10 <b>happens</b> 30:16 65:23 <b>happily</b> 40:24 <b>happy</b> 61:1 139:20 <b>hard</b> 45:16 128:18 <b>hate</b> 113:8 <b>haul</b> 45:5 86:18 94:9,10 109:17 <b>haulage</b> 103:1 <b>hauling</b> 38:24,25 39:1 44:18 109:10 <b>haven</b> 121:4 <b>haynes</b> 29:15 33:2 127:2,21 131:20 132:3 <b>header</b> 85:12 <b>hear</b> 19:4 26:22 34:11 113:16 115:12 <b>heard</b> 73:25 94:2 98:6 100:21 113:10 114:6 115:2 117:5 117:20 118:11,19 122:21 136:5 <b>hearing</b> 2:1 4:9 7:11 113:23 141:6 <b>hearings</b> 6:9 <b>held</b> 12:5 20:4 27:11 36:25 37:2 65:4 76:19 90:8 <b>hello</b> 4:22 6:6 <b>help</b> 71:6 99:10 <b>helpful</b> 18:3 <b>helps</b> 111:12 <b>hesitate</b> 139:5 <b>hiccups</b> 59:24 <b>high</b> 51:12 52:14</p>	<p><b>highly</b> 41:1 <b>hine</b> 3:11 4:24 7:6 <b>hire</b> 40:1 <b>hiring</b> 130:25 <b>history</b> 14:20 25:14 64:7 90:15 92:4 120:22 142:16 <b>hit</b> 51:6,8 <b>hold</b> 32:21 45:24 112:9,9 <b>holding</b> 32:14,15 139:9 <b>holiday</b> 50:6 61:2 85:18 137:18 <b>holidays</b> 137:8 <b>hon</b> 1:22 <b>honest</b> 132:19 <b>honestly</b> 128:20 <b>honor</b> 4:15,18,23 5:7,16 6:10 7:4,5,9 8:11,14 9:9,23 10:21 11:2 14:7,12 14:15,25 18:11,13 19:5 20:10 21:10,13 27:5 28:9,18 30:23 33:10 34:12,14,21 40:21 41:6 43:7,16 43:19 49:2 53:1 66:12,18 67:2,15,17 71:1,8,18,20 72:1 86:23,25 87:12,15 88:1,4,19 89:1 95:17 100:4,9,12 106:18 109:23 110:1,21,23 111:4 111:10,13,17,25 112:21 113:7 114:8 114:11,25 115:5,11 117:1 119:9 120:2 120:18 123:4,12,16 124:1,10 125:7 128:25 130:3 132:21,23 133:3,6 133:23 137:2 138:1 138:17,18 139:3 140:7,20,23 141:19 141:20</p>	<p><b>honorable</b> 4:3 <b>hook</b> 94:22 <b>hooks</b> 94:16 <b>hope</b> 132:1 <b>hopefully</b> 111:11 <b>hour</b> 8:2 88:6 112:1 113:23 114:23 <b>hours</b> 8:3 <b>huh</b> 79:7 120:12 <b>hundred</b> 139:16</p>
<p><b>h</b></p>			<p><b>i</b></p>
<p><b>h</b> 35:7 142:14 <b>half</b> 8:3 83:11 113:23 <b>halt</b> 107:9 <b>halted</b> 107:21 <b>hand</b> 35:2 89:18 <b>handed</b> 64:1 <b>handing</b> 64:1 <b>handle</b> 72:14 73:5 96:8 <b>handled</b> 26:2 53:20 73:10,12 77:20 82:16 83:6 103:18 <b>handling</b> 55:17 82:11 <b>hands</b> 85:24 136:4 <b>hansen</b> 5:2 25:13,14 25:16 26:13 27:8 29:4 34:13 35:3,6 35:12,12 36:21 38:14 42:12 43:24 53:12 63:1 67:19 68:5,19 69:9 72:9 84:5 85:10 86:1 87:3 88:5,12,14,21 88:23 89:15,16 94:5 98:6 103:13,15 125:18,20 127:23 128:20 130:13</p>			<p><b>i.e.</b> 127:11 <b>ian</b> 5:1 51:16,24 58:23 59:19,20 60:22 61:15 73:16 73:17 86:11,12,14 87:7,25 89:19,22 142:9 <b>idea</b> 73:23 74:10 75:10 86:7 116:4 128:7 <b>identified</b> 63:19 117:23 125:13,14 <b>identify</b> 36:1 44:3 46:24 49:14,22 57:22 59:4 60:9 61:14 64:15 68:22 69:9 117:8,18 <b>ignoring</b> 124:18 <b>illuminating</b> 12:13 18:2 <b>illustrative</b> 49:19 <b>imbalance</b> 28:24 29:8 <b>immediately</b> 11:13 61:7 63:24 98:9,20 116:21 118:10 119:2 <b>impact</b> 12:19 13:25 14:3 42:15 75:10 94:24 <b>implications</b> 33:5 <b>important</b> 25:9 32:15 97:17 99:14 99:15 103:23 104:11 115:13 137:10</p>



<p><b>importantly</b> 23:17                  23:20 26:13 30:23                  32:12 33:1 67:3                  131:5  <b>impossible</b> 105:25                  106:2 132:25  <b>inception</b> 14:22,25  <b>incidentally</b> 25:21                  28:10 124:15  <b>include</b> 57:9 91:4  <b>including</b> 25:18  <b>incorporates</b> 23:19  <b>incorrectly</b> 21:2  <b>increase</b> 17:13  <b>incurred</b> 8:20 12:8                  15:23 83:7 122:6                  127:11  <b>independent</b> 121:15  <b>indicate</b> 10:6 64:20  <b>indicated</b> 7:22                  37:13 47:18 74:14                  76:2 84:5 91:4                  104:18 119:10                  133:16  <b>indicates</b> 48:10 50:5  <b>indication</b> 125:10                  128:5  <b>indirect</b> 105:4  <b>indiscernible</b> 6:14                  17:9 28:16 31:21                  66:16 127:2  <b>individual</b> 79:22  <b>indulgence</b> 21:10  <b>industries</b> 23:21                  116:10,24  <b>influenced</b> 42:9                  93:24  <b>information</b> 41:3  <b>informed</b> 86:17  <b>initial</b> 27:21  <b>initially</b> 84:14 99:6                  136:3 139:20  <b>inquiry</b> 22:22  <b>insofar</b> 48:11  <b>institute</b> 37:12  <b>instituted</b> 62:19</p>	<p><b>institution</b> 37:7  <b>insufficient</b> 126:24  <b>insure</b> 46:21  <b>insured</b> 31:5  <b>intended</b> 116:22  <b>intending</b> 111:13  <b>intent</b> 24:3  <b>intention</b> 59:9  <b>interchange</b> 13:6,10                  17:19 29:12 39:6                  42:13,16 44:20 51:7                  66:10 67:20 74:15                  74:16 78:21 92:6,7                  94:2,6,12,16,18,25                  96:13 97:22 99:12                  105:17,19 106:3                  135:2,7,14  <b>interchanged</b> 17:17                  17:18 95:6 105:2,6  <b>interchanges</b> 96:6  <b>interchanging</b>                  13:22 39:3 86:4  <b>interconnecting</b>                  63:7 79:23  <b>interest</b> 5:11 20:3,5                  20:8 21:24,25 22:23                  23:1,2,3 129:9,10  <b>interested</b> 24:24                  34:17 141:5  <b>interesting</b> 22:21  <b>interestingly</b>                  121:17  <b>interests</b> 20:13                  22:10  <b>interfaced</b> 51:11  <b>interlining</b> 11:5                  65:25 82:9  <b>interlying</b> 10:13,25                  11:3 12:17,22 19:15                  23:9,12,24,25 24:7                  24:16,20,21,25 25:4                  25:5 33:11 40:4                  55:13 63:9,14 91:9                  91:13,16 101:14                  115:19 124:23                  125:17 127:11                  128:15 129:5 131:4</p>	<p>131:15,18,22 132:6                  135:10  <b>interrail</b> 40:9  <b>interrupt</b> 92:15  <b>intertraffic</b> 40:9  <b>intervenes</b> 32:25                  132:5  <b>introduce</b> 4:21 6:3                  112:4  <b>introduced</b> 6:18,20  <b>introducing</b> 5:20  <b>invoice</b> 44:23 53:21                  54:6,13  <b>invoiced</b> 70:16  <b>invoices</b> 10:5,5                  53:15 54:18,19                  57:24 58:4 69:10,15                  69:19,20 70:2,7,18                  70:21 71:14,15                  142:17,18  <b>invoicing</b> 41:14  <b>involve</b> 22:10 39:6                  40:10  <b>involved</b> 7:19 15:5                  16:2 20:4 94:6                  96:15 118:16  <b>ironically</b> 12:2  <b>irrelevant</b> 16:11                  22:21 119:9 127:4                  128:2 135:19  <b>irving</b> 5:2,12,18                  7:12,14,17,21 9:3                  9:15 10:3,14 11:1,4                  13:1,5,10,22 14:8                  14:16,23,25 15:5,6                  15:12,18,21,23,25                  16:1,2,13,16,18,20                  16:21,23,25 17:4,6                  17:16,19 19:17 21:4                  21:4 24:11,23 25:17                  25:18,19,22 27:5,6                  27:7,11,13,14,16                  28:11,20 29:3,3,13                  29:23 30:1 31:4                  32:2 33:23 34:12                  35:16,17,19,23 36:2                  36:3,3,5,7,8,8,11,14</p>	<p>36:18,19,21,24 37:3                  37:15,25 38:4,6,8                  38:23 39:2,9,20                  40:1 42:1,3,5,12,16                  42:24 43:25 44:13                  44:24 45:4,22,22                  46:10,10,24 47:2,24                  47:24,25 48:8,18,18                  49:13,21 51:13,21                  55:9,10 57:21 59:3                  60:6,19,21 61:10,13                  62:24 63:14,21 64:2                  64:12 65:6 66:10                  67:20,23 68:6,14,15                  68:20,22 69:9,24                  70:10,13,16,19,22                  71:19 72:12,15,19                  72:21,25 73:4,5,8                  73:21 74:3,15 75:5                  75:7,20 76:3,4,5,9                  77:14,25 78:18                  80:12,13,16,24 81:1                  81:8,24 85:11,11                  86:3 87:8 90:16,20                  92:1,18,18,19 93:1                  94:1,25 95:14,21                  96:3,10,19 97:11,13                  97:23 99:12,21                  104:15 106:21                  107:4,8,10 108:8,16                  108:17,22 109:3,6                  110:5,11 111:23                  119:2 122:23 124:7                  125:16 126:2,6                  128:17,21 130:21                  135:1 142:16  <b>irving's</b> 51:10 142:4  <b>irvings</b> 49:8 54:20  <b>isis</b> 66:2  <b>iss</b> 5:11 28:4,11                  29:4,5,8,10,10,14                  29:18,24,25 30:7,20                  30:25 31:1,3,6,6,11                  31:22,24 32:1,6,16                  34:3 40:4,12,18                  41:10,13,15,24 42:1                  42:4,8 55:17,23</p>
--	--	--	--

56:18 57:15 58:14 59:10,22 60:14,23 61:24 63:25 66:2 67:24 68:3 73:4,6 73:12,15,24 74:3,8 74:11 78:5 79:13,14 79:15,21,22,24 80:5 80:6,14,17,18 82:10 83:8,12,13,14,17,18 83:24 85:7,23,23 87:6 91:9,15,17,20 91:24 92:1,10,11 93:2,3,4,7,8,10,11 93:19,22,23 98:10 98:22,24,24 99:18 100:17 101:2,14,20 103:23 104:5,6,9,12 118:11,15,18,22,23 118:24 123:9,11 126:22 127:5,5,5,16 127:17,24 130:19 <b>issue</b> 5:12 7:22 8:8 9:23 10:9 11:12,16 11:20,22 16:11 20:1 20:2 22:14 23:9,23 23:24 24:10,11 50:5 62:3 66:22 93:16 113:1 115:13 117:1 117:11 132:10 135:8,19 139:14,17 <b>issued</b> 53:21 54:6 70:3,16 <b>issues</b> 14:14 113:11 136:13 <b>it'd</b> 16:14 18:10 49:2 <b>it'll</b> 5:21 132:25	<b>january</b> 38:20 44:4 52:22 60:25 61:19 62:14 <b>jim</b> 60:11 87:8 <b>joanne</b> 47:1,8,20 49:16,24,24 50:2 57:23 58:18,20,21 59:5,11 <b>job</b> 45:15 132:16 <b>joe</b> 56:25 58:12 <b>john</b> 13:11,22 17:12 17:20 35:14 51:9,11 88:6 89:15 95:13 96:7,9 97:2,22 98:3 104:23 105:9 109:3 118:17 131:12 <b>joined</b> 37:3 <b>judge</b> 1:23 6:6 29:15 33:2 76:1,25 127:2,20 131:20 132:3 <b>judge's</b> 48:25 <b>july</b> 50:21 58:3,10 59:5 73:18,18 106:25 <b>junction</b> 94:19 109:12 <b>june</b> 50:21 52:3 58:12 73:18 <b>jury</b> 67:11 <b>justify</b> 22:3	84:17 86:14,19,23 87:18 88:15,23 89:7 95:17,20 100:10,12 100:14,16 106:18 109:23 110:5,23 111:4,10,23,24 112:20 113:1,5,22 114:15,17,22 116:10 118:3,14 119:7 123:16 124:2 126:9 129:25 130:3 133:3,9 134:13 136:11,25 137:1,6 138:1,10,16 139:5 139:17,21,23 140:6 140:9,12,17,22 141:1,20 142:7,10 <b>keach's</b> 18:17 134:5 134:9,18 136:17 <b>keep</b> 41:15 96:16 101:5 104:5,8 132:13 <b>keeps</b> 101:8 <b>keith</b> 71:22 <b>kelter</b> 47:1 49:16,24 50:2 57:23 58:18,20 58:21 59:5,11 <b>kelter's</b> 47:20 <b>kept</b> 27:16 <b>key</b> 3:14 <b>kind</b> 124:13 132:2 <b>knew</b> 86:1 103:21 131:1 <b>know</b> 8:15 9:9 11:15 13:13 18:15 18:22 19:10 21:15 26:25 28:20 29:18 30:4,19 32:10 33:7 33:18 39:12,15 54:9 59:17 64:25 74:7,9 74:20,23,25 75:3,7 75:11,16,19,21 79:10 95:9,10 96:4 96:4,19,22 97:10,15 99:14,25 101:10 105:14 106:2,24 107:13 109:9	112:10 113:7 118:4 120:9 122:8 125:10 129:2 130:20 131:2 132:13 134:5 136:17 137:10 138:2,5 141:7,10,15 141:16 <b>knowledge</b> 31:2 40:5,7 41:23 42:6 68:13 95:18 100:3 100:17 107:12 <b>knowledgeable</b> 31:1 <b>known</b> 23:2,3 40:4 <b>knows</b> 95:20
	<b>k</b>		<b>l</b>
	<b>k</b> 35:6 <b>karl</b> 5:2 34:13 35:3 35:6 142:6 <b>keach</b> 3:8 4:14,15 4:15,20 5:7,16 6:5 6:15,16,22 18:14 19:23 20:1,16,17,19 20:25 21:12,13 23:8 26:8 27:4 28:15,18 28:23 32:3,6,8,9,19 32:23 34:8,9 40:21 40:24 43:12,16 49:2 49:6 53:3,5,9 66:12 67:2,13,15 71:4,8 71:13,20 72:1,8		<b>l</b> 35:6 <b>label</b> 16:7 26:3 <b>labels</b> 16:11 26:1,3 <b>lac</b> 98:3 107:9,18,20 109:12 131:10 <b>lack</b> 21:17 <b>laid</b> 8:17 18:17 <b>lake</b> 20:4 36:4 68:8 68:11,17 99:22 100:1 121:21 <b>landlocked</b> 42:22 75:3 <b>large</b> 12:20 56:17 137:11 <b>largely</b> 22:12,21 25:12,13 40:25 82:3 126:21 <b>larger</b> 28:12 46:8 <b>largest</b> 15:7 27:24 <b>late</b> 115:18 135:5 <b>laughter</b> 20:21 <b>law</b> 7:6 10:13 21:2 21:21 23:14,19 24:18 33:16,21 116:7,9 120:23 127:21 <b>lawyer's</b> 115:1 <b>lays</b> 124:23 <b>lead</b> 41:13 <b>leading</b> 40:25 41:1
<b>j</b>			
<b>j</b> 3:8 <b>j.b.</b> 35:19 <b>j.d.</b> 5:2 7:17 25:17 27:6 35:16,17,23 36:1,11,13,14,18,21 37:3,15,25 44:13 47:2,24 68:14 72:11 72:15,24 73:8 76:3 90:19			

<p><b>learned</b> 29:8 93:15  <b>leave</b> 87:21,23  136:4  <b>leaves</b> 14:7  <b>leery</b> 25:15  <b>legal</b> 66:13,16,21  67:1,11,12 86:3  143:16  <b>legally</b> 127:4  <b>lend</b> 137:1  <b>length</b> 88:8  <b>lepe</b> 3:18 4:23,24  6:23 7:3,4,5,16 8:14  9:6,8 10:2 15:21  17:23,25 18:7,11  19:4 20:9,23 21:1  21:19 22:18 23:10  23:15 25:11 26:1  34:12,21 35:11 41:4  41:6,7 43:7,10,14  43:19,22,23 48:24  49:12 53:1,11 65:18  65:21 66:15,18,21  67:16,17,18 69:4,8  70:25 71:18 81:7  86:25 87:2,12,15,24  87:25 88:4,11,14,17  88:19,21 89:1,3,6  89:10,14 90:3 95:22  95:24,25 100:4,6,8  109:24 110:1,3,21  111:1,12,17,20  112:8,12 113:6,7,21  114:5,7,11,18,25  115:5,10,11,14  116:17 120:6,12,18  122:15,18 123:15  123:25 125:12  128:19 132:23  133:2,5,6 135:1  136:9,24 137:18  138:11,18,20,23,25  139:3 140:20  141:19 142:6,8,9  <b>lepe</b>'s 25:8  104:14 124:3</p>	<p><b>lesson</b> 120:22  <b>letting</b> 40:24  <b>liable</b> 78:25 101:7  <b>lien</b> 22:6,7 121:19  121:23  <b>liens</b> 84:23  <b>light</b> 29:7 112:1,2  <b>limited</b> 7:17 35:16  35:17,19 36:11,14  36:18,22 37:3 40:5  44:14 47:2  <b>lindsay</b> 3:9 4:17  <b>line</b> 20:6 21:3 30:9  31:5 51:6,8 68:7,10  68:16 94:12,21  99:22,25 102:3  107:8,16,16,19,21  107:22 108:9,11  132:8  <b>lines</b> 39:5 60:5  79:23 107:23  118:19 130:16  <b>list</b> 47:23 69:15  <b>listing</b> 70:2  <b>litigated</b> 131:21  <b>little</b> 18:23 29:5  81:16,16 90:9 92:4  92:5 133:3 138:4  <b>load</b> 91:18  <b>local</b> 54:18 55:2  56:5 57:6,9 82:21  83:2,3 105:21  <b>locomotives</b> 94:11  94:14,21  <b>logansport</b> 121:14  <b>long</b> 30:2,16 36:25  90:8 112:10 114:9  114:15 119:16  120:21 122:6 133:3  137:14  <b>longer</b> 24:14 28:19  77:25  <b>look</b> 8:4 28:13  49:13,21 52:19  53:12 59:3 60:7  64:2 68:20 69:12,24  80:24 81:13 85:10</p>	<p>121:13 124:21  125:15,17 130:10  141:16  <b>looked</b> 19:9 33:5  <b>looking</b> 24:2,3  34:16,19 49:10  52:11 60:12 61:18  99:1 103:7,9  <b>looks</b> 23:21 69:1  <b>lose</b> 23:14  <b>loses</b> 9:7  <b>lost</b> 13:11,19  <b>lot</b> 18:16 21:21 92:7  93:8,9,14,18 95:11  99:14 131:11  <b>lots</b> 31:2 128:14,15  128:16  <b>lumber</b> 35:20</p> <p style="text-align: center;"><b>m</b></p> <p><b>m</b> 89:22 142:3  <b>magic</b> 114:23  <b>mail</b> 99:9  <b>mails</b> 98:12,15  <b>main</b> 90:6,7 91:5  95:5 96:7 99:4  107:16,16,19,21,22  <b>maine</b> 1:2,7,16 3:13  4:3,7,10,16,25 6:7  7:7,13,19 8:19  10:10,19 11:5,8,11  11:23 12:4,5 22:11  23:22 24:3 36:16,17  37:24 38:15 44:8,8  44:11 64:6 70:3  75:14 86:2 87:5  90:5 91:6 97:9  109:2 115:21,24  116:1,20 120:4,7,8  121:1,6,10,24 122:1  124:16 129:2 133:7  133:20 135:5  <b>maine's</b> 11:20  <b>major</b> 25:19 45:15  <b>majority</b> 56:9  <b>making</b> 26:25 53:10  78:13 87:3 111:12  122:20 128:11,12</p>	<p>129:11 138:19  139:7  <b>manager</b> 36:23  37:14 38:9 58:21  59:21 72:13 91:3  <b>manner</b> 32:6 38:10  <b>mark</b> 112:4  <b>marked</b> 43:25  46:23 64:18  <b>market</b> 13:11  107:12 131:11  <b>marketing</b> 97:1  <b>massive</b> 17:12  31:15  <b>masters</b> 90:12  <b>matter</b> 1:5 10:13  13:24 23:7,14 24:16  25:7 26:2 33:15,21  59:25 116:6 117:10  119:16 120:24  128:4,8  <b>matters</b> 72:15 73:10  112:11 118:2  <b>max</b> 114:11  <b>mcclain</b> 116:10,24  129:2  <b>mckane</b> 90:18  <b>mean</b> 17:22 67:2  73:6 92:16 93:21  96:17 102:23,24  107:2 112:7 113:24  128:8,10 131:24  134:22 137:3  <b>meaning</b> 65:16  <b>meaningless</b> 134:19  <b>means</b> 78:12 81:24  91:10 132:20  <b>meant</b> 28:6 67:25  103:16 104:20  129:8 134:10,20  <b>mechanism</b> 40:8,10  41:8 130:19  <b>meet</b> 122:6 123:11  124:8 128:18,24  129:5 132:20  <b>meeting</b> 96:23  124:5</p>
---	--	---	--



<p><b>meets</b> 137:7  <b>megantic</b> 98:3  107:9,18,20 109:12  131:10  <b>member</b> 29:10  30:25 31:3,8,11  80:14,19 91:17 93:8  103:4,21 104:5,12  127:4,5  <b>members</b> 24:21  28:4 29:4 80:5,17  91:14 101:20  <b>memo</b> 62:3  <b>memorialized</b> 47:11  49:19 50:15  <b>memory</b> 50:21  <b>mentioned</b> 14:12  37:23 83:10 105:6  106:20 116:11  <b>mere</b> 22:25  <b>message</b> 50:1  <b>messy</b> 48:22 76:25  77:1 126:9,10,12,16  <b>middle</b> 3:4  <b>migonigal</b> 56:25  58:12 97:2  <b>mileage</b> 29:5  <b>miles</b> 74:20 75:17  <b>million</b> 20:6 66:8  133:12  <b>mills</b> 16:3  <b>miltenberger</b>  121:14,25  <b>mind</b> 41:4  <b>minds</b> 71:23  <b>mine</b> 25:9  <b>mineola</b> 143:19  <b>minimum</b> 82:15  <b>minute</b> 43:11 71:21  71:24 87:12 100:4  111:10 133:2  <b>minutes</b> 62:18  113:12 114:3,11,18  114:19  <b>misread</b> 11:8  115:21</p>	<p><b>misreading</b> 21:20  125:4  <b>mix</b> 56:16 106:12  <b>mma</b> 13:7,10,15  14:10,17,19,23 15:2  15:4,4,8,14,22,23  15:24 16:1,15,15,20  16:22,22 17:2,4,5  17:15,18 19:14,21  25:4,20,22 26:17,20  27:6,7,12,12,14,15  28:10 29:9,23,25  31:24,25 32:1 38:18  38:19,22,24 39:3,10  39:13,15,21 40:1  41:23 42:10,13 43:1  44:18,20,25 45:5,20  45:24 46:7,7,19  47:3,16,25 48:5  49:9 51:1,1,7 52:5,7  52:9 53:15 54:18  55:16,22 56:11 57:5  57:6,13 58:6,13  59:6,24 60:4,19  61:11 62:24 63:15  63:21,22 64:13 65:2  65:6,8 66:1,10,23  67:5,20 68:6,10,16  69:22 70:4,12,16,22  73:20,21 74:16,16  74:20 75:16,17 76:4  76:8 77:14,14,20,24  77:25 80:21 81:24  82:10 83:8,15,18  84:6,19 91:24 92:8  92:9,22 93:11,24  94:2,19 95:7,10,14  95:21 96:2,13,19  97:6,19,23 98:1,7  98:18 99:12,21  102:2,22 103:11,12  104:4,22 105:10,11  106:3,21 107:3,5,8  107:11,13,24,24  108:1,6,11,14,19,25  109:2,3,9,9,16,17  109:17,20 110:7,13</p>	<p>110:15,18 117:2  118:11,23,23 119:1  125:22,25 127:19  127:20,25 142:16  <b>mma's</b> 13:25 14:11  28:5 33:23 42:15  51:6 59:9 63:16  64:13 66:6,11 67:21  68:5,15 69:16 70:4  74:17 75:11 94:24  98:9,21 99:13,20  103:7 104:18  105:14 108:9  117:22 127:18,18  <b>modern</b> 24:18  130:16  <b>modified</b> 19:11  <b>moment</b> 61:24  88:19 106:18  <b>momentarily</b> 25:13  <b>monday</b> 62:2,4,7  139:9  <b>money</b> 27:7,16  29:24,25,25 30:20  31:9 32:9,19,20,21  32:21,23 41:13,17  46:10,12 68:3 77:11  77:13,14 79:21,24  80:1,9,18 83:14,17  83:18,19,20,23,24  85:23 98:24 101:2  101:11,12 102:22  102:24 103:12  104:2,6 126:2,6  127:6,18,18,18,20  127:22 132:13,14  137:11 139:18  <b>monies</b> 46:1 47:17  47:18 50:25 59:23  60:4 65:2,4 66:1  <b>month</b> 7:23 8:9,16  10:15 11:19 12:1  20:13 21:21 22:1,5  22:8 41:16,20,21  51:17 60:15 63:15  64:22 65:15,23,24  91:19 103:24 104:7</p>	<p>116:2,8,23 119:25  121:2,5,16 124:13  133:13 135:12  <b>monthly</b> 40:16  <b>months</b> 8:20 10:4  12:8 66:6 122:3,7  128:11  <b>montreal</b> 1:7 4:7,16  6:7 7:19 10:10  38:15 44:8 62:1,20  64:6 98:3 99:4  <b>morning</b> 10:17 16:9  18:15 26:14 61:25  115:18  <b>mortgage</b> 22:15  <b>motivators</b> 33:2  <b>move</b> 19:24 89:6  109:3  <b>moved</b> 89:3 108:24  109:14,16  <b>movement</b> 57:24  58:3,13 59:7,10  118:16  <b>movements</b> 63:8  <b>moves</b> 91:18  <b>moving</b> 56:4 92:20  98:4  <b>multiple</b> 73:11,11  91:16 106:13  <b>mutual</b> 32:16</p>
<b>n</b>			
<p><b>n</b> 3:1 4:1 35:7,7  89:23 142:1,3 143:1  <b>name</b> 35:6 89:20,22  97:8  <b>national</b> 85:22  <b>nature</b> 23:2 37:9  39:25 59:13,14  130:16  <b>nauseam</b> 129:3  <b>nb</b> 36:16 44:12 46:1  47:19 50:25 51:8,8  58:8,21 64:11,13  <b>nbsr</b> 66:3  <b>nbsr</b> 52:5,8,18  53:20 55:23 56:11  57:5,14 62:19 81:4</p>			

<p><b>necessarily</b> 14:1 20:8 31:19 105:1 <b>necessary</b> 8:22 10:10 13:2,5 52:13 122:7 129:7 135:3 <b>necessity</b> 22:17 32:4 32:5 129:7 131:20 <b>need</b> 14:14 113:4 120:16 140:14 <b>needed</b> 19:1 52:18 77:10 81:4 93:10,14 <b>needs</b> 9:10 137:7 140:14 <b>negative</b> 14:3 95:4 <b>neither</b> 25:8 29:16 <b>net</b> 25:23,24 30:22 40:18 91:20 101:16 <b>netted</b> 91:20,22 101:15 <b>never</b> 31:18 73:25 <b>new</b> 3:12 4:10,24 7:6,12 17:12 19:11 24:2 35:14 37:8,10 37:23 39:4 44:9 51:9 52:8 61:1 63:1 63:5,12,21 66:3 69:11,21 75:20 78:19 86:2 87:4 90:6 91:4 95:5 97:22 98:17,19 104:15 116:14 121:4 131:12 <b>night</b> 26:15 35:5 76:8 84:5,22 85:2 86:1,11,17 <b>nightmare</b> 42:19 77:2 126:8 <b>nine</b> 73:21,23 74:4 74:11 <b>non</b> 130:4 <b>normal</b> 40:24 <b>normally</b> 122:14 <b>north</b> 13:12,19 17:9 17:17 57:10 61:5 78:17 91:23 93:17 93:22 94:17 118:17</p>	<p><b>northern</b> 3:13 4:11 4:25 7:7,13 36:16 37:24 70:3 86:2 87:5 90:7 91:5 95:5 96:7 <b>nos</b> 71:19 <b>note</b> 10:11 16:8 85:17 <b>noted</b> 7:9 58:11 <b>notified</b> 6:3 <b>notion</b> 135:1,13 <b>notwithstanding</b> 25:21,23 76:17 83:5 85:11 135:8 <b>november</b> 1:18 61:17 64:22 143:12 <b>number</b> 17:7 24:18 49:8 66:13 78:16 97:16 112:14 124:23,24 <b>numerous</b> 35:21 <b>ny</b> 143:19</p>	<p><b>officer</b> 76:3 <b>offset</b> 76:20 126:1 <b>oh</b> 3:16 6:5 20:19 54:7 63:9 77:7 138:22 <b>oil</b> 7:21 13:12,21 17:10,10,13 19:13 28:5,11 30:3,5 36:19 50:24 51:4,5 51:7 57:10,24 58:3 58:13 59:7,10 60:4 60:14 61:17 63:23 64:16,20 66:5 75:19 75:20 76:10 77:19 77:23 78:7,18 82:3 83:4 97:20,21 98:9 98:21 99:17,18 104:15 105:8 109:10,11,11,18 110:16,17 118:1,6,8 118:16 125:24 126:23 131:10 133:25 134:3 <b>okay</b> 4:22 5:8 6:5 6:15,21 7:15 18:7,8 18:11 19:4 34:12 36:6,11 37:5,9,13 37:17 38:6 39:15,20 40:3,7,10 41:12,23 43:6,15 44:16 45:2 45:4,8 46:5,15,18 47:9,10,13,20 48:10 48:10,23 49:13,18 50:17 51:13,23 52:6 52:19,24 53:3,17 54:4,10,14,17,24 55:4,11,16,22 56:3 56:16,23 57:4,13,18 57:21,25 58:5,7,9 58:17,23 59:3,8,13 63:18 64:1,8,15 65:8 66:9 68:19 69:9,12,19,24 70:9 71:17 73:3 74:10,20 75:25 77:8,22 78:16 79:10,14 80:4,23 81:1,13,18,19 82:3</p>	<p>83:10 85:2 86:22 87:9 89:10,14 90:14 90:22 91:12 92:1 95:19 97:10 103:10 103:25 108:1 111:15,22 113:6 120:19 134:25 139:2,12,19 141:3 <b>old</b> 21:22 143:17 <b>once</b> 30:19 45:23 58:13 59:10,22 83:8 91:19 136:15 <b>ones</b> 5:20 64:18 89:8,11 <b>ongoing</b> 8:22 10:10 13:3 <b>ontario</b> 90:13 <b>open</b> 50:10 67:13 120:2 122:19 133:22 134:24 <b>opening</b> 8:12 19:24 21:14 <b>opens</b> 134:6 <b>operate</b> 51:4 75:22 107:13 108:6,22 109:21 122:5 129:11 131:7 <b>operated</b> 108:2 <b>operates</b> 29:19 <b>operating</b> 8:24 12:11 14:10 19:20 20:3,15 35:19 66:25 117:4,14,24 118:24 119:6,20,24 122:11 123:11 134:12,21 135:24 <b>operation</b> 8:22 10:10 13:3 122:7 129:7 131:16 135:4 <b>operational</b> 90:25 <b>operations</b> 12:20 13:25 14:3,19 35:22 42:15,18 94:24 <b>opinion</b> 8:18 10:18 12:13 23:15 29:15 32:13 74:14 79:13 106:16 120:20</p>
	<b>o</b>		
	<p><b>o</b> 1:21 4:1 89:22 142:3 143:1 <b>o'clock</b> 18:14 114:22 <b>objection</b> 2:1 4:9 8:1 10:12,24 40:23 66:12 67:10 71:5,8 71:12,13 89:8,13 95:17 115:17 <b>objective</b> 125:9 128:4 <b>obligation</b> 32:23 83:7 <b>obligations</b> 32:1,22 <b>obtain</b> 13:18 <b>obvious</b> 33:11 <b>obviously</b> 14:20 136:20 <b>occasion</b> 59:11 <b>occur</b> 32:4 65:11 <b>occurred</b> 13:14 119:16 <b>october</b> 49:16 51:17</p>		

127:21 131:21 133:8,8,11,19 134:7 134:19 135:10 <b>opinions</b> 23:22 <b>opportunity</b> 8:5 18:15 19:1,23 71:15 113:9,22 136:10,11 136:15,16,18 <b>opposed</b> 49:3 126:14 <b>opted</b> 24:25 73:4 130:21 <b>opting</b> 102:2,5,12 <b>option</b> 48:20 76:3 76:21 137:3 <b>options</b> 92:21 96:18 <b>oral</b> 114:4 <b>orally</b> 114:10,16 136:6 <b>order</b> 4:4 6:22 23:10 97:20,21 121:2 133:17 <b>ordering</b> 93:18 <b>ordinary</b> 70:10 <b>organization</b> 51:21 <b>origin</b> 105:9 <b>original</b> 25:21 29:2 53:5 129:18 130:6 <b>originally</b> 138:1 <b>originated</b> 54:17 55:2 56:4,18 57:7,9 57:11 109:2 <b>originating</b> 30:5,7,9 30:11 31:12 78:9 79:4 82:1,4,20 83:15,16 96:8 101:2 103:22 <b>orms</b> 2:25 143:3,10 <b>outbound</b> 107:7 <b>outgoing</b> 107:11 <b>outside</b> 101:24 <b>outstanding</b> 69:15 70:3 <b>overall</b> 117:19 <b>overrule</b> 67:10 <b>owe</b> 15:22 47:19	<b>owed</b> 15:25 16:1,15 16:16 17:4,15 27:6 27:7 28:20,24 32:9 46:1 50:25 60:4 65:3 66:4 70:12 76:4,5 77:14,14,25 83:15 102:25 103:9 103:10 125:16 <b>owned</b> 72:16,18 74:21 75:17 107:23 <b>owns</b> 74:20 <hr/> <p style="text-align: center;"><b>p</b></p> <hr/> <b>p</b> 3:1,1 4:1 89:22 <b>p.m.</b> 47:21 61:19 72:4,4 115:8,8 <b>p.o.</b> 3:5 <b>pacific</b> 17:18 30:5 57:11 78:8 97:21 <b>page</b> 56:24 61:20 69:12 71:6 81:2,14 85:15 120:13 142:5 <b>pages</b> 69:25 <b>paid</b> 8:24 11:13 12:10 14:9 16:19 17:5 19:20 24:13 27:15 31:7,8 32:11 32:20 33:14 40:9 41:13 46:22 51:2 54:5 56:10 57:5 59:25 63:24,25 66:24 67:24,25 76:9 76:11,18,19,20 80:6 80:9,18 82:16 83:8 93:1,4 98:19,20 99:1,2 101:20,23,24 103:2,4,17 104:2 116:21 117:3,9,13 118:10 119:2,6,8,13 119:24 122:11 123:9,9 124:12 126:5 127:15,17 133:15,17 134:11 <b>pains</b> 122:23 <b>pan</b> 92:7,11,22 93:11 96:12 98:1 105:7,9,14,17,19 106:4,11 130:23	<b>paper</b> 15:5,18,21,23 16:2,13,20,21 17:6 25:19,19 27:5,12,14 27:16 28:20 29:23 35:20,24 36:2,3,4,4 36:7,8,9 39:9,20 40:1 44:24 45:5,6 45:22 46:6,10 47:23 47:24,25 55:9,10 65:3 72:21 73:11 76:4,12 77:14,25 92:19 93:1 95:15,21 96:3,10,19 97:11,13 106:21 107:4,8,10 108:3,8,8,12,16,22 109:1,3,6,7 110:5 110:11 113:25 115:23 125:16 126:2,6 136:16 <b>paper's</b> 45:22 46:10 108:17 <b>papers</b> 8:6 19:10 115:20 136:12 <b>paragraph</b> 52:19 53:13 56:16,24,25 81:20 <b>paragraphs</b> 81:16 <b>parent</b> 25:17 27:10 <b>parse</b> 120:21 <b>part</b> 30:18 91:14,17 101:10 119:1,1 <b>participants</b> 31:7 40:12 118:18 <b>participate</b> 41:23 42:1,3,5,8 74:3,8,11 87:4,5 91:24 92:1 93:7,23 118:15 <b>participating</b> 29:10 31:23 40:18 41:9,17 41:19 80:17 101:20 <b>participation</b> 73:6 73:12 <b>particular</b> 11:21 13:20 14:17 22:7 36:8 40:19 44:16 45:11 46:19 65:1 66:14 70:9 91:17	94:19 112:24 <b>particularly</b> 29:18 132:18 <b>parties</b> 7:18 9:11,18 15:10,17,24 16:5,18 19:14 44:7 50:14 52:21 85:22 101:20 117:3,22 118:8 119:1,18,23 141:4 <b>partner</b> 93:19 <b>party</b> 22:1 57:6 80:21 98:15 125:8 142:15 <b>path</b> 80:5 <b>pause</b> 43:18 69:7 72:6 87:14 88:25 100:7 106:19 111:16 <b>pay</b> 9:24 12:17 16:14,15 19:17 24:7 28:23 30:10,13 45:16 47:18 51:2 52:15 58:13 59:9 61:4 68:6,15 78:25 79:11,17,18,21,21 79:22 80:2 85:18 91:21 99:20 101:7 101:11 103:24 104:3,11 126:1,3,6 127:20 129:21 <b>payable</b> 30:21 40:11,15 <b>payables</b> 91:19 101:13 <b>paying</b> 16:22,23 30:8 64:13 83:24,25 85:22 104:4,6 <b>payment</b> 8:21 17:3 17:3 19:15,16 22:6 24:20,25 25:6 27:11 44:19,22 45:15 48:2 50:18 52:18 54:10 54:25 55:16,23,24 56:11 57:1,14,15 58:14 59:10 61:7,17 63:22 64:12 81:4 82:10 98:10,22,23
--	--	---	---

<p>103:8 117:8,18,23                  118:6,10 119:3,14                  119:15,16,19                  120:14 125:13,15                  127:5,12 134:20                  135:23  <b>payments</b> 15:11                  16:5 19:13 23:9,13                  23:23 24:17 25:4                  27:12,24 29:23                  33:11,20,21 40:17                  41:18 47:23 55:4                  60:14,23 62:11                  64:11,12,13,15,20                  65:1,13,16 77:4                  83:12 98:8 99:19                  102:4,13,18 118:1                  123:10 124:24                  129:5,18 131:16,18                  131:22  <b>pays</b> 101:2,8  <b>penn</b> 121:4  <b>people</b> 6:4 26:10                  37:20 38:12 42:7                  72:24 73:7,10 79:17                  96:24 101:23                  104:11 128:14,15                  128:19 129:14,15                  130:20,23,24 136:5  <b>people's</b> 30:15                  112:2  <b>percent</b> 139:16  <b>percentage</b> 77:19  <b>perfect</b> 71:11  <b>performing</b> 128:15  <b>period</b> 24:15 27:21                  30:16,22 63:15                  73:23 74:4 124:14                  137:20 140:23  <b>person</b> 80:1  <b>personal</b> 95:18  <b>personally</b> 55:7                  74:9  <b>perspective</b> 106:10  <b>peter</b> 1:22 4:3 6:7  <b>petition</b> 69:17</p>	<p><b>petitioning</b> 127:4  <b>pgc</b> 1:7  <b>ph</b> 47:1,2 51:24                  56:25 58:2 60:11                  97:1  <b>phrased</b> 140:2  <b>pick</b> 96:11  <b>picked</b> 97:20  <b>piece</b> 95:9 110:19  <b>place</b> 20:14 25:20                  42:25 56:14 60:15                  99:3,10,16 131:8                  132:8 135:6  <b>places</b> 124:22  <b>plan</b> 11:20 115:25                  124:20,21,22                  133:14,18  <b>planning</b> 38:23  <b>please</b> 4:4 34:24                  35:4 40:22 43:21                  60:7 69:6 86:16                  89:18,20 115:7                  133:5  <b>pleased</b> 19:4  <b>pleasure</b> 136:25                  137:17  <b>plenty</b> 138:21,23  <b>pm</b> 1:19 141:23  <b>point</b> 9:3 11:16                  19:22 20:10 21:16                  21:17,17 27:13                  33:15 53:17 54:8,15                  54:17,24 55:11                  67:14 77:24 78:2,4                  94:11,12 105:6                  107:4,5 111:14,25                  114:4,12 115:16,22                  117:25 118:14                  119:7,7 131:23,24                  133:24 137:15                  141:9  <b>pointed</b> 65:8 124:10                  128:19  <b>points</b> 11:2 19:8                  81:14,15 107:8                  108:25 114:12                  115:14 117:6 127:3</p>	<p><b>policy</b> 33:5 37:20                  38:10 131:17  <b>portion</b> 77:23  <b>portland</b> 1:16 3:6  <b>position</b> 8:14 20:9                  24:23 25:2,3 36:21                  36:25 37:2 114:1  <b>positions</b> 90:8  <b>post</b> 112:13 136:15                  137:3,13  <b>potential</b> 5:24 12:18  <b>potentially</b> 121:21  <b>practical</b> 13:20                  106:3  <b>practice</b> 65:11  <b>pre</b> 94:15  <b>preceding</b> 53:21                  63:15  <b>precisely</b> 24:17  <b>precode</b> 23:19  <b>preexisting</b> 23:17  <b>prefer</b> 136:22                  139:11  <b>preference</b> 136:8,17  <b>preliminary</b> 40:25  <b>premarked</b> 34:22  <b>premise</b> 23:4  <b>prepared</b> 64:8 70:9                  111:6 139:3  <b>prerequisite</b> 22:1  <b>presence</b> 21:24,25                  22:19,25  <b>present</b> 9:21 53:13                  111:24 137:16  <b>presentation</b> 6:23  <b>presented</b> 8:7,8                  23:11  <b>president</b> 96:25                  97:1  <b>president's</b> 50:6  <b>presiding</b> 4:4  <b>pressure</b> 141:16  <b>presume</b> 27:9  <b>presumptuous</b>                  139:6  <b>pretty</b> 10:16 62:3                  105:16 128:14</p>	<p><b>prevent</b> 130:25  <b>prevented</b> 130:25  <b>prevents</b> 23:3  <b>previously</b> 44:24                  56:21 98:6  <b>pricing</b> 96:15  <b>primarily</b> 14:13  <b>primary</b> 32:14 33:7  <b>principal</b> 24:8  <b>principle</b> 120:14                  121:23 122:1,1                  123:19 129:20  <b>principles</b> 135:4,6  <b>print</b> 34:20  <b>prior</b> 8:20 10:4                  13:13 76:10 90:15                  92:9 122:3 125:24  <b>priorities</b> 124:15,23                  129:19 130:5,5  <b>priority</b> 7:24 8:10                  8:16 11:19 12:1,7                  20:12 21:5,7 24:12                  33:4 34:5 116:3,23                  120:1 121:2,5,10,16                  123:6,13 124:24,25                  128:17 129:15,20                  132:1,11,12 133:13                  135:12,12,19,24  <b>probably</b> 5:19 9:23                  18:23 22:12 29:17                  87:8 114:19 139:8  <b>problem</b> 11:7 23:1                  50:23,24 55:2 88:23                  125:18  <b>problems</b> 50:17                  83:19  <b>procedures</b> 37:19  <b>proceeding</b> 7:19  <b>proceedings</b> 141:23                  143:4  <b>process</b> 15:10 50:18                  91:23 93:5,18                  111:13 113:18  <b>produce</b> 10:5  <b>produced</b> 13:12                  18:5</p>
---	--	--	---

<p><b>product</b> 13:21 40:1 42:23 107:10,11 110:5 122:22 123:2 <b>products</b> 108:8 109:7 <b>proffer</b> 20:20,23 <b>program</b> 91:20 <b>progressively</b> 28:8 <b>projects</b> 39:4 <b>promised</b> 123:17 <b>prompt</b> 98:23 <b>proof</b> 28:14 66:4 69:10 <b>proofs</b> 4:10 <b>property</b> 132:3 <b>proposal</b> 24:6 52:7 54:15 57:5 <b>propose</b> 57:1 112:11 113:13 <b>proposed</b> 57:14,19 73:17 127:9 <b>proposition</b> 23:16 135:21,25 <b>protect</b> 129:13,16 130:12 131:15 <b>protected</b> 82:22,24 83:1,3 126:1 131:22 <b>protecting</b> 126:20 <b>protection</b> 131:19 131:25 <b>protective</b> 130:19 <b>provide</b> 8:11 44:22 63:12,14 92:24 114:4 117:11 122:22 123:1 134:15 <b>provided</b> 8:23 10:3 10:6 12:23 63:23 66:5 70:22 108:18 122:3,9,9 133:15,17 135:3 <b>provides</b> 22:13 44:23 135:22 <b>providing</b> 19:19 66:9 67:19 99:11 117:12,17 131:4 134:10,21</p>	<p><b>provision</b> 9:19 23:18 63:9 116:17 <b>provisions</b> 53:14,25 <b>public</b> 3:15 12:20 129:9 <b>pull</b> 43:11 <b>pulled</b> 26:17 84:6 <b>pulp</b> 36:3,4,8 45:22 46:10 47:24 <b>purpose</b> 7:10 44:16 <b>pursued</b> 13:8 <b>push</b> 137:24 <b>pushed</b> 62:10 <b>pushing</b> 139:21 <b>put</b> 9:14 14:2 16:8 18:18 25:2,3,20 26:4 79:24 80:1,9 94:14 95:11 99:8 101:14,16,17 112:20,22 113:1,4 113:11 136:6 138:14 <b>puts</b> 138:14 <b>putting</b> 18:4</p> <p style="text-align: center;"><b>q</b></p> <p><b>qualifies</b> 140:10 <b>qualify</b> 7:23 8:16 10:15 11:18,25 12:1 12:7 33:20 115:19 119:25 124:11,14 140:13 <b>quality</b> 24:9 <b>quebec</b> 75:14 97:9 107:22 <b>question</b> 10:3 11:18 14:7 17:21 18:21 41:1,2,5 48:14,25 49:5 67:10 76:2 79:1 86:5 88:5,5,15 98:5 102:11 104:1 104:14 106:9 108:5 109:5 110:4,9 116:19,23 118:21 119:11,15,17 132:12,14 136:1 <b>questions</b> 22:13 95:23 100:8 118:19</p>	<p><b>quibble</b> 108:13 <b>quick</b> 17:21 18:8 <b>quite</b> 8:19 50:25 51:12,12 52:14 93:20 106:6 111:2 <b>quote</b> 24:4 102:23</p> <p style="text-align: center;"><b>r</b></p> <p><b>r</b> 1:21 3:1,18 4:1 35:6 143:1 <b>rail</b> 12:20 37:24 39:4 41:14 94:10 97:6 <b>railcars</b> 94:16,20 96:11 <b>railroad</b> 5:2 7:12,14 8:22,25 9:1,20 10:3 10:22,23 12:23,24 13:3 14:18,21 15:25 20:4,15 21:20 24:18 25:20 28:2 29:13 31:12 36:12,15 66:25 68:8,11,17 75:2,14 78:9,12 79:2,4 80:17 82:4 83:5 86:4 90:23,25 91:16 92:6,10,11,16 93:10,21,22 94:15 94:23 95:1,8,13 96:6,9,9 97:8,9,25 99:10 106:12 108:1 109:4,6,14,21 111:23 116:11 119:21 121:20 122:5,8 123:3 124:12 125:11 128:17 129:8,9,10 129:11,14,17,21 130:6,12,15 131:7 131:17 135:4 <b>railroad's</b> 5:18 124:20 <b>railroading</b> 130:17 <b>railroads</b> 7:16 9:3 9:15 10:14 11:1,5 13:1,6,10,23 14:8 14:16,23 15:1,6,13 15:19 16:2,16,19,24</p>	<p>17:1,4,16,20 19:17 21:4,4 24:6,11,23 25:22 27:7,13 28:11 29:3 30:1,9,10 31:4 32:2,10 33:23 34:13 37:25 38:4,7,8 39:7 40:18 41:10,19 42:1 42:3,13,17,24 46:8 46:13 48:8,19 60:19 61:5,11 62:24 63:14 63:21 65:6 66:11 67:21,23 68:6,15 70:10,13,16,19,23 72:19 73:4,11 74:15 76:6,9 77:15 78:16 78:22 79:5,6,11,18 80:4,5,12,16 81:9 81:24,25 82:1 90:16 91:4,14,16,17,21,21 92:1,18,24 93:2,4 93:17,18 94:1,8,9 94:10 96:5,14,15 97:23 98:4 99:13,21 103:22 105:2,9,12 106:14 118:15,22 119:2 122:23 124:7 128:21 129:23 130:18 132:1 135:7 <b>railway</b> 1:8 3:12,13 4:8,10,11,16,25,25 6:7 7:7,8,13,13,20 10:11 36:16,16,17 37:23 38:15,23 44:8 44:9,9,11,12 51:1 52:9 58:8,22 59:21 63:2,5,12 69:11,21 70:4 87:5,5 90:6,6,7 90:21 91:5,6,6 92:8 95:6 96:8 98:17,20 99:23 100:1 <b>railway's</b> 63:22 <b>railways</b> 35:21 39:2 41:17 42:5 86:3 90:5 93:19 <b>raise</b> 20:1 35:2 88:4 89:18</p>
---	---	--	--



<p><b>raised</b> 115:16 135:18 <b>raises</b> 20:1 22:12 <b>raising</b> 88:5 <b>rare</b> 122:18,20 <b>rate</b> 92:24 <b>rates</b> 93:17 <b>reached</b> 60:19 62:23 63:20 65:6 98:7,18 109:13 118:25 <b>read</b> 11:15 18:16,24 19:10 32:14 84:25 100:2 115:17 125:3 129:3 133:10 134:7 134:8 <b>ready</b> 34:11 <b>real</b> 14:19 <b>realistic</b> 9:9 <b>really</b> 10:25 11:9 13:5 16:11 24:10 26:17 42:6 74:10 75:10 85:3 93:13 109:5 113:25 127:7 127:8 132:10 141:11 <b>realm</b> 34:4 <b>reason</b> 21:21 22:19 24:17 26:2 28:1,2,9 33:12 34:5 46:18 52:12 77:8,12,22 80:12 129:6 130:20 131:15 139:5 <b>reasonable</b> 140:23 <b>reasons</b> 18:13 22:17 24:25 26:14 73:4 102:14 <b>recall</b> 74:17 86:4 98:10 110:8 <b>receipt</b> 54:12 57:15 62:17 98:8,9,21 119:3 <b>receivable</b> 20:5 37:21 38:13 40:11 40:15 <b>receivables</b> 91:19 91:21 101:13,15</p>	<p><b>receive</b> 55:16 61:6 82:8,10 <b>received</b> 5:18 18:14 19:14 54:25 55:4,11 58:14 59:10,15 61:23 62:1 66:1 79:6 84:9,18 98:24 102:22 118:10 123:10 <b>receivership</b> 120:22 <b>receiving</b> 30:8 55:24 68:2 79:2,5 79:11,18 80:4,5 81:24 98:25 <b>recess</b> 72:2 115:6 <b>recessed</b> 72:4 115:8 <b>recognized</b> 12:22 12:24 115:25 116:7 133:13 135:11 <b>recognizing</b> 122:2 <b>recommend</b> 74:7 <b>recommendation</b> 74:4 <b>recommended</b> 59:17 <b>reconvened</b> 72:4 115:8 <b>record</b> 7:5 35:5 71:3 89:21 118:12 143:4 <b>records</b> 47:18 70:19 71:10 77:3,3 <b>recross</b> 87:17,18 <b>redirect</b> 86:24 87:1 109:25 110:2 <b>reduce</b> 48:18 128:2 <b>reducing</b> 124:9 <b>reduction</b> 110:12 110:18 <b>redundant</b> 93:20 <b>refer</b> 7:12 38:3,17 60:2 75:2 78:8 90:16 <b>reference</b> 39:1 53:7 <b>referenced</b> 63:2,6 63:18</p>	<p><b>referred</b> 10:19 19:15 23:15 72:19 72:22 90:16 91:8 <b>referring</b> 36:7 60:2 81:15 <b>refers</b> 116:13 <b>refineries</b> 17:11,20 <b>refinery</b> 75:20 78:18 97:24 100:24 104:15 <b>reflect</b> 70:12,15,21 77:3 <b>refuse</b> 74:15 86:3 86:18 130:14 135:2 <b>refused</b> 13:6 24:19 74:16 126:1 <b>regard</b> 11:8 95:14 113:14 117:5 136:18,21 <b>regarding</b> 5:9 52:7 58:3 59:7,9 63:22 98:7,8,12 <b>regards</b> 49:16 <b>region</b> 96:18 <b>rejected</b> 24:6 <b>related</b> 7:20 36:18 64:16 65:1 93:16 98:21 <b>relates</b> 102:6 113:8 134:15 <b>relationship</b> 14:22 14:25 16:4 25:25 26:4,5 31:25 39:9 39:12,21,25 42:25 43:4 44:25 92:25 93:16 96:2 97:11 105:14 106:21,24 <b>relationships</b> 32:17 45:8,12,12 132:5 <b>relative</b> 97:16 <b>release</b> 27:13 <b>relevance</b> 116:24 <b>relevant</b> 34:19 123:19 125:5 <b>reliance</b> 8:25 12:11 23:4 30:19 63:6 117:2,11,17 122:9</p>	<p>126:3 128:5 134:10 134:22 <b>relied</b> 33:25 34:2 66:22 67:4,24 <b>relies</b> 117:7 <b>rely</b> 11:24 15:1,3,13 29:6 63:2 66:11 67:21,23 68:2 85:2 98:17 99:13 103:12 119:20 123:6,7 <b>relying</b> 14:11 17:1,2 19:20 20:2 25:5 26:10,11,21 27:18 27:21,23,25 31:18 31:19,20 33:23 46:21 66:14 84:2 85:5,6 99:18 102:21 117:22 123:2 125:10,22,24 126:4 126:11,14,18 134:16 <b>remainder</b> 112:3 <b>remand</b> 124:18 <b>remember</b> 30:3 130:4 <b>remit</b> 29:25 103:12 <b>render</b> 128:14 <b>rendering</b> 134:18 <b>reorganization</b> 8:21 10:4 11:11,14,20 12:9 116:1,12,22 122:3 129:10 133:14 <b>reorganizations</b> 130:6 <b>repair</b> 140:7,13,15 <b>repeat</b> 72:11 81:7 <b>repeated</b> 10:16 <b>repeating</b> 41:5 <b>rephrase</b> 63:13 <b>reply</b> 8:3 10:16 13:4 16:9 18:14 19:10 26:14 113:22 115:17 136:11 <b>report</b> 26:17 27:18 37:21 84:6</p>
--	--	--	--

<p><b>reporting</b> 27:20  <b>reports</b> 84:10,23,25                  85:3  <b>represent</b> 13:2 70:2  <b>representative</b>                  50:13  <b>represented</b> 52:7  <b>representing</b> 132:6  <b>request</b> 50:9  <b>required</b> 11:13,25                  11:25 24:7 116:21                  135:7,14  <b>requirement</b> 22:4  <b>requirements</b> 21:5                  122:17 124:5 125:8  <b>requiring</b> 32:8  <b>rescue</b> 125:12  <b>reserve</b> 5:21 113:24  <b>reside</b> 35:13,14  <b>residual</b> 109:11  <b>resist</b> 114:17  <b>resolution</b> 141:4  <b>resolved</b> 113:17                  135:13  <b>resource</b> 73:7  <b>resources</b> 93:9  <b>respect</b> 5:18 7:18                  14:20 16:12 20:16                  23:12 31:6 33:2                  44:22 50:1,5 65:13                  74:2 75:16,25 77:17                  78:9 82:19 83:2,4                  100:17 102:13,17                  102:20,21 108:1                  110:4,15 114:1                  115:20 118:5,8,9                  119:8 122:25                  128:25 129:4 133:9                  133:21 134:1  <b>respective</b> 96:14  <b>respond</b> 6:24 18:18                  19:1 21:16 66:18                  132:23  <b>responded</b> 58:17  <b>responding</b> 47:8                  49:24</p>	<p><b>response</b> 8:2 47:6                  49:15 76:1 104:14                  105:5  <b>responsibilities</b>                  37:17 90:22  <b>responsibility</b> 30:13                  90:24  <b>responsible</b> 30:8,10                  78:13 79:10,17,20                  79:21,22 87:3  <b>rest</b> 69:20  <b>restitution</b> 121:23  <b>restructure</b> 41:2  <b>result</b> 17:12,14 65:4                  105:3 138:2  <b>resulted</b> 110:12,17  <b>return</b> 48:2  <b>revenue</b> 8:24 12:11                  13:15 14:10 17:14                  19:20 20:3,15 66:25                  91:1 110:12,18                  117:4,14,24 118:24                  119:6,20,24 122:11                  123:11 134:12,21                  135:24  <b>revert</b> 23:10  <b>review</b> 71:15                  113:22 136:10,11                  136:16  <b>revision</b> 52:5,7,12                  52:18 53:8 81:3  <b>rid</b> 4:12  <b>right</b> 15:20 23:5                  24:10 27:7 28:15,18                  28:22 32:7,18 34:10                  34:18,24 35:1,2                  36:18 38:4,18 41:18                  43:24 44:13 45:9                  51:20 52:16 57:25                  60:6 68:19 73:20                  75:22 77:5,10,12                  78:5,9 79:24 80:10                  80:11 82:6,14,25                  83:4,21,24 84:23                  85:21 86:3,8 87:23                  89:18 101:1,5,7,8                  102:2,4,10,13,20</p>	<p>103:3,20 104:8,9,21                  105:1,22 106:8                  107:10,17,20,24                  108:7,23 109:7,17                  110:25 111:7                  113:24 115:2,3                  116:16 120:5 121:8                  122:14 126:1,15,16                  127:3,6 129:14,15                  130:2,7,14,17,23                  131:7,14 132:11                  135:21 136:1                  137:10 138:14                  140:1,8,11,14  <b>rights</b> 19:2  <b>rise</b> 72:3,5 115:7                  141:22  <b>risk</b> 14:17 24:22                  31:12,13 46:21  <b>risks</b> 123:1  <b>road</b> 143:17  <b>robert</b> 3:8 4:15                  51:24 61:16  <b>role</b> 37:13 38:6,8                  87:9  <b>route</b> 98:2 104:18                  104:19,21,22                  105:11 106:3                  131:13  <b>routes</b> 13:7,17                  97:19  <b>rude</b> 17:24  <b>rule</b> 21:21 22:2,4,8                  22:15,16 116:23  <b>ruled</b> 132:3  <b>run</b> 30:15 129:17                  130:18  <b>running</b> 130:15  <b>ryan</b> 5:1 51:17                  57:23 58:2,7,8,11                  59:6,15 60:10,12                  61:15,23</p>	<p><b>safe</b> 89:15,16  <b>safety</b> 90:25  <b>saint</b> 13:11,22                  17:11,20 35:14 51:9                  51:11 88:6 89:15                  95:13 96:7,9 97:2                  97:21 98:3 104:23                  105:9 109:3 118:17                  131:12  <b>sales</b> 95:11 97:1  <b>satisfied</b> 12:8 14:6                  15:13  <b>satisfy</b> 21:5 122:17  <b>saved</b> 131:2  <b>saw</b> 5:8 95:4  <b>saying</b> 29:21 47:8                  71:23 105:22                  106:15 127:7,8  <b>says</b> 47:21 48:2                  54:6 56:3,16 57:4                  57:13 58:23 60:13                  61:1 62:10,16                  120:13 121:14,25                  125:13  <b>scenario</b> 79:11                  81:25  <b>scheduled</b> 6:11  <b>schedules</b> 112:2                  137:12  <b>se</b> 23:1  <b>searsport</b> 107:7                  109:2  <b>seated</b> 4:4 35:4                  89:20  <b>second</b> 11:22 12:5                  12:13 14:5 23:15                  29:20 40:22 41:16                  41:20,21 45:25                  53:12,20 54:14 61:3                  65:14,23,24 79:1                  81:2 83:11 104:7                  120:6,8,24 121:7,12                  140:1  <b>secondly</b> 24:20 25:3  <b>section</b> 7:24 8:10,17                  21:7 120:1</p>
		<b>s</b>	
		<b>s</b> 3:1 4:1 35:7 89:22 89:22 142:3,14 <b>sadly</b> 29:16 130:3	

<p><b>secure</b> 20:5 67:25 68:2 77:9,12 80:13 83:10,13,14 <b>secured</b> 20:14,15 21:18,22 22:20 25:2 25:25 26:4 27:2 77:18 82:22 83:1 85:5 118:4 126:12 126:14,15 <b>security</b> 5:11 20:3,5 20:7,13 21:24,25 22:10,23 23:1,2,3 127:16 <b>see</b> 8:2 18:24 20:25 28:14 34:16 48:3 50:2,6 51:18,25 53:15,17,22 54:17 54:20,24 57:2,7,15 57:17 58:15,17,25 59:14 60:16 61:8,20 62:2,5,8,11,14,21 64:3,23 69:12,25 81:4,14,21 82:12 85:19 96:13,16 97:3 122:16 123:23 140:4 <b>seeing</b> 141:8 <b>seek</b> 45:17 <b>seeking</b> 48:2 122:25 <b>self</b> 24:24 <b>send</b> 41:15 45:25 46:1 47:16 49:8 61:6 62:4 <b>sending</b> 47:22,25 48:5 <b>senior</b> 22:6,7 96:24 <b>sense</b> 79:8 88:2 93:13 105:13 106:10 112:16 125:7 <b>sent</b> 46:6,7 49:25 59:9 61:25 62:7 69:21 <b>sentence</b> 57:4 <b>separate</b> 118:1,2 121:15 122:1 133:25</p>	<p><b>series</b> 78:21 81:6 <b>seriousness</b> 141:13 <b>serves</b> 50:21 <b>service</b> 75:4,5,8,12 108:18 110:7 <b>serviced</b> 74:25 <b>services</b> 8:21,23 9:19 10:3,6,9 12:23 13:2,5 14:8 15:25 16:1,17 19:19 24:13 63:10,15,23 66:5,9 67:19 70:22 98:8,21 99:11 117:11,12,17 122:2,8,22 124:13 127:12 128:15,16 129:13 130:12 131:5 134:11,15,21 135:3,22 140:14 <b>serving</b> 47:23 <b>session</b> 4:3 <b>set</b> 6:15 15:10 25:25 29:3 37:19 38:9,10 77:9 125:3 126:23 129:19 135:21 <b>setoff</b> 26:24 27:8 <b>sets</b> 126:10 <b>setting</b> 31:3 76:4 93:17 <b>settle</b> 140:19 <b>settled</b> 55:23 56:18 61:6 <b>settlement</b> 19:16 40:4,11 52:5,8,12 55:13 57:14 65:25 82:9 91:9,13 93:2,3 141:11 <b>settlements</b> 40:14 40:19 41:9 60:14 <b>severed</b> 107:16,17 107:17,20 <b>share</b> 19:17 41:15 51:10,10 60:1,2 98:25,25 101:5,8,18 102:23,24 103:1,7,9 118:18 127:3,3 <b>sheet</b> 81:3 82:7</p>	<p><b>sheila</b> 2:25 143:3,10 <b>ship</b> 78:12 107:10 108:12,14,14,17 110:5,11 122:22 <b>shipment</b> 32:11 51:3,5 91:18 <b>shipments</b> 17:13,15 28:5,11 30:3,6 57:10 63:23 64:16 66:6 76:10 77:19,20 77:23 78:7,10,14,18 82:3 83:4 98:9,21 99:17,18 100:22 102:25 118:7,8 125:24 131:12 134:1,4 <b>shipped</b> 16:3 17:11 <b>shipper</b> 30:12 56:10 96:10 106:10 <b>shippers</b> 13:19 91:23 92:25 93:5 96:17 97:16 <b>shipping</b> 35:21 63:7 75:19 80:2 96:11 108:8 109:7 <b>short</b> 21:15 86:25 88:7 136:7 <b>shorter</b> 137:20 <b>shortly</b> 59:24 68:1 83:23 <b>show</b> 9:18 13:9 14:1 14:4,15 15:2,17 19:13 21:3 64:10 84:23 <b>showing</b> 34:22 <b>shown</b> 70:15 <b>shows</b> 19:18 64:11 64:12 <b>shur</b> 3:2 4:17 <b>shut</b> 120:2 129:13 129:21 <b>shutdown</b> 109:6 131:14 <b>shuts</b> 130:12 <b>sic</b> 13:21 <b>side</b> 73:1 90:19 94:18 111:23</p>	<p><b>sides</b> 50:10 <b>siding</b> 94:15 <b>signed</b> 52:22 <b>significance</b> 22:23 29:19 65:22 <b>significant</b> 93:12 95:2,4,9 110:12,17 110:19 113:16 <b>significantly</b> 133:1 <b>silk</b> 124:3 <b>similar</b> 11:3 19:3 111:2 <b>similarly</b> 80:13 110:15 <b>simple</b> 9:17 102:11 109:5 129:6 <b>simplified</b> 93:5 <b>simplify</b> 91:22 <b>simply</b> 9:14 11:20 13:20 23:16 27:15 47:16 76:3,11 86:18 115:21 122:22 131:17 <b>simpson</b> 5:1 29:7 31:1 51:16,25 59:19 59:20 60:22,24,25 61:15 62:7,13 73:16 78:5 83:11 85:13,17 86:14 87:7,25 88:7 89:19,22,25 90:4 96:1 100:15 102:9 106:20 110:4 111:6 130:13 142:9 <b>simpson's</b> 130:22 <b>simultaneous</b> 137:2 137:12 138:10 <b>simultaneously</b> 45:24 46:16 <b>sister</b> 44:12 <b>sit</b> 61:23 <b>sits</b> 130:8 <b>situation</b> 25:1 29:3 92:12,12 <b>six</b> 7:23 8:9,16,20 10:4,15 11:19 12:1 12:8 21:21 22:1,5,8 63:15 66:6 88:6</p>
---	---	---	--

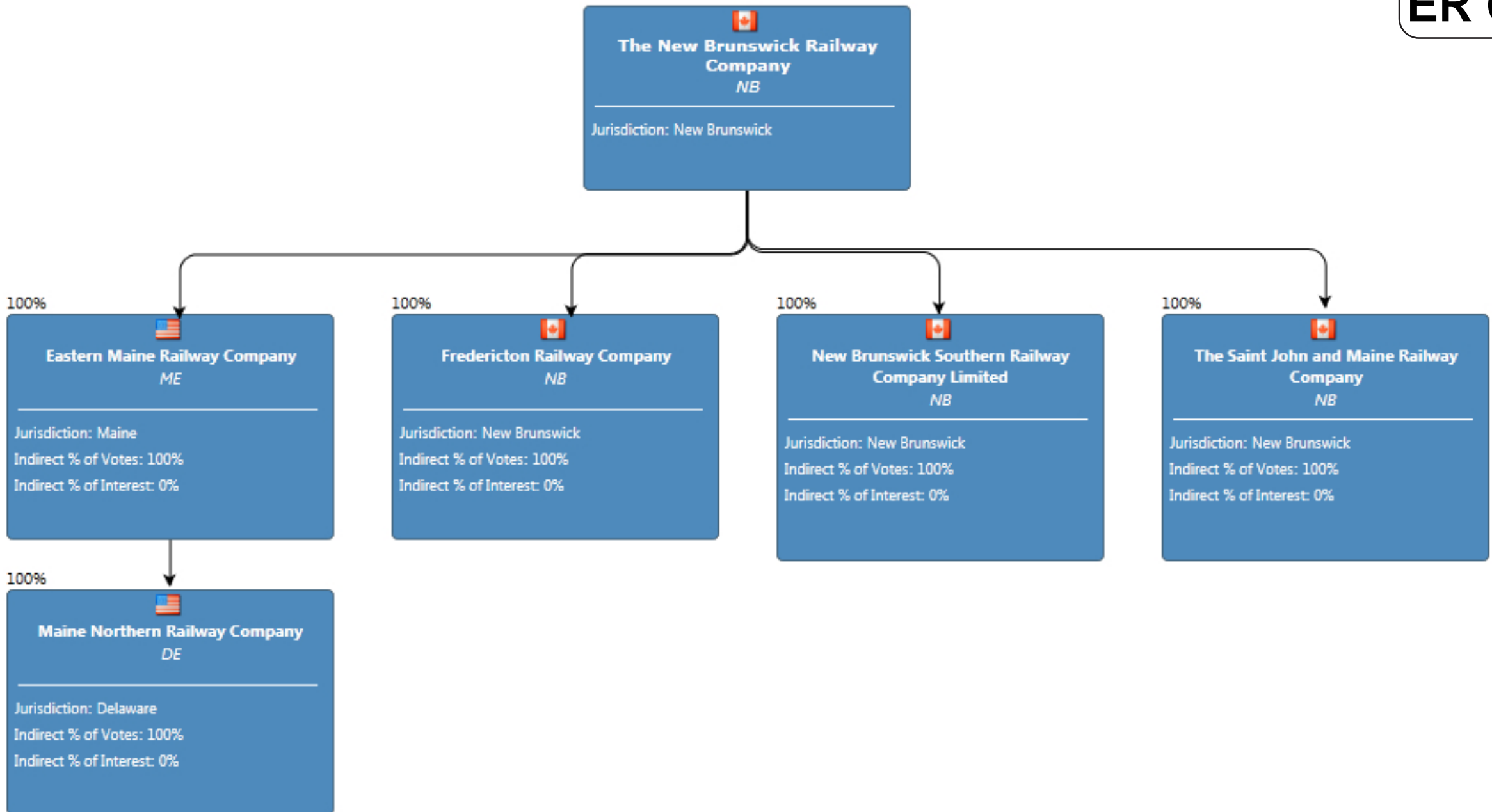




<p>90:18 116:2,8,23                  119:25 121:2,5,15                  122:3,7 124:13                  128:11 133:13                  135:12  <b>skip</b> 19:22  <b>slipped</b> 138:4  <b>slowed</b> 131:11  <b>small</b> 140:7  <b>smiling</b> 140:20,21  <b>sold</b> 74:21 107:14  <b>sole</b> 5:12  <b>solicit</b> 95:14  <b>solicited</b> 96:19  <b>solutions</b> 143:16  <b>solved</b> 22:13  <b>somebody</b> 26:6,8                  131:1  <b>somewhat</b> 21:15                  138:3  <b>soon</b> 19:16 141:12  <b>sorry</b> 6:10,15 20:20                  40:22 88:3 92:18                  138:22  <b>sort</b> 18:8 22:19                  32:16 131:1  <b>sought</b> 8:22  <b>sounds</b> 26:6,8                  111:20  <b>source</b> 13:15 17:3,3                  117:8,18,23 127:19  <b>sources</b> 125:13,15  <b>south</b> 2:25 143:3,7  <b>southern</b> 3:12 4:10                  4:25 7:7,13 24:1,2                  36:16 37:23 44:9,12                  46:2 47:19 50:25                  51:9 52:8 58:8,22                  63:1,5,12,22 64:11                  64:14 69:11,21 86:2                  87:4 90:6 91:5 95:5                  98:17,19 116:14  <b>southern's</b> 51:8                  66:4  <b>sow's</b> 124:3  <b>speak</b> 59:24</p>	<p><b>speaking</b> 46:9  <b>specific</b> 97:15 107:1                  117:8,18,23 118:9                  129:8  <b>specifically</b> 23:22                  23:23 61:18 90:5                  92:6 103:21 117:23                  125:25 133:12,14                  135:10  <b>specifics</b> 25:8  <b>speed</b> 60:11  <b>spell</b> 35:4  <b>spelling</b> 59:16  <b>spend</b> 10:7  <b>spent</b> 90:18  <b>spoke</b> 99:8  <b>spread</b> 29:22  <b>spreadsheet</b> 71:7  <b>square</b> 3:15  <b>stage</b> 59:18 139:15                  139:16,17  <b>stand</b> 9:13 34:25                  88:1 111:5 135:20                  135:25  <b>standard</b> 8:15,17                  8:19 14:1 22:17,18                  25:22 117:10,14                  118:20 119:10                  120:5,7 124:9,11,14                  128:2,2,7,8,18  <b>standards</b> 9:22                  122:6 123:12 124:9  <b>standpoint</b> 95:10,11  <b>start</b> 6:24  <b>started</b> 17:11  <b>starting</b> 4:13 39:23  <b>state</b> 89:20  <b>statement</b> 8:12                  10:18 19:24 52:20                  55:13 58:10  <b>statements</b> 27:19                  70:9  <b>states</b> 1:1 4:2 50:6                  107:22 108:11  <b>stating</b> 24:7  <b>status</b> 8:9 21:7</p>	<p><b>steamship</b> 116:12  <b>step</b> 87:19 110:25  <b>stipulated</b> 71:3                  112:3  <b>stipulation</b> 4:11                  5:11,23 6:19 7:10                  71:14,16 89:8                  112:18,21,23 113:2                  140:8  <b>stipulations</b> 5:5,8  <b>stop</b> 33:17 107:3,4                  130:15  <b>stoppage</b> 12:18  <b>stopped</b> 108:2,8                  109:6  <b>story</b> 62:19  <b>straight</b> 124:8  <b>stranded</b> 109:12  <b>street</b> 1:15 3:4  <b>strike</b> 63:13  <b>structured</b> 26:22  <b>study</b> 8:5 113:25  <b>stuff</b> 87:21 127:3                  129:17 130:8,10                  140:15  <b>subject</b> 52:4 57:24                  60:11,23 61:16  <b>subjective</b> 9:2  <b>submit</b> 31:17 33:10                  112:4,13 113:25                  136:7,19 137:13                  141:5  <b>submitted</b> 7:10                  115:20 136:12  <b>subordinate</b> 124:25                  125:1  <b>subordinated</b> 33:8  <b>subsequently</b> 65:10                  99:9  <b>subset</b> 22:7  <b>subsidiaries</b> 72:16                  72:18  <b>substantial</b> 14:3                  97:13  <b>successfully</b> 13:18  <b>successor</b> 14:18                  25:15 75:16</p>	<p><b>suffice</b> 34:2  <b>suggest</b> 9:13 71:20                  112:13 134:8                  136:14 138:7  <b>suggested</b> 57:5  <b>suggestion</b> 5:14                  112:1,4 137:2  <b>suite</b> 143:18  <b>sum</b> 114:10,16  <b>summarized</b> 33:19  <b>summary</b> 33:18                  71:9  <b>summing</b> 18:4                  114:6  <b>sunberry</b> 90:20  <b>supplement</b> 120:10  <b>supplied</b> 24:13,14                  127:11  <b>suppliers</b> 129:15,16  <b>supply</b> 41:3 112:8                  129:16  <b>support</b> 23:16                  69:10 119:22  <b>supported</b> 121:18  <b>supposed</b> 51:2 71:6  <b>sure</b> 5:25 6:18 8:13                  10:1 21:11 31:1                  41:4 43:12 53:10                  71:22 78:13 86:15                  88:8,16,20 98:4                  106:6,9 107:1 108:5                  108:20 113:15,17                  114:18 129:11                  132:25 133:11                  138:19 140:24  <b>surprising</b> 138:3  <b>swap</b> 19:10,12                  49:17 50:9,18 56:13                  60:11 64:7 75:25                  82:23,24 83:3 85:5                  118:1,2 133:25                  134:2 142:16  <b>swaps</b> 45:20 46:3                  99:15  <b>sworn</b> 35:3 89:19  <b>sympathize</b> 111:3</p>
---	--	---	---

<p><b>system</b> 19:16 24:21 24:21,25 25:4,6 28:11 29:18 30:14 30:20,25 31:8,14,22 31:24 32:7,16 33:3 33:6,25 34:3 40:4 40:10 55:13 56:3 57:15 63:25 65:25 66:2 67:24 68:3 79:15,15 80:6 82:9 83:8,17 84:9,18 85:5,6 91:9,13 93:14 100:17 101:3 101:8,9,11,21,24 102:12,20,22,23 103:4,4,11 125:17 127:24 130:17,18 130:21,21 131:1,9 131:13 132:4,6,12</p>	<p><b>telephone</b> 6:8 <b>tell</b> 31:2 34:15 92:16 97:2 108:24 <b>telling</b> 49:4 105:24 128:14 <b>tells</b> 117:15 <b>ten</b> 14:24 114:11,18 <b>term</b> 79:2 81:3 82:6 92:15 113:8 <b>terminating</b> 96:9 107:8 <b>terminology</b> 45:20 <b>terms</b> 6:22 7:9 8:6 8:14,15 9:10 11:10 11:24 13:18 14:14 15:9,14 16:9,17 17:4,13 18:17 25:6 25:23,23,24 30:2 38:25 40:7 44:19,22 46:5 52:5,8,12,18 52:20 53:13,14 54:10 57:1 81:4,9 88:7 94:6 118:15 120:22 125:9 127:10,14,15 128:4 128:7,9 134:13 135:16 <b>terrible</b> 125:5 <b>test</b> 9:2 128:24 129:5,7,8,12 <b>testified</b> 26:13 27:8 42:12 44:24 45:4 66:13 73:3 77:17 95:20 131:6 <b>testimony</b> 6:18 9:14 18:10 23:7 25:9,9 27:9 30:24 67:4,7 74:14,18 87:20 88:8 89:17 90:17 94:1,3 98:6,10,12 100:18 110:24 117:5 130:22 132:19 134:1 <b>tests</b> 132:20 <b>thank</b> 4:15 5:5,16 6:2,12 7:2,4 21:9,9 21:11,13 34:8,9,12</p>	<p>34:20,21 35:8 43:15 43:16,16,19,22 48:13,23 49:6 65:19 67:15,16,17 71:17 71:18 72:1 84:16 86:24 87:16,19,19 88:2,17 89:16,24 100:6,10 109:24 110:22,24 115:11 115:11 120:2,3 123:14,15,16 132:20,22 133:6 136:1,23,24 141:14 141:15,19,20,21 <b>thanks</b> 53:3,10 <b>thanksgiving</b> 138:5 <b>theory</b> 123:20 <b>thereof</b> 21:17 <b>thing</b> 20:10 93:20 99:14 123:18 139:16 140:1,6 <b>things</b> 10:11 26:2 26:16 32:14 34:4 96:16 100:2 134:14 137:9 <b>think</b> 5:17,19,22 8:5 8:15 9:9,22 10:7,15 11:3 14:1,3,5,12,12 14:13 16:10 18:23 19:9,18 20:11 21:19 22:18,22 23:8 26:8 29:4,16 32:13 33:1 33:20,22 34:6 50:21 71:5,23 73:19 76:1 81:19 88:7,14 89:3 89:7 93:6 95:2 101:17 105:23 110:14 112:15 113:21 114:11,12 114:23 115:21 117:1 118:19 120:4 123:20,20 126:13 128:13 129:2,3,4 131:6 132:18,19 133:3,21 137:1 138:8,20 140:12,17 140:18 141:1</p>	<p><b>thinking</b> 83:19 137:23 138:13 141:10 <b>third</b> 54:17 56:24 120:25 121:7,12 <b>thirteen</b> 73:2 <b>thirty</b> 37:1 <b>thompson</b> 3:11 4:24 7:6 <b>thoughts</b> 113:13 114:3,9 <b>three</b> 33:18 81:19 92:24 93:2,3 96:5 96:11,11,14 98:4 122:6,12 138:20,22 <b>throw</b> 18:6 141:3 <b>thursday</b> 139:24,25 <b>time</b> 6:23 10:7 18:22 21:15,23 24:15 27:12 29:2 30:15,16,22 33:22 36:6,6 37:2 38:3,3 45:8,16 49:9,11 50:17 56:10 70:25 73:18 76:9 78:4 82:16,16 83:7 84:19 92:8 100:9 111:7 115:4,12 119:14 120:21 127:12,12 128:1 129:23 137:6 137:17,20 138:21 138:23 140:23 <b>timed</b> 108:16 <b>timely</b> 61:6 <b>times</b> 31:5 111:2 114:23 <b>timewise</b> 141:16 <b>timing</b> 88:3 137:16 <b>tissue</b> 36:5 <b>title</b> 72:11 91:2 <b>titled</b> 52:17 <b>today</b> 5:1,3,13 8:2 22:22 27:9 34:16 61:6 62:3,11 72:19 89:24 96:11 113:10 113:19 114:6 125:6</p>
<p><b>t</b></p>			
<p><b>t</b> 142:3,3,14 143:1,1 <b>take</b> 5:5 26:10,18 31:11 32:1,8 45:17 46:20 49:13 52:19 53:12 60:15 64:2 68:20 69:24 71:21 71:24 78:7 80:24 85:10 104:1 115:3 126:2,6 <b>taken</b> 70:18 <b>takes</b> 120:21 132:14 <b>talk</b> 12:14 93:9 137:16 <b>talked</b> 6:23 79:12 81:25 84:5 <b>talking</b> 76:10 83:11 85:15 92:17 116:15 116:18 121:24 125:6,19 139:21 <b>tarr</b> 47:2,6,8,20 48:10 49:15,23,25 50:1 59:7 60:10 <b>tax</b> 130:4 <b>technically</b> 106:6,8 <b>technology</b> 6:15 <b>teeing</b> 120:9</p>			

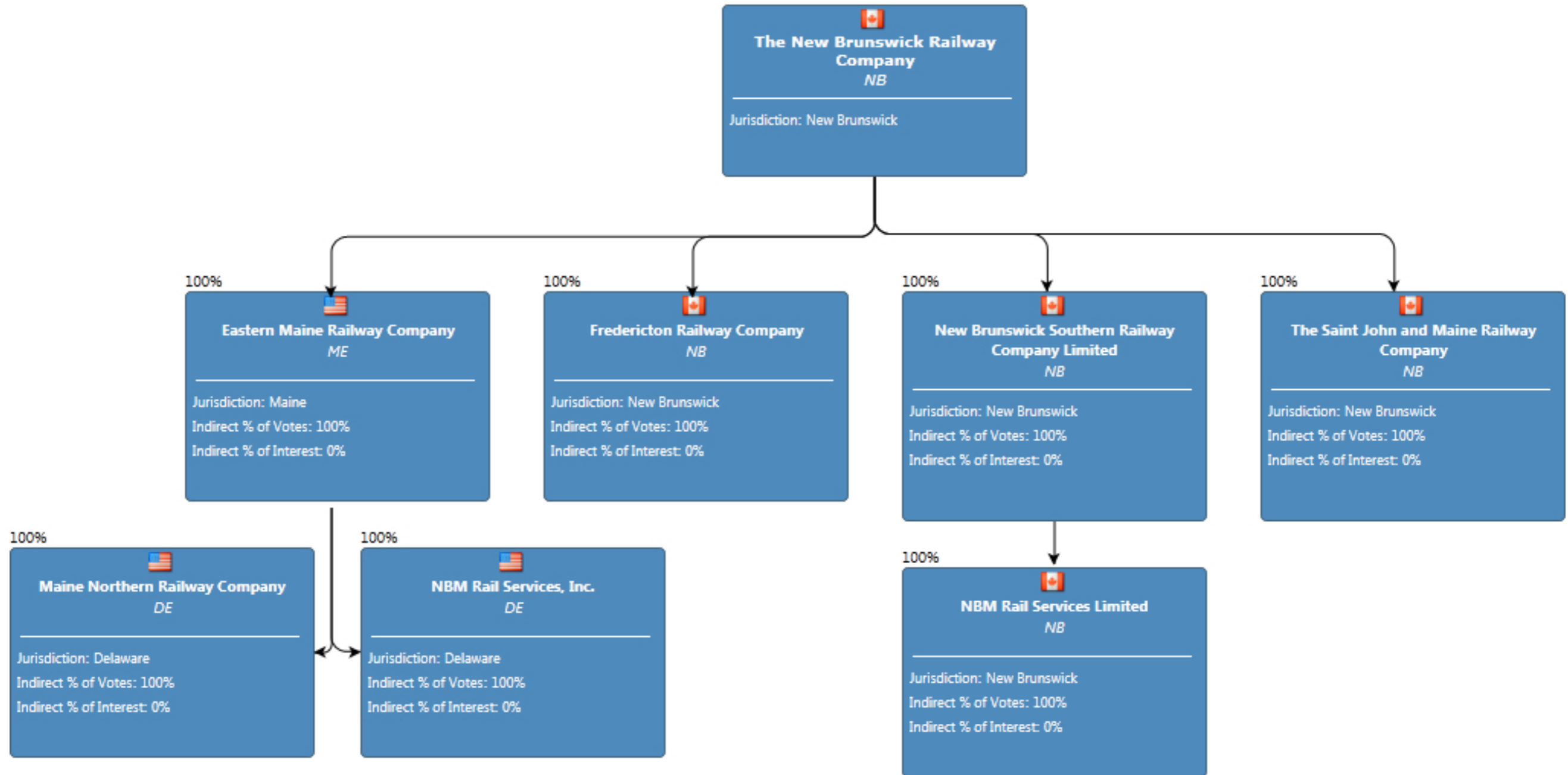
<p><b>told</b> 26:1 62:2 76:8 79:4 82:6 85:2 86:7 119:17 <b>tomorrow</b> 61:3 <b>top</b> 33:14 51:16 81:3 85:12,15 128:25 <b>total</b> 48:18 54:18 66:3 77:20 128:12 <b>totally</b> 122:1 <b>track</b> 29:12 74:20 75:17 107:9 <b>tracks</b> 24:20 30:15 74:23,25 78:17 104:19,19 <b>traffic</b> 12:19 13:6,7 13:10 17:16 29:11 39:6 42:13,16 44:19 54:18 55:2,11,23 56:4,9,16,17 57:7,9 57:13 66:10 67:20 77:24 81:8,20,23 82:8,20,20,21 83:2 83:3,6 86:4 94:2,7,9 94:25 97:22 98:1 99:12 104:23 105:11,21 107:21 135:2,8,15 <b>train</b> 51:7 94:14,20 94:22 <b>trains</b> 30:15 60:14 <b>transcontinental</b> 32:11 <b>transcribed</b> 2:25 <b>transcriber</b> 143:8 <b>transcript</b> 125:21 143:4 <b>transcriptionist</b> 143:10 <b>transfer</b> 16:16 45:25 46:1 48:11 49:9,10 62:19 <b>transfers</b> 16:14 47:9 48:15 <b>translate</b> 134:2 <b>transpired</b> 16:12,13</p>	<p><b>transport</b> 51:9 90:20 97:20 <b>transportation</b> 50:24 60:4 90:19 <b>transported</b> 13:13 <b>treat</b> 140:3 141:12 <b>treated</b> 122:4,14 132:7 <b>treating</b> 33:5 <b>treatment</b> 24:9 <b>tremendous</b> 13:15 <b>trepidation</b> 111:7 <b>trial</b> 112:13 136:15 137:3,14 <b>triangular</b> 26:24 27:8 <b>trip</b> 89:15 <b>troubled</b> 14:20 <b>trucking</b> 90:20 <b>true</b> 21:23 28:19 77:24 82:3 124:19 125:14 129:23 130:3 132:11 140:9 143:4 <b>trust</b> 32:16,21 33:5 33:6,7,13 131:20 132:3,4 <b>trustee</b> 3:3 4:16 8:1 8:3 9:5 10:12,23 13:4 16:10 112:17 115:21 116:5 <b>trustee's</b> 4:9 11:7 115:16 <b>trusts</b> 33:9 <b>truth</b> 124:4 <b>try</b> 21:14 97:4 <b>trying</b> 34:19 95:12 97:17 108:13 <b>turn</b> 19:17 30:21 41:16 81:2 85:23 92:25 93:4 105:11 <b>turning</b> 16:23 52:16 60:6,21 61:13 <b>two</b> 5:22 8:3 9:25 11:10 30:18 37:1,24 39:7 48:15 56:5 69:25 71:6 81:19</p>	<p>82:25 84:2 88:10 118:1 121:14 124:24 136:12 137:19,24 139:15 139:19,21 140:13 <b>type</b> 10:14,25 12:25 135:11 141:6 <b>types</b> 12:6 116:20 <b>typically</b> 47:10 54:25 55:16 82:10 <b>typing</b> 34:16</p> <p style="text-align: center;"><b>u</b></p> <p><b>u</b> 112:18 <b>u.s.</b> 1:14,23 108:1 <b>uh</b> 79:7 120:12 <b>ultimate</b> 30:12 78:14 <b>ultimately</b> 28:25 30:11 79:10 93:11 <b>unable</b> 42:16 94:25 <b>uncommon</b> 22:9 <b>uncontroverted</b> 119:4 <b>underlying</b> 51:20 51:24 116:6 <b>undersecured</b> 28:8 <b>understand</b> 4:11 66:25 78:9,25 79:2 79:20 102:7,9 107:23 108:2 115:17 <b>understanding</b> 9:11 11:24 41:12 52:6 53:24 54:4 55:14 56:1,7,19 57:18 63:20 76:2 79:14 85:21 91:12 95:7 96:1 114:22 126:22 <b>understandings</b> 9:18 42:25 43:4 <b>understood</b> 54:11 55:20 82:14 83:5 103:16 127:24 <b>undertaken</b> 46:3 <b>unequivocally</b> 125:20 128:20 132:19</p>	<p><b>unfair</b> 33:6 34:6 120:9 <b>unfortunate</b> 13:14 14:24 <b>unfortunately</b> 21:19 111:4 138:5 <b>unique</b> 92:5 93:21 96:5 120:19 133:23 <b>united</b> 1:1 4:2 50:6 107:22 108:11 <b>universe</b> 5:23,24 130:11 <b>university</b> 37:8,10 90:11,12,18 <b>unpaid</b> 34:6 <b>unquestionably</b> 23:25 <b>unreceived</b> 81:20 81:23 <b>unsecured</b> 24:9,12 28:3 31:25 33:4,8 34:6 132:7 <b>unwilling</b> 15:1,3 <b>use</b> 10:23 92:15 113:8 <b>usual</b> 47:9 48:11 <b>usually</b> 34:19 40:20 94:12,12 <b>utilized</b> 45:5 97:20 <b>utopia</b> 36:4</p> <p style="text-align: center;"><b>v</b></p> <p><b>v</b> 22:15 <b>vacation</b> 58:24 <b>valid</b> 5:11 <b>various</b> 10:6 72:21 78:22 98:12 134:14 <b>vast</b> 56:9 <b>vendors</b> 134:14 <b>verify</b> 112:9 <b>veritext</b> 143:16 <b>versus</b> 121:14 <b>vice</b> 97:1 <b>view</b> 42:22 <b>virtually</b> 31:4 42:21 46:15 102:3 125:14 <b>virtue</b> 38:24</p>
--	--	--	--



<b>volume</b> 52:14 107:7	<b>weigh</b> 30:14	<b>wonderful</b> 5:4 7:2	100:12 102:16,16
<b>w</b>	<b>welcome</b> 6:13	111:19 115:1	138:9,23
<b>wages</b> 129:20	<b>went</b> 28:1 61:16	120:20 140:24	<b>year</b> 61:1 73:23
<b>wait</b> 29:23 83:6	78:17 81:6 103:13	<b>wonderfully</b> 18:2	74:4
112:6	109:1 122:23	<b>wondering</b> 18:3,9	<b>years</b> 13:13 14:24
<b>want</b> 19:2 26:3 29:6	124:19 127:14	<b>word</b> 141:17	17:8 20:12 21:1,20
31:10,11 51:23	<b>west</b> 138:6	<b>words</b> 12:15,16	22:21 37:1 73:21
74:13 81:13,13	<b>western</b> 90:12	26:25 28:21,24 32:7	74:11 90:9,18,19,21
95:22 113:1,17	<b>whatsoever</b> 116:25	32:9,19 117:10	<b>yellow</b> 64:18 65:17
114:3,20 117:25	118:7	125:21	65:18
136:3,4,6 137:15,16	<b>wheeling</b> 20:4 22:23	<b>work</b> 73:7 106:7	<b>yep</b> 90:1
137:24,25	68:7,11,17 99:22	131:1 138:11 141:8	<b>yesterday</b> 61:3
<b>wanted</b> 18:18 24:19	100:1 121:21	<b>worked</b> 17:7 29:5	<b>yesterday's</b> 27:3,4
65:2 86:15 92:12,13	<b>wheelings</b> 5:10	32:7 49:1,3,7 58:6	<b>york</b> 24:2 116:14
126:17 130:16	<b>wholly</b> 72:16,18	78:5 99:6 100:3	
<b>wants</b> 16:10 59:17	<b>wide</b> 67:13	126:22	<b>z</b>
132:13	<b>willing</b> 15:13	<b>working</b> 72:24	<b>zahradka</b> 3:9 4:17
<b>water</b> 35:1	140:12 141:11	107:9	4:18
<b>way</b> 13:21 25:9 28:3	<b>win</b> 139:16	<b>works</b> 29:14 30:7	
29:5,14,19 30:3,7	<b>winded</b> 133:3	31:3,6 47:1,2 49:4	
31:2,6 32:15 33:14	<b>wire</b> 16:14,16 27:14	58:8,22 91:13	
36:19 42:9,23 47:10	45:25 46:1 49:9,10	137:22 138:11	
49:1,9,19 59:22	76:19	<b>worried</b> 26:6	
78:1,5,22 79:6,20	<b>wires</b> 76:14,17	<b>worry</b> 120:16	
86:12 91:22 93:24	<b>wise</b> 42:7	<b>worth</b> 21:20 32:14	
95:4 96:16 104:22	<b>wish</b> 88:3 89:14	<b>worthiness</b> 93:24	
107:12 112:5 120:3	112:13 114:15	<b>worthwhile</b> 123:23	
120:9 124:7 126:22	120:10 137:13	<b>would've</b> 95:2	
134:7 140:2,4	<b>wishes</b> 60:25	103:10 105:3,23	
<b>we've</b> 11:14 23:21	<b>wishing</b> 113:20	110:17 119:12	
34:22 79:5 90:16	<b>withheld</b> 76:14	121:19,20 131:23	
112:7 115:20	<b>withhold</b> 139:18	<b>wrap</b> 30:24 140:19	
124:22 129:2	<b>withholding</b> 76:17	<b>writing</b> 99:9 113:20	
139:15 140:16	129:12	120:11 136:19	
<b>wednesday</b> 53:15	<b>witness</b> 4:20 8:12	<b>wrong</b> 28:1,2 116:8	
138:8	34:13,23,25 35:3,6	121:12 133:10	
<b>week</b> 45:23 47:22	41:2 43:8,20 48:16		
58:24 60:15 64:21	48:20 49:7 65:20	<b>x</b>	
97:3 138:24	67:7 69:3 84:15	<b>x</b> 1:4,12 49:8 142:1	
<b>weekend</b> 114:14	86:17 87:21 89:19	142:14	
<b>weekly</b> 15:11,18	89:22 90:1 95:18	<b>y</b>	
16:5,13 45:20 46:4	112:24 142:5	<b>y</b> 142:3	
<b>weeks</b> 16:21 137:19	<b>witnesses</b> 5:3 6:25	<b>yard</b> 94:13,13	
137:24 138:13,18	9:14 34:15 111:18	<b>yeah</b> 20:23 41:6	
138:20,22 139:4,4	111:21,22,25	49:15 51:19 53:7	
139:21	<b>wo</b> 140:7	71:8 79:9 81:5	
		86:17 87:23 92:17	



 Business Entity in the Group  
 Holders

Case 13-10670 Doc 2351-6 Filed 05/16/17 Entered 05/16/17 13:26:20 Desc  
 Exhibits - Original Documents Page 10  
 Subsidiaries Diagram for The New Brunswick Railway Company on 2017-04-20



 Business Entity in the Group  
 Holders



## 4.1 Haulage Carrier and Freight Transport Services (Revenue Allocation)

In 2013, EMR and MNR performed haulage carrier and freight transport services for the benefit of NB Southern. NB Southern relies on EMR and MNR to fulfill portions of certain customer contracts, primarily haulage carrier contracts with MMA and Springfield, and freight transport contracts with Woodlands and Woodlands Pulp. That is, the routes used to complete these customer contracts traverse tracks operated by EMR and MNR.

NB Southern collects revenues from its customers and allocates portions of this revenue due to both EMR and MNR to compensate for the haulage carrier and freight transport services provided to fulfill customer contracts. The total revenue receivable by NB Southern is allocated between itself, EMR, and MNR based on track miles covered for each customer contract.

This revenue allocation can be considered a service fee charged by EMR and MNR for their provision of haulage carrier and freight transport services for the benefit of NB Southern. The table below shows the final revenue allocation for fiscal 2013 between EMR, MNR, and NB Southern.

Customer	MNR	EMR	NB Southern	Total
MMA	-	4,214,866	3,204,201	7,419,067
Springfield	-	3,185,441	4,899,431	8,084,871
Woodlands	1,109,140	902,789	928,391	2,940,321
Woodlands Pulp	1,079,987	1,138,160	311,097	2,529,244
<b>Total</b>	<b>2,189,128</b>	<b>9,441,255</b>	<b>9,343,120</b>	<b>20,973,503</b>

## 4.2 Operational and Administrative Support Services (Expense Allocation)

NB Southern provides operational and administrative support services for the benefit of EMR and MNR.<sup>6</sup> The operational and administrative support services provided by NB Southern comprise:

- Sales and Invoicing
- Car Hire
- Information Technology (“IT”) / Processing Costs
- Dispatching
- Fueling
- Locomotive Lease
- Locomotive Repairs
- Equipment Rental
- Track Construction Materials
- Miscellaneous Supplies
- Administration

<sup>6</sup> EMR also provides limited operational support services to NB Southern through its leasing of locomotives that are in turn utilized by NB Southern. NB Southern also leases locomotives for its own benefit and the benefit of EMR. For simplicity, this report focuses on the operational and administrative support services provided by NB Southern to both EMR and MNR as these comprise the majority of the operational and administrative support services provided among the NBM Railways entities. However, our assessment and conclusion on the arm’s length nature of the expense allocation can equally apply to EMR’s provision of operational support service to NB Southern.



Table with columns: Waybill Control Initial #, Date, STCC, STCC Description, Consignee, Consignee Name, Rate, CC, Fuel / mile, Missing Charge, Repetitive Waybill Code, ICM Charge (Shipper), Shipper Name, F902 Origin Stat, F903 State, D902 Destination, S/D903 Customer, Customer Name, Cust S/ Bill To, Invoice #, Invoice Date, Invoice IC Refere, IC Weight, IC W, Waybill Nur, Waybill Date, Kin Block To, IC Carr, Customer City, Cust Block To, Cust ID/Add. The table contains multiple rows of shipping data.



Table with multiple columns containing identification numbers, dates, company names, and other details. The table is organized into columns and rows, with some cells containing multiple lines of text or repeated values.















Table with multiple columns containing identification numbers (e.g., 2611227 ACFX), dates (e.g., 7/6/2012), amounts (e.g., 75786), and various alphanumeric codes (e.g., 3295230 KAOLIN, IRVPAPSTJ, IRVING PAPER, 938 CAD, 9.3%).









Table with multiple columns: Product ID, Description, Quantity, Unit, Price, Supplier Name, Supplier Address, Supplier Phone, Supplier Email, Supplier Website, Supplier Logo, Supplier Type, Supplier Status, Supplier Rating, Supplier Score, Supplier Compliance, Supplier Certification, Supplier Accreditation, Supplier License, Supplier Insurance, Supplier References, Supplier History, Supplier Reviews, Supplier Comments.







Table with columns: ID, Date, Description, Category, Value, Party Name, Address, City, State, ZIP, and various other identifiers. The table contains multiple rows of data, including entries for IRVING PAPER, BAYSHORE BULK TRANSFER, and various commercial products.

Table with columns for document ID, date, quantity, price, description, and various codes. The table lists numerous entries, each with a unique identifier and associated details.







<u>Initial</u>	<u>Number</u>	<u>L/E</u>	<u>Date</u>	<u>Concatenate</u>	<u>Vlookup</u>	<u>Charge Code</u>	<u>Rate</u>	<u>Fuel % / Rate</u>	<u>Missing Charge</u>	<u>Customer</u>	<u>Commodity</u>	<u>GL Acct.</u>	<u>Weight</u>
TTGX	158732	L	20130526	15873220130526	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOS	50 4101 10	42531
TTGX	853787	L	20130526	85378720130526	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOS	50 4101 10	42080
TTGX	980495	L	20130526	98049520130526	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOS	50 4101 10	41996
TTGX	604343	L	20130526	60434320130526	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOS	50 4101 10	41887
TTGX	987149	L	20130526	98714920130526	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOS	50 4101 10	41570
TTGX	962799	L	20130526	96279920130526	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOS	50 4101 10	39769
TTGX	975378	L	20130526	97537820130526	#N/A	KIABI	998.75	0.3886	\$73.45	MMA	AUTOMOBILES	50 4101 10	32633
TTGX	988851	L	20130526	98885120130526	#N/A	KIABI	998.75	0.3886	\$73.45	MMA	AUTOS	50 4101 10	32393
TTGX	940620	L	20130526	94062020130526	#N/A	KIABI	998.75	0.3886	\$73.45	MMA	AUTOS	50 4101 10	31731
TTGX	995986	L	20130526	99598620130526	#N/A	KIABI	998.75	0.3886	\$73.45	MMA	AUTOS	50 4101 10	31469
TTGX	851584	L	20130526	85158420130526	#N/A	KIABI	998.75	0.3886	\$73.45	MMA	AUTOS	50 4101 10	29062
ETTX	906779	L	20130526	90677920130526	#N/A	CHRYSLTRI	1119.72	0.3886	\$73.45	MMA	AUTOMOBILES	50 4101 10	28000
TTGX	157933	L	20130526	15793320130526	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOMOBILES	50 4101 10	24000
NDYX	558766	L	20130527	55876620130527	#N/A	FLAKE01	1045	7.50%	\$78.38	MMA	BOARDS	50 4102 10	189972
NDYX	558671	L	20130527	55867120130527	#N/A	FLAKE01	1045	7.50%	\$78.38	MMA	BOARDS	50 4102 10	186480
TR	150226	L	20130528	15022620130528	#N/A	IRVPULN2	895	7.50%	\$67.13	MMA	WOODPULP	50 4101	187481
CRLE	119731	L	20130528	11973120130528	#N/A	IRVPULN2	895	7.50%	\$67.13	MMA	WOODPULP	50 4101	187448
NOKL	570568	L	20130528	57056820130528	#N/A	IRVPULN2	895	7.50%	\$67.13	MMA	WOODPULP	50 4101	187263
MMA	9239	L	20130528	923920130528	#N/A	IRVPULN2	895	7.50%	\$67.13	MMA	WOODPULP	50 4101	187125
MMA	9196	L	20130528	919620130528	#N/A	IRVPULN2	895	7.50%	\$67.13	MMA	WOODPULP	50 4101	186990
CRLE	119763	L	20130528	11976320130528	#N/A	IRVPULN2	895	7.50%	\$67.13	MMA	WOODPULP	50 4101	186619
TR	150210	L	20130528	15021020130528	#N/A	IRVPULN2	895	7.50%	\$67.13	MMA	WOODPULP	50 4101	185674
TR	150188	L	20130528	15018820130528	#N/A	IRVPULN2	895	7.50%	\$67.13	MMA	WOODPULP	50 4101	185228
NOKL	570530	L	20130528	57053020130528	#N/A	IRVPULN2	895	7.50%	\$67.13	MMA	WOODPULP	50 4101	185127
TTGX	966039	L	20130528	96603920130528	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOS	50 4101 10	50000
TTGX	992706	L	20130528	99270620130528	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOS	50 4101 10	43416
SOO	516381	L	20130528	51638120130528	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOS	50 4101 10	42895
TTGX	975781	L	20130528	97578120130528	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOS	50 4101 10	42699
TTGX	963016	L	20130528	96301620130528	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOS	50 4101 10	41887
TTGX	978166	L	20130528	97816620130528	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOS	50 4101 10	38340
GTW	504122	L	20130528	50412220130528	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOS	50 4101 10	37480
TTGX	975018	L	20130528	97501820130528	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOS	50 4101 10	37214
CP	546005	L	20130528	54600520130528	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45	MMA	AUTOMOBILES	50 4101 10	24000
CN	382447	L	20130529	38244720130529	#N/A	WOOCHE02	840	7.50%	\$63.00	MMA	UREA	50 4102 10	198856
UNPX	120355	L	20130529	12035520130529	#N/A	WOOCHE02	840	7.50%	\$63.00	MMA	UREA	50 4102 10	197886
NDYX	558624	L	20130529	55862420130529	#N/A	FLAKE01	1045	7.50%	\$78.38	MMA	BOARDS	50 4102 10	192766
NDYX	558699	L	20130529	55869920130529	#N/A	FLAKE01	1045	7.50%	\$78.38	MMA	BOARDS	50 4102 10	189368
TILX	250510	L	20130530	25051020130530	#N/A	CANFOOD03	782.73	7.50%	\$58.70	MMA	RAPESEED OIL	50 4101	185717
MMA	9227	L	20130530	922720130530	#N/A	IRVPULN2	895	7.50%	\$67.13	MMA	WOODPULP	50 4101	185281
MMA	9228	L	20130530	922820130530	#N/A	IRVPULN2	895	7.50%	\$67.13	MMA	WOODPULP	50 4101	185096
MMA	9586	L	20130530	958620130530	#N/A	IRVPULN2	895	7.50%	\$67.13	MMA	WOODPULP	50 4101	185038
MMA	9231	L	20130530	923120130530	#N/A	IRVPULN2	895	7.50%	\$67.13	MMA	WOODPULP	50 4101	184823
MMA	9590	L	20130530	959020130530	#N/A	IRVPULN2	895	7.50%	\$67.13	MMA	WOODPULP	50 4101	184739
BRCX	1370	L	20130530	137020130530	#N/A	CANFOOD03	782.73	7.50%	\$58.70	MMA	RAPESEED OIL	50 4101	184029
PROX	75655	L	20130530	7565520130530	#N/A	CANFOOD03	782.73	7.50%	\$58.70	MMA	RAPESEED OIL	50 4101	183960
DBUX	250543	L	20130530	25054320130530	#N/A	CANFOOD03	782.73	7.50%	\$58.70	MMA	RAPESEED OIL	50 4101	183799
UNPX	120373	L	20130531	12037320130531	#N/A	WOOCHE02	840	7.50%	\$63.00	MMA	UREA	50 4102 10	200841
UNPX	120358	L	20130531	12035820130531	#N/A	WOOCHE02	840	7.50%	\$63.00	MMA	UREA	50 4102 10	199297
UNPX	120371	L	20130531	12037120130531	#N/A	WOOCHE02	840	7.50%	\$63.00	MMA	UREA	50 4102 10	199077
UNPX	120326	L	20130531	12032620130531	#N/A	WOOCHE02	840	7.50%	\$63.00	MMA	UREA	50 4102 10	198548

UNPX	120065 L	20130531	12006520130531	#N/A	WOOCHE02	840	7.50%	\$63.00 MMA	UREA	50 4102 10	197490
AOK	15075 L	20130531	1507520130531	#N/A	IRVPAP01F	1024	7.50%	\$76.80 MMA	PRINTING PAPER	50 4101	188740
TTGX	952207 L	20130531	95220720130531	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45 MMA	AUTOS	50 4101 10	41372
TTGX	982263 L	20130531	98226320130531	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45 MMA	AUTOS	50 4101 10	40102
TTGX	983554 L	20130531	98355420130531	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45 MMA	AUTOS	50 4101 10	39667
TTGX	978084 L	20130531	97808420130531	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45 MMA	AUTOS	50 4101 10	35119
CP	542559 L	20130531	54255920130531	#N/A	KIABI	998.75	0.3886	\$73.45 MMA	AUTOS	50 4101 10	31099
TTGX	991240 L	20130531	99124020130531	#N/A	KIABI	998.75	0.3886	\$73.45 MMA	AUTOS	50 4101 10	29872
TTGX	990521 L	20130531	99052120130531	#N/A	KIABI	998.75	0.3886	\$73.45 MMA	AUTOS	50 4101 10	29804
TTGX	983556 L	20130531	98355620130531	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45 MMA	AUTOMOBILES	50 4101 10	24000
TTGX	963087 L	20130531	96308720130531	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45 MMA	AUTOMOBILES	50 4101 10	24000
TTGX	996227 L	20130531	99622720130531	#N/A	CHRYSLBI	1119.72	0.3886	\$73.45 MMA	AUTOMOBILES	50 4101 10	24000
AOK	111930 L	20130601	11193020130601	#N/A	IRVPULN2	895	6.00%	\$53.70 MMA	WOODPULP	50 4101	191582
MMA	9144 L	20130601	914420130601	#N/A	IRVPULN2	895	6.00%	\$53.70 MMA	WOODPULP	50 4101	188297
TR	150211 L	20130601	15021120130601	#N/A	IRVPULN2	895	6.00%	\$53.70 MMA	WOODPULP	50 4101	187850
CRLE	119727 L	20130601	11972720130601	#N/A	IRVPULN2	895	6.00%	\$53.70 MMA	WOODPULP	50 4101	187622
<b>Total</b>								<b>\$4,570.92</b>			

<u>Initial</u>	<u>Number</u>	<u>L/E</u>	<u>Date</u>	<u>Charge Code</u>	<u>Rate</u>	<u>Fuel %</u>	<u>Fuel \$</u>	<u>Customer</u>	<u>Commodity</u>	<u>GL Acct.</u>	<u>Weight</u>
TTGX	700983	L	20130605	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOMOBILES	50 4101 10	40000
TTGX	985543	L	20130605	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOMOBILES	50 4101 10	24000
TTGX	159613	L	20130607	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOMOBILES	50 4101 10	24000
TTGX	980442	L	20130605	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOMOBILES	50 4101 10	40000
TTGX	993331	L	20130605	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOMOBILES	50 4101 10	24000
TTGX	964229	L	20130605	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOMOBILES	50 4101 10	40000
TTGX	853742	L	20130607	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOMOBILES	50 4101 10	24000
TTGX	978259	L	20130607	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOMOBILES	50 4101 10	24000
CPIA	543011	L	20130607	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOMOBILES	50 4101 10	24000
NS	171198	L	20130605	KIABI	998.75	0.3678	\$69.51	MMA	AUTOS	50 4101 10	27823
CNA	712736	L	20130605	KIABI	998.75	0.3678	\$69.51	MMA	AUTOS	50 4101 10	27648
TTGX	603723	L	20130603	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	38413
TTGX	978292	L	20130605	KIABI	998.75	0.3678	\$69.51	MMA	AUTOS	50 4101 10	27890
TTGX	603758	L	20130605	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	41887
TTGX	922298	L	20130605	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	41115
TTGX	712229	L	20130607	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	41887
TTGX	979888	L	20130603	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	38390
TTGX	964973	L	20130603	KIABI	998.75	0.3678	\$69.51	MMA	AUTOS	50 4101 10	27099
TTGX	980521	L	20130607	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	41648
TTGX	988557	L	20130605	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	41202
TTGX	157191	L	20130605	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	41452
TTGX	158901	L	20130605	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	41737
TTGX	942177	L	20130607	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	42195
TTGX	985851	L	20130602	KIABI	998.75	0.3678	\$69.51	MMA	AUTOS	50 4101 10	30014
CN	712183	L	20130602	KIABI	998.75	0.3678	\$69.51	MMA	AUTOS	50 4101 10	28483
TTGX	996834	L	20130605	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	42364
CNA	712710	L	20130605	KIABI	998.75	0.3678	\$69.51	MMA	AUTOS	50 4101 10	29048
TTGX	603693	L	20130602	KIABI	998.75	0.3678	\$69.51	MMA	AUTOS	50 4101 10	30893
TTGX	964915	L	20130603	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	41887
TTGX	979139	L	20130602	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	36545
TTGX	981550	L	20130605	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	38944
TTGX	941935	L	20130605	KIABI	998.75	0.3678	\$69.51	MMA	AUTOS	50 4101 10	29579
TTGX	156860	L	20130605	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	36089
TTGX	996321	L	20130605	CHRYSLBI	1119.72	0.3678	\$69.51	MMA	AUTOS	50 4101 10	41012

TTGX	973823 L	20130602	CHRYSLBI	1119.72	0.3678	\$69.51 MMA	AUTOS	50 4101 10	43767
TTGX	256054 L	20130602	CHRYSLBI	1119.72	0.3678	\$69.51 MMA	AUTOS	50 4101 10	40970
TTGX	970621 L	20130607	CHRYSLBI	1119.72	0.3678	\$69.51 MMA	AUTOS	50 4101 10	41887
TTGX	911390 L	20130602	KIABI	998.75	0.3678	\$69.51 MMA	AUTOS	50 4101 10	31162
TTGX	931021 L	20130605	CHRYSLBI	1119.72	0.3678	\$69.51 MMA	AUTOS	50 4101 10	40245
BTTX	880222 L	20130607	CHRYSLBI	1119.72	0.3678	\$69.51 MMA	AUTOS	50 4101 10	44394
NDYX	558800 L	20130606	FLAKE01	1045	6%	\$62.70 MMA	BOARDS	50 4102 10	190012
NDYX	558687 L	20130605	FLAKE01	1045	6%	\$62.70 MMA	BOARDS	50 4102 10	188330
NDYX	558799 L	20130606	FLAKE01	1045	6%	\$62.70 MMA	BOARDS	50 4102 10	186099
MMA	35548 L	20130614	DELFOR01	824	6%	\$49.44 MMA	LUMBER	50 4101	191923
MMA	35506 L	20130614	DELFOR01	824	6%	\$49.44 MMA	LUMBER	50 4101	191257
MMA	9573 L	20130608	IRVPULN2	895	6%	\$53.70 MMA	WOODPULP	50 4101	187247
MMA	9570 L	20130604	IRVPULN2	895	6%	\$53.70 MMA	WOODPULP	50 4101	187043
MMA	9111 L	20130604	IRVPULN2	895	6%	\$53.70 MMA	WOODPULP	50 4101	186690
MMA	9567 L	20130605	IRVPULN2	895	6%	\$53.70 MMA	WOODPULP	50 4101	186948
MMA	9178 L	20130605	IRVPULN2	895	6%	\$53.70 MMA	WOODPULP	50 4101	186767
MMA	9044 L	20130604	IRVPULN2	895	6%	\$53.70 MMA	WOODPULP	50 4101	186869

**Total \$3,389.75**





Table with columns for document number, date, amount, party names, and various identifiers. It lists numerous entries for BAYSHORE BULK TRANSFER, IRVING TISSUE INC., and IRVING PULP & PAPER LTD, among others.



Case 13-10670 Doc 2351-8 Filed 05/16/17 Entered 05/16/17 13:26:20 Desc Exhibit H - FSC Backup Page 26 of 32

2870366	UTLX	301763	2/4/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS	SEARSPORT	ME	SAINT JOHN	NB	IRVPAPCLSTJ	IRVING PAPER CLAY	400	MMA	###	###	1	50	4101	199432	N	606865	20130131	T	IRVPAPCLSTJ	MMA	SAINT JOHN	NB	IRVPAPCLSTJ
2870367	GATX	30472	2/4/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS	SEARSPORT	ME	SAINT JOHN	NB	IRVPAPCLSTJ	IRVING PAPER CLAY	400	MMA	###	###	1	50	4101	195134	N	606866	20130131	T	IRVPAPCLSTJ	MMA	SAINT JOHN	NB	IRVPAPCLSTJ
2870368	GATX	64770	2/4/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS	SEARSPORT	ME	SAINT JOHN	NB	IRVPAPCLSTJ	IRVING PAPER CLAY	400	MMA	###	###	1	50	4101	200840	N	606867	20130131	T	IRVPAPCLSTJ	MMA	SAINT JOHN	NB	IRVPAPCLSTJ
2870371	ACFX	95290	2/4/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS	SEARSPORT	ME	SAINT JOHN	NB	IRVPAPCLSTJ	IRVING PAPER CLAY	400	MMA	###	###	1	50	4101	198023	N	606870	20130131	T	IRVPAPCLSTJ	MMA	SAINT JOHN	NB	IRVPAPCLSTJ
2870377	UTLX	301198	2/4/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS	SEARSPORT	ME	SAINT JOHN	NB	IRVPAPCLSTJ	IRVING PAPER CLAY	400	MMA	###	###	1	50	4101	204136	N	606876	20130131	T	IRVPAPCLSTJ	MMA	SAINT JOHN	NB	IRVPAPCLSTJ
2870378	GATX	4932	2/4/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS	SEARSPORT	ME	SAINT JOHN	NB	IRVPAPCLSTJ	IRVING PAPER CLAY	400	MMA	###	###	1	50	4101	203265	N	606877	20130131	T	IRVPAPCLSTJ	MMA	SAINT JOHN	NB	IRVPAPCLSTJ
2870379	GATX	64782	2/4/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS	SEARSPORT	ME	SAINT JOHN	NB	IRVPAPCLSTJ	IRVING PAPER CLAY	400	MMA	###	###	1	50	4101	198473	N	606878	20130131	T	IRVPAPCLSTJ	MMA	SAINT JOHN	NB	IRVPAPCLSTJ
2870376	GATX	65552	2/4/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS	SEARSPORT	ME	SAINT JOHN	NB	IRVPAPCLSTJ	IRVING PAPER CLAY	400	MMA	###	###	1	50	4101	201508	N	606875	20130131	T	IRVPAPCLSTJ	MMA	SAINT JOHN	NB	IRVPAPCLSTJ
2870372	GATX	65501	2/4/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS	SEARSPORT	ME	SAINT JOHN	NB	IRVPAPCLSTJ	IRVING PAPER CLAY	400	MMA	###	###	1	50	4101	199287	N	606871	20130131	T	IRVPAPCLSTJ	MMA	SAINT JOHN	NB	IRVPAPCLSTJ
2870373	GATX	34621	2/4/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS	SEARSPORT	ME	SAINT JOHN	NB	IRVPAPCLSTJ	IRVING PAPER CLAY	400	MMA	###	###	1	50	4101	197878	N	606872	20130131	T	IRVPAPCLSTJ	MMA	SAINT JOHN	NB	IRVPAPCLSTJ
2870374	GATX	50072	2/4/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS	SEARSPORT	ME	SAINT JOHN	NB	IRVPAPCLSTJ	IRVING PAPER CLAY	400	MMA	###	###	1	50	4101	201595	N	606873	20130131	T	IRVPAPCLSTJ	MMA	SAINT JOHN	NB	IRVPAPCLSTJ
2870375	ACFX	76940	2/4/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS	SEARSPORT	ME	SAINT JOHN	NB	IRVPAPCLSTJ	IRVING PAPER CLAY	400	MMA	###	###	1	50	4101	192999	N	606874	20130131	T	IRVPAPCLSTJ	MMA	SAINT JOHN	NB	IRVPAPCLSTJ
2870365	AEX	19172	2/4/2013	3274110	LIME	BAYCARSTJ	BAYSHORE BULK TRANSFER	800	CAD	6.5%	\$52.00	1MMAABAYLIME	GRAINC	GRAMONTBED	GRAYMONT (QC) INC.	BEDFORD	PQ	SAINT JOHN	NB	BAYCARSTJ	BAYSHORE CARGO FLO	400	MMA	###	###	1	50	4101	178000	N	606833	20130128	C	BAYCARSTJ	MMA	SAINT JOHN	NB	BAYCARSTJ
2870364	AEX	11948	2/4/2013	3274110	LIME	BAYCARSTJ	BAYSHORE BULK TRANSFER	800	CAD	6.5%	\$52.00	1MMAABAYLIME	GRAINC	GRAMONTBED	GRAYMONT (QC) INC.	BEDFORD	PQ	SAINT JOHN	NB	BAYCARSTJ	BAYSHORE CARGO FLO	400	MMA	###	###	1	50	4101	178000	N	606832	20130128	C	BAYCARSTJ	MMA	SAINT JOHN	NB	BAYCARSTJ
2858271	CPU	638516	2/6/2013	3715116	FRT TRCS TRLRS	CPIMSLAC	CP INTERMODAL SERVICE	122.25	CAD	6.5%	\$7.95	4049LAC	S-M-MT45	AMMASTJ	AGENT, MTL MAINE & ATLANTIC RR	ST JOHN WHARF IMS	NB	LACHINE IMS	PQ	MMABRN	MMA AGENT	589	MMA	###	###	1	50	4105	30	0	983282	20130126	U	MMABRN	BROWNVILLE J C ME	MMABRN	MMABRN	
2861902	AOK	15090	2/6/2013	2611135	WOODPULP	IRVTISFOR	IRVING TISSUE INC. (FE)	895	CAD	6.5%	\$58.18	4IRVIRVMMAWOOOFE	IRVPLUN2	IRVPULSTJ	IRVING PULP & PAPER LTD	SAINT JOHN	NB	FORT EDWARD	NY	IRVPULSTJ	IRVING PULP & PAPER LTD	400	MMA	###	###	1	50	4101	189130	N	460375	20130204	B	MMABRN	SAINT JOHN	NB	MMABRN	
2860101	CRLE	119717	2/6/2013	2611135	WOODPULP	IRVTISFOR	IRVING TISSUE INC. (FE)	895	CAD	6.5%	\$58.18	4IRVIRVMMAWOOOFE	IRVPLUN2	IRVPULSTJ	IRVING PULP & PAPER LTD	SAINT JOHN	NB	FORT EDWARD	NY	IRVPULSTJ	IRVING PULP & PAPER LTD	400	MMA	###	###	1	50	4101	188875	N	460326	20130201	A	MMABRN	SAINT JOHN	NB	MMABRN	
2852159	CRLE	119751	2/6/2013	2611135	WOODPULP	IRVTISFOR	IRVING TISSUE INC. (FE)	895	CAD	6.5%	\$58.18	4IRVIRVMMAWOOOFE	IRVPLUN2	IRVPULSTJ	IRVING PULP & PAPER LTD	SAINT JOHN	NB	FORT EDWARD	NY	IRVPULSTJ	IRVING PULP & PAPER LTD	400	MMA	###	###	1	50	4101	186778	N	460374	20130204	A	MMABRN	SAINT JOHN	NB	MMABRN	
2852161	TR	150218	2/6/2013	2611135	WOODPULP	IRVTISFOR	IRVING TISSUE INC. (FE)	895	CAD	6.5%	\$58.18	4IRVIRVMMAWOOOFE	IRVPLUN2	IRVPULSTJ	IRVING PULP & PAPER LTD	SAINT JOHN	NB	FORT EDWARD	NY	IRVPULSTJ	IRVING PULP & PAPER LTD	400	MMA	###	###	1	50	4101	187380	N	460325	20130201	A	MMABRN	SAINT JOHN	NB	MMABRN	
2861226	CRLE	119761	2/6/2013	2611135	WOODPULP	IRVTISFOR	IRVING TISSUE INC. (FE)	895	CAD	6.5%	\$58.18	4IRVIRVMMAWOOOFE	IRVPLUN2	IRVPULSTJ	IRVING PULP & PAPER LTD	SAINT JOHN	NB	FORT EDWARD	NY	IRVPULSTJ	IRVING PULP & PAPER LTD	400	MMA	###	###	1	50	4101	189801	N	460376	20130204	A	MMABRN	SAINT JOHN	NB	MMABRN	
2861903	AOK	15145	2/8/2013	2611135	WOODPULP	IRVTISFOR	IRVING TISSUE INC. (FE)	895	CAD	6.5%	\$58.18	4IRVIRVMMAWOOOFE	IRVPLUN2	IRVPULSTJ	IRVING PULP & PAPER LTD	SAINT JOHN	NB	FORT EDWARD	NY	IRVPULSTJ	IRVING PULP & PAPER LTD	400	MMA	###	###	1	50	4101	189371	N	460411	20130205	B	MMABRN	SAINT JOHN	NB	MMABRN	
2861901	CRLE	119779	2/8/2013	2611135	WOODPULP	IRVTISFOR	IRVING TISSUE INC. (FE)	895	CAD	6.5%	\$58.18	4IRVIRVMMAWOOOFE	IRVPLUN2	IRVPULSTJ	IRVING PULP & PAPER LTD	SAINT JOHN	NB	FORT EDWARD	NY	IRVPULSTJ	IRVING PULP & PAPER LTD	400	MMA	###	###	1	50	4101	188524	N	460412	20130205	A	MMABRN	SAINT JOHN	NB	MMABRN	
2864615	AOK	15108	2/1/2013	2611135	WOODPULP	IRVTISFOR	IRVING TISSUE INC. (FE)	895	CAD	6.5%	\$58.18	4IRVIRVMMAWOOOFE	IRVPLUN2	IRVPULSTJ	IRVING PULP & PAPER LTD	SAINT JOHN	NB	FORT EDWARD	NY	IRVPULSTJ	IRVING PULP & PAPER LTD	400	MMA	###	###	1	50	4101	184624	N	577081	20130130	B	MMABRN	SAINT JOHN	NB	MMABRN	
2861904	AOK	118154	2/1/2013	2611135	WOODPULP	IRVTISFOR	IRVING TISSUE INC. (FE)	895	CAD	6.5%	\$58.18	4IRVIRVMMAWOOOFE	IRVPLUN2	IRVPULSTJ	IRVING PULP & PAPER LTD	SAINT JOHN	NB	FORT EDWARD	NY	IRVPULSTJ	IRVING PULP & PAPER LTD	400	MMA	###	###	1	50	4101	188138	N	460494	20130207	B	MMABRN	SAINT JOHN	NB	MMABRN	
2879866	UNPX	120007	2/12/2013	2818170	UREA	FLAKESTS	FLAKEBOARD CO LTD	840	CAD	6.5%	\$54.60	1MMAFLAANY	WOOCHEO2	YARCANNON	YARA CANADA INC	ST ANTOINE	PQ	ST STEPHEN	NB	FLAKESTS	FLAKEBOARD COMPANY	33	MMA	###	###	1	50	4102	10	199210	843796	20130201	C	FLAKESTS	MMA	ST STEPHEN	NB	FLAKESTS
2869024	AOK	15107	2/12/2013	2818170	UREA	IRVTISFOR	IRVING TISSUE INC. (FE)	895	CAD	6.5%	\$58.18	4IRVIRVMMAWOOOFE	IRVPLUN2	IRVPULSTJ	IRVING PULP & PAPER LTD	SAINT JOHN	NB	FORT EDWARD	NY	IRVPULSTJ	IRVING PULP & PAPER LTD	400	MMA	###	###	1	50	4101	186112	N	577094	20130202	B	MMABRN	SAINT JOHN	NB	MMABRN	
2869025	CRLE	119710	2/13/2013	2611135	WOODPULP	IRVTISFOR	IRVING TISSUE INC. (FE)	895	CAD	6.5%	\$58.18	4IRVIRVMMAWOOOFE	IRVPLUN2	IRVPULSTJ	IRVING PULP & PAPER LTD	SAINT JOHN	NB	FORT EDWARD	NY	IRVPULSTJ	IRVING PULP & PAPER LTD	400	MMA	###	###	1	50	4101	186275	N	577095	20130202	A	MMABRN	SAINT JOHN	NB	MMABRN	
2880941	NOKL	570581	2/13/2013	2611135	WOODPULP	IRVTISFOR	IRVING TISSUE INC. (FE)	895	CAD	6.5%	\$58.18	4IRVIRVMMAWOOOFE	IRVPLUN2	IRVPULSTJ	IRVING PULP & PAPER LTD	SAINT JOHN	NB	FORT EDWARD	NY	IRVPULSTJ	IRVING PULP & PAPER LTD	400	MMA	###	###	1	50	4101	189943	N	460653	20130212	A	MMABRN	SAINT JOHN	NB	MMABRN	
2869023	TR	406275	2/13/2013	2611135	WOODPULP	IRVTISFOR	IRVING TISSUE INC. (FE)	895	CAD	6.5%	\$58.18	4IRVIRVMMAWOOOFE	IRVPLUN2	IRVPULSTJ	IRVING PULP & PAPER LTD	SAINT JOHN	NB	FORT EDWARD	NY	IRVPULSTJ	IRVING PULP & PAPER LTD	400	MMA	###	###	1	50	4101	186754	N	577093	20130202	A	MMABRN	SAINT JOHN	NB	MMABRN	
2884111	UNPX	120027	2/14/2013	2818170	UREA	FLAKESTS	FLAKEBOARD CO LTD	840	CAD	6.5%	\$54.60	1MMAFLAANY	WOOCHEO2	YARCANNON	YARA CANADA INC	ST ANTOINE	PQ	ST STEPHEN	NB	FLAKESTS	FLAKEBOARD COMPANY	33	MMA	###	###	1	50	4102	10	198813	853145	20130207	C	FLAKESTS	MMA	ST STEPHEN	NB	FLAKESTS
2884110	UNPX	120277	2/14/2013	2818170	UREA	FLAKESTS	FLAKEBOARD CO LTD	840	CAD	6.5%	\$54.60	1MMAFLAANY	WOOCHEO2	YARCANNON	YARA CANADA INC	ST ANTOINE	PQ	ST STEPHEN	NB	FLAKESTS	FLAKEBOARD COMPANY	33	MMA	###	###	1	50	4102	10	198857	852387	20130206	C	FLAKESTS	MMA	ST STEPHEN	NB	FLAKESTS
2884104	UNPX	120329	2/14/2013	2818170	UREA	FLAKESTS	FLAKEBOARD CO LTD	840	CAD	6.5%	\$54.60	1MMAFLAANY	WOOCHEO2	YARCANNON	YARA CANADA INC	ST ANTOINE	PQ	ST STEPHEN	NB	FLAKESTS	FLAKEBOARD COMPANY	33	MMA	###	###	1	50	4102	10	198107	851066	20130206	C	FLAKESTS	MMA	ST STEPHEN	NB	FLAKESTS
2885185	ACFX	73010	2/16/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS	SEARSPORT	ME	SAINT JOHN	NB	IRVPAPCLSTJ	IRVING PAPER CLAY	400	MMA	###	###	1	50	4101	191054	N	606961	20130212	T	IRVPAPCLSTJ	MMA	SAINT JOHN	NB	IRVPAPCLSTJ
2885183	ACFX	73019	2/16/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS	SEARSPORT	ME	SAINT JOHN	NB	IRVPAPCLSTJ	IRVING PAPER CLAY	400	MMA	###	###	1	50	4101	193333	N	606959	20130212	T	IRVPAPCLSTJ	MMA	SAINT JOHN	NB	IRVPAPCLSTJ
2885173	ACFX	75733	2/16/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS	SEARSPORT	ME	SAINT JOHN	NB	IRVPAPCLSTJ	IRVING PAPER CLAY	400	MMA	###	###	1	50	4101	189805	N	606948	20130212	T	IRVPAPCLSTJ	MMA	SAINT JOHN	NB	IRVPAPCLSTJ
2885176	ACFX	75741	2/16/2013	3295230	KAOLIN	IRVPAPSTJ	IRVING PAPER	995	CAD	7.5%	\$74.63	1MMAIRVKAOSEARS	IRVPAPCL	IRVPAPSTJ	IMERYS																							

Table with multiple columns containing case details: ID (e.g., 2891189 AOK), Date (e.g., 3/2/2013), Location (e.g., 2611135 WOODPULP), Party (e.g., IRVTSFOR IRVING TISSUE INC. (FE)), Amount (e.g., 895 CAD), Rate (e.g., 6.0%), and Description (e.g., \$53.70 4IRVIRVMMAWOOFTE IRVPLN2 IRVPULSTJ IRVING PULP & PAPER LTD SAINT JOHN NB FORT EDWARD NY IRVPULSTJ IRVING PULP & PAPER LTD 400 MMA ### ### 1 50 4101 186891 N 577171 20130220 B MMABRN SAINT JOHN NB MMABRN).

Table with multiple columns: ID, Name, Date, Amount, Description, Party, Address, City, State, Zip, etc. Contains detailed transaction records for various individuals and companies.

Table with columns for product codes, dates, descriptions, quantities, units, prices, and categories. Includes entries for various paper and tissue products from companies like FLAKEBOARD CO LTD, IRVING PAPER, and SEARSPORT.











# Eastern Maine Railway Company

11 Gifford Road  
Saint John, New Brunswick  
E2M 7W3  
Phone: 506 632-7777



August 2, 2013

Montreal, Maine & Atlantic Railway Ltd.  
Northern Maine Junction Park  
15 Iron Road  
Hermon, ME 04401-9601

Attention: President  
Fax: 207-848-4232

Dear Sirs,

Re: Commercial Agreement - Overdue Payments

Reference is made to the Commercial Agreement, dated January 9, 2003 (the "Agreement") among Montreal, Maine & Atlantic Railway Ltd ("MMA"), Eastern Maine Railway Company ("EMR") and New Brunswick Southern Railway Company Limited ("NBS"). Pursuant to sections 2, 6 and 7 of the Agreement, MMA is obligated to bill and collect on behalf of, and remit to, EMR and NBS, in accordance with the procedures set forth in section 12 of the Agreement, various charges for transportation services owed by customers to EMR and NBS.

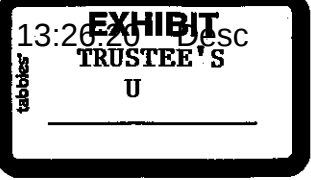
As you are aware, since July 8, 2013, MMA has failed to remit to EMR and NBS funds received by MMA on their behalf as required under the terms of section 12.1(B) of the Agreement. In accordance with the provisions of section 12.1(C) of the Agreement, please be advised that if MMA fails to remit to EMR and NBS, within seven (7) days of the date of this letter, all amounts received by MMA on behalf of EMR and NBS, EMR and NBS will require cash payments in advance from MMA prior to moving cars under the Agreement.

Yours truly,

A handwritten signature in black ink, appearing to read "Ian Simpson".

Ian Simpson  
General Manager





New Brunswick Southern Railway Company Limited  
11 Gifford Road, Saint John, N.B. E2M 7W3  
Phone: 506-632-7777



August 2, 2013

Montreal, Maine & Atlantic Railway Ltd.  
Northern Maine Junction Park  
15 Iron Road  
Hermon, ME 04401-9601

Attention: President  
Fax: 207-848-4232

Dear Sirs,

Re: Commercial Agreement - Overdue Payments

Reference is made to the Commercial Agreement, dated January 9, 2003 (the "Agreement") among Montreal, Maine & Atlantic Railway Ltd ("MMA"), Eastern Maine Railway Company ("EMR") and New Brunswick Southern Railway Company Limited ("NBS"). Pursuant to sections 2, 6 and 7 of the Agreement, MMA is obligated to bill and collect on behalf of, and remit to, EMR and NBS, in accordance with the procedures set forth in section 12 of the Agreement, various charges for transportation services owed by customers to EMR and NBS.

As you are aware, since July 8, 2013, MMA has failed to remit to EMR and NBS funds received by MMA on their behalf as required under the terms of section 12.1(B) of the Agreement. In accordance with the provisions of section 12.1(C) of the Agreement, please be advised that if MMA fails to remit to EMR and NBS, within seven (7) days of the date of this letter, all amounts received by MMA on behalf of EMR and NBS, EMR and NBS will require cash payments in advance from MMA prior to moving cars under the Agreement.

Yours truly,

A handwritten signature in black ink, appearing to be "Ian Simpson".

Ian Simpson  
General Manager

# RICHTER

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF ST-FRANÇOIS  
COURT NO.: 450-11-000167-134  
ESTATE NO.: 0000164-2013-QC

SUPERIOR COURT  
(Commercial Division)  
(Sitting as a court designated pursuant to the  
*Companies' Creditors Arrangement Act*,  
R.S.C. C. C-36, as amended)

IN THE MATTER OF THE PLAN OF COMPROMISE OR  
ARRANGEMENT OF:

MONTREAL, MAINE & ATLANTIC CANADA CO.  
(MONTREAL, MAINE & ATLANTIQUE CANADA CIE)

Petitioner

- and -

RICHTER ADVISORY GROUP INC.  
(RICHTER GROUPE CONSEIL INC.)

Monitor

## PROOF OF CLAIM

### 1) PARTICULARS OF THE CREDITOR AND ADDRESS WHERE NOTICES SHOULD BE SENT

Full legal name of the Creditor: New Brunswick Southern Railway Company Limited (the "Creditor")

Full mailing address of the Creditor: P.O. Box 3189, 11 Gifford Road, Saint John, N.B. E2M 4X8

Telephone number of the Creditor: 877-838-6277

E-mail address of the Creditor: \_\_\_\_\_

Name of the authorized representative of the Creditor, if applicable: William J. Dever

Full mailing address of the authorized representative: J.D. Irving, Limited 300 Union St., P.O. Box 5777

Telephone number of the authorized representative: St-John, N.B. Canada E2L 4M3 506-632-5906

E-mail address of authorized representative of the Creditor: Dever.william@jdirving.com

Title or capacity of authorized representative of the Creditor: Corporate Counsel

If the Creditor is an Estate, please complete the "Estate Information Schedule" attached.

### 2) DECLARATION

I have a claim against:

- Montreal, Maine & Atlantic Canada Co. (Canadian insolvency proceedings); or
- Montreal, Maine & Atlantic Railway, Ltd. (United States insolvency proceedings); or
- Both Montreal, Maine & Atlantic Canada Co. and Montreal, Maine & Atlantic Railway, Ltd.

T. 1-866-845-8958  
F. 1-800-246-1125  
[mmaclaims@richter.ca](mailto:mmaclaims@richter.ca)

Richter Groupe Conseil Inc.  
Richter Advisory Group Inc.  
1981 McGill College  
Montréal, QC H3A 0G6

Montréal, Toronto



CREDITORS: New Brunswick Southern Railway Co.Ltd  
Date Received: 20140613  
Date Entered:

**3) CLAIMS FOR DAMAGES RELATING TO THE JULY 6, 2013 DERAILMENT IN THE TOWN OF LAC-MÉGANTIC (HEREINAFTER REFERRED TO AS DERAILMENT CLAIMS).**

**DERAILMENT CLAIMS ARE DEEMED TO BE FILED CONCURRENTLY IN BOTH THE CANADIAN (WITH RESPECT TO MONTREAL, MAINE & ATLANTIC CANADA CO.) AND THE UNITED STATES (WITH RESPECT TO MONTREAL, MAINE & ATLANTIC RAILWAY LTD.) INSOLVENCY PROCEEDINGS, BY THE FILING OF THE PRESENT FORM.**

**IMPORTANT** – The categories of damages that may be claimed below are indicative only. Completing a proof of claim does not determine (i) that the type of claim is valid, well-founded and/or will be allowed, (ii) that any amounts claimed will be recognized as well-founded or that they will be allowed as valid claims, and (iii) that any claims allowed can or will be satisfied in whole or in part as a result of any of these proceedings. The Schedules attached to the present form are to assist you in providing particulars and a description of damages that you are claiming but are indicative only; they are not to be understood as suggesting that all categories of damages would apply to all persons affected by the derailment and they are not intended to limit the damages that may be claimed. You should complete and attach as many Schedules as necessary to provide a complete description of all of the damages that you are claiming.

For claims other than for damages relating to the July 6, 2013 derailment in the Town of Lac-Mégantic a detailed, complete statement of account must be attached to the proof of claim. Provide all particulars of the claim and supporting documents, including amount, description of transaction(s) or agreements(s) giving rise to the claim. The amount on the statement of account must correspond with the amount claimed on the proof of claim. The detailed statement of account must show the date, the invoice number and the amount of all the invoices or charges, together with the date, the number and the amount of all credits or payments. A statement of account is not complete if it begins with an amount brought forward. If the claim cannot be evidenced through a statement of account, the Creditor must provide a sworn affidavit providing all particulars of the claim, together with all supporting documents.

If the claim is in a foreign currency, it shall be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging currency to Canadian dollars on the Determination Date, namely August 8, 2013 (US \$1 = CA \$1.0348; 1 EURO = CA \$1.3857).

**The proof of claim form must be received by the Monitor, Richter Advisory Group Inc., by June 13, 2014 at 5 p.m., Montreal Time (Claims Bar Date).**

The proof of claim may be filed by regular mail, by fax, by messenger or by any other means of electronic mail addressed to:

**Richter Advisory Group Inc.  
(In its capacity as Court-appointed Monitor of  
Montreal, Maine & Atlantic Canada Co.)  
Attention: Claims Department  
1981 McGill College, 12<sup>th</sup> Floor  
Montréal QC H3A 0G6  
Facsimile: 1-800-246-1125  
Email: [mmaclaims@richter.ca](mailto:mmaclaims@richter.ca)**

Any claim sent by fax, by messenger or by any other means of electronic mail is deemed to be received by the Monitor upon receipt. Any claim sent by mail is deemed to be received by the Monitor at the post-mark date.

The proof of claim must be signed by the Creditor or its duly authorized representative and signed by a witness.

**AMOUNT CLAIMED  
AGAINST  
MONTREAL, MAINE  
& ATLANTIC  
CANADA CO.**

**AMOUNT CLAIMED  
AGAINST  
MONTREAL, MAINE  
& ATLANTIC  
RAILWAY LTD.  
(IF DIFFERENT)**

**If you are claiming damages resulting from the death of a person** (details to be provided on **Schedule 1** attached hereto):

A. **ECONOMIC AND MATERIAL DAMAGES**  
(from Schedule 1, pages 8 & 9)

CA\$ \_\_\_\_\_ CA\$ \_\_\_\_\_

B. **OTHER DAMAGES**  
(from Schedule 1, pages 10 & 11)

CA\$ \_\_\_\_\_ CA\$ \_\_\_\_\_

**If you are claiming damages resulting from bodily injuries not resulting in death** (details to be provided on Schedules 2A and/or 2B attached hereto):

• *If you are claiming damages resulting from bodily injuries suffered by yourself, complete **Schedule 2A***

C. **ECONOMIC AND MATERIAL DAMAGES**  
(from Schedule 2A, pages 7 & 8)

CA\$ \_\_\_\_\_ CA\$ \_\_\_\_\_

D. **OTHER DAMAGES**  
(from Schedule 2A, pages 9 & 10)

CA\$ \_\_\_\_\_ CA\$ \_\_\_\_\_

• *If you are claiming damages resulting from bodily injuries suffered by someone else, complete **Schedule 2B***

E. **ECONOMIC AND MATERIAL DAMAGES**  
(from Schedule 2B, pages 10 & 11)

CA\$ \_\_\_\_\_ CA\$ \_\_\_\_\_

F. **OTHER DAMAGES**  
(from Schedule 2B, pages 12 & 13)

CA\$ \_\_\_\_\_ CA\$ \_\_\_\_\_

<b>AMOUNT CLAIMED AGAINST MONTREAL, MAINE &amp; ATLANTIC CANADA CO.</b>	<b>AMOUNT CLAIMED AGAINST MONTREAL, MAINE &amp; ATLANTIC RAILWAY LTD. (IF DIFFERENT)</b>
---	--

**If you are claiming damages (of individuals or businesses) other than those resulting from the death of a person or from bodily injuries (details to be provided on Schedules 3A and/or 3B attached hereto):**

• *If you are claiming damages suffered by an individual, complete Schedule 3A*

G. MATERIAL DAMAGES TO PROPERTY (from Schedule 3A, pages 6 & 7)	CA\$ _____	CA\$ _____
H. DAMAGES FOR LOSS OF USE OF PROPERTY (from Schedule 3A, pages 10 & 11)	CA\$ _____	CA\$ _____
I. DAMAGES FOR LOSS OF INCOME (from Schedule 3A, pages 13 & 14)	CA\$ _____	CA\$ _____
J. OTHER DAMAGES (from Schedule 3A, pages 15 & 16)	CA\$ _____	CA\$ _____

• *If you are claiming damages suffered by a business, complete Schedule 3B*

K. MATERIAL DAMAGES TO PROPERTY (from Schedule 3B, pages 5 & 6)	CA\$ _____	CA\$ _____
L. DAMAGES RESULTING FROM LOSS OF USE OF PROPERTY (from Schedule 3B, pages 10 & 11)	CA\$ _____	CA\$ _____
M. BUSINESS DAMAGES <u>NOT</u> RESULTING FROM LOSS OF USE OF PROPERTY (from Schedule 3B, pages 14 & 15)	CA\$ _____	CA\$ _____
N. OTHER DAMAGES (from Schedule 3B, pages 16 & 17)	CA\$ _____	CA\$ _____
O. <b>If you are an insurer and have a subrogated claim,</b> complete Schedule 4 (from page 1)	CA\$ _____	CA\$ _____
P. <b>If you are a government or municipality,</b> complete Schedule 5 (from page 6)	CA\$ _____	CA\$ _____
Q. <b>If you have a contribution or indemnity claim,</b> complete Schedule 6	CA\$ _____	CA\$ _____

4) ALL CLAIMS, OTHER THAN DERAILMENT CLAIMS, AS OF AND INCLUDING AUGUST 7, 2013 (DEEMED TO BE FILED ONLY IN THE CANADIAN INSOLVENCY PROCEEDINGS) (details to be provided below and on Schedule 7 attached hereto):

(check and complete appropriate box)

UNSECURED CLAIM OF CA\$ 2,256,482.20

That in respect of this debt, the Creditor does not hold any assets of the Petitioner as security.

Regarding the amount of CA\$ 2,256,482.20 the undersigned does not claim a right to a priority.

Regarding the amount of CA\$ \_\_\_\_\_ the undersigned claims a right to a priority under section 136 of the *Bankruptcy and Insolvency Act (Canada)* or would claim such a priority if the current proof of claim were filed pursuant to the *Bankruptcy and Insolvency Act (Canada)*.

SECURED CLAIM OF CA\$ \_\_\_\_\_

That in respect of this debt, the Creditor holds assets of the Petitioner valued at CA\$ \_\_\_\_\_ as security, particulars of which are as follows.

(Give full particulars of the security, including the date on which the security was given and attach a copy of the security documents)

CLAIM BY WAGE EARNER (ONLY OF MONTREAL, MAINE & ATLANTIC CANADA CO.)  
ATLANTIC CANADA CO.) CA\$ \_\_\_\_\_  
consisting of:

Unpaid wages of CA\$ \_\_\_\_\_

Unpaid vacation pay CA\$ \_\_\_\_\_

5) TIME LIMIT FOR FILING OF CLAIM

Pursuant to the Claims Order granted by the Superior Court on April 4, 2014 ("Order"), the Claims Bar Date has been fixed to June 13, 2014 at 5:00 P.M., Montréal Time.

Creditors who have not filed a proof of claim with the supporting documents by the Claims Bar Date in compliance with the Order will receive no other notice, and unless a new Order is rendered by the Superior Court, (i) shall NOT be entitled to participate as a creditor in the proceedings, (ii) shall NOT be entitled to vote on any matter relating to these proceedings, including the Plan of compromise or arrangement of Montreal, Maine & Atlantic Canada Co. (the "Plan") and the Plan of Reorganization in the Chapter 11 proceedings, (iii) shall NOT be entitled to assert any claim against Montreal, Maine & Atlantic Canada Co. and Montreal, Maine and Atlantic Railway, Ltd. (iv) and shall NOT be entitled to receive any distribution under the Plan or under the Plan of Reorganization in the Chapter 11 proceedings.

Dated at Saint John, New Brunswick this 13 day of June 2014



Signature of the Witness



(Signature of the Creditor or of its authorized representative)

(This form is completed and sworn under penalty of perjury)

JOHN C. PAPPAS.

(Please print name)

William Dever, Corporate Counsel

(Please print name)

MONTREAL, MAINE & ATLANTIC CANADA CO. / MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE

**SCHEDULE 7 TO PROOF OF CLAIM FORM  
TO BE COMPLETED ONLY IF YOU ARE FILING A CLAIM  
OTHER THAN A CLAIM FOR DAMAGES AS A RESULT OF THE JULY 6, 2013 DERAILMENT**

1. Name of Creditor: New Brunswick Southern Railway Company Limited

2. Claim Amount:  
(Enter on page 5 of the proof of claim form) CA\$ 2,256,482.20

3. Check and complete appropriate category:

**A. UNSECURED CLAIM OF CA\$ 2,256,482.20**

In respect of this debt, I do not hold any assets of the debtor as security.

Regarding the amount of CA\$ \_\_\_\_\_, I claim a right to priority under section 136 of the *Bankruptcy and Insolvency Act* (Canada) or would claim such a priority if the current proof of claim were filed pursuant to the *Bankruptcy and Insolvency Act* (Canada).

Regarding the amount of CA\$ 2,256,482.20, I do not claim a right to a priority.  
(Set out on attached sheet details to support priority claim)

**B. SECURED CLAIM OF CA\$ \_\_\_\_\_**

In respect of this debt, I hold assets of the debtor valued at CA\$ \_\_\_\_\_ as security, particulars of which are as follows:  
(Give full particulars of the security, including the date on which the security was given and the value at which you assess the security and attach a copy of the security documents)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**C. CLAIM BY WAGE EARNER (ONLY OF MONTREAL, MAINE & ATLANTIC CANADA CO.) CA\$ \_\_\_\_\_**

- consisting of:
- Unpaid wages of CA\$ \_\_\_\_\_
  - Unpaid vacation pay CA\$ \_\_\_\_\_

4. **PARTICULARS OF CLAIM**

A DETAILED, COMPLETE STATEMENT OF ACCOUNT MUST BE ATTACHED TO THE PROOF OF CLAIM, PROVIDE ALL PARTICULARS OF THE CLAIM AND SUPPORTING DOCUMENTATION, INCLUDING AMOUNT, DESCRIPTION OF TRANSACTION(S) OR AGREEMENT(S) GIVING RISE TO THE CLAIM.

Bureau  
1000, rue De La Gauchetière Ouest  
Montréal (Québec) H3B 0A2  
Canada  
Tél : 514-397-4100  
Télec : 514-875-6246

**mccarthy  
tetrault**

**Philippe H. Bélanger**  
Direct Line : 514-397-4203  
Fax : 514-875-6246  
E-mail : pbelanger@mccarthy.ca

June 13, 2014

**By Courier**

M. Gilles Robillard  
**RICHTER ADVISORY GROUP INC.**  
1981 McGill College  
Montréal (Québec) H3A 0G6

**RE: In the matter of the plan of compromise or arrangement of:  
Montreal, Maine & Atlantic Canada Co. (Montreal, Maine & Atlantique  
Canada Cie)  
Court No: 450-11-000167-134  
Estate No.: 0000164-2013-QC  
Our file: 192406-455944**

Dear Sir:

We act as counsel to New Brunswick Southern Railway Company Limited ("**NBSRCL**") Limited with respect to the above-captioned matter.

You will find enclosed herewith the NBSRCL's duly completed proof of claim which is being filed following the Claims Process Order rendered by the Honourable Justice Gaetan Dumas on April 4, 2014.

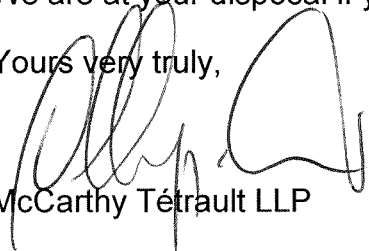
We must advise you that NBSRCL has also filed a proof of claim as a creditor benefiting from priority set-out at section 1171(b) of the US Bankruptcy Code against the assets of Montreal, Maine & Atlantic Railway, Limited ("**MMA US**"). Such proof of claim has been filed concurrently in the context of MMA US' Chapter 11 proceedings.

The filing of the enclosed proof of claim by NBSRCL in the Canadian insolvency proceedings is made under strict reserve of NBSRCL's rights resulting from the proof of claim filed in the United States Insolvency proceedings against MMA US. It should not be construed, expressly or implicitly as an admission to the effect that amounts claimed are not owed by MMA US.



We are at your disposal if you wish to discuss the above further.

Yours very truly,



McCarthy Tétrault LLP

Philippe H. Bélanger

PHB/cb

Cc: Messrs. William Dever and Alan Lepene

Encl.: Proof of claim executed on June 13, 2014 with attachments.

The agreements evidencing the commercial relationship between New Brunswick Southern Railway Company Limited (“NBSR”) and Montreal Maine & Atlantic Railway, Ltd. (“MMA”) are voluminous and are not attached to this Proof of Claim. Copies are available upon request. Pursuant to the commercial relationship between the parties, NBSR provided freight services to MMA in connection with interline rail shipments and issued invoices for such services. A schedule of the outstanding invoices is attached. Copies of the invoices are available upon request. The agreements consist of the following:

1. Commercial Agreement, dated January 9, 2003, among MMA, NBSR and Eastern Maine Railway (“EMR”) with the following exhibits:
  - Interchange Agreement
  - EMR/NBS Rates
  - Blocking Agreement
  - Rate Agreements Form
  - Contracts and Rate Agreements
2. Interchange Agreement at Brownville Junction Yard, dated January 9, 2003, among MMA and EMR.
3. Blocking Agreement, dated January 9, 2003, among MMA, NBSR and EMR.

Remark	Reference	Document Number	Invoice Date	Due Date	Open Amount	COMPANY
		34229	2012-07-13	2012-08-12	109,8	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	4006950	2013-05-27	2013-06-17	3 832,53	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	100855	2013-06-04	2013-06-25	97 640,94	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	4006980	2013-06-04	2013-06-25	2 788,33	NBSR
CRUDE FSC MAY	Crude FSC MAY	60815	2013-06-10	2013-07-10	38 227,95	NBSR
CRUDE	CRUDE MAY	60816	2013-06-10	2013-07-10	478 950,00	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	100864	2013-06-11	2013-07-02	70 639,59	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	400712	2013-06-11	2013-07-02	1 561,82	NBSR
	2012 FSC UNBILLED	60820	2013-06-14	2013-07-14	133 246,06	NBSR
	2013 UNBILLED FSC	60821	2013-06-14	2013-07-14	67 396,20	NBSR
railinc #2573	railinc# 2573	60830	2013-06-14	2013-07-14	1 890,53	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	100848	2013-06-24	2013-07-15	58 227,45	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	100862	2013-06-24	2013-07-15	95 731,92	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	4006920	2013-06-24	2013-07-15	1 075,92	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	100868	2013-07-02	2013-07-23	116 742,72	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	100870	2013-07-02	2013-07-23	98 901,14	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	400714	2013-07-02	2013-07-23	10 057,82	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	400715	2013-07-02	2013-07-23	23,25	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	400720	2013-07-02	2013-07-23	8 431,80	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	400721	2013-07-02	2013-07-23	15,5	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	100873	2013-07-03	2013-07-24	58 813,33	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	400724	2013-07-03	2013-07-24	5 349,16	NBSR
MMA CRUDE	MMACRU	100880	2013-07-08	2013-08-07	783 990,00	NBSR
MMA CRUDE	MMACRU	400728	2013-07-08	2013-08-07	59 960,88	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	100882	2013-07-09	2013-07-30	68 579,70	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	400732	2013-07-09	2013-07-30	5 466,19	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	100884	2013-07-18	2013-08-08	19 900,00	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	400735	2013-07-18	2013-08-08	1 463,20	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	400736	2013-07-18	2013-08-08	7,75	NBSR
#2602	#2602	61241	2013-07-22	2013-08-21	61,74	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	100887	2013-07-22	2013-08-12	21 900,00	NBSR
MMA CRUDE	MMACRU	100888	2013-07-22	2013-08-21	196 230,00	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	400739	2013-07-22	2013-08-12	1 708,90	NBSR
MMA CRUDE	MMACRU	400740	2013-07-22	2013-08-21	15 134,70	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	100889	2013-07-25	2013-08-15	13 940,00	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	400741	2013-07-25	2013-08-15	1 123,62	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	400731	2013-07-29	2013-08-19	7,75	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	100894	2013-07-31	2013-08-21	18 595,00	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	400746	2013-07-31	2013-08-21	1 489,42	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	100892	2013-08-01	2013-08-22	1 680,00	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	400744	2013-08-01	2013-08-22	245,7	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	100899	2013-08-06	2013-08-27	9 950,00	NBSR
MONTREAL MAINE ATLANTIC RR	MMA	400750	2013-08-06	2013-08-27	731,6	NBSR
					<b>\$2 571 819,91</b>	
(less) \$304,733\$* x 1.0348 = 315,337.71					<b>-\$315 337,71</b>	

TOTAL: \$2 256 482,20

\* This amount was deducted from the Creditor's claim pursuant to the Order Approving Compromise and Settlement Agreement with Irving Paper Limited, Irving Pulp and Paper Limited and J.D. Irving, Limited (doc #495) entered on December 13, 2013.



**Lindsay K. Zahradka**

**From:** Lepene, Alan <Alan.Lepene@thompsonhine.com>  
**Sent:** Wednesday, March 22, 2017 4:05 PM  
**To:** Lindsay K. Zahradka  
**Cc:** Bob Keach; Keith Cunningham; Henderson, James  
**Subject:** Keach v. NBSR and MNR  
**Attachments:** SKMBT\_42113050311230.pdf



Lindsay,

I am forwarding copies of the below e-mails and the attached responsive to your document request. Assuming you want to use this as an exhibit, we'll make a hard copy, without this message to you, for use at the depositions.

Alan  
216-566-5520  
216-440-4172 (cell)

---

**From:** Gardner, M. Donald [<mailto:mdgardner@mmarail.com>]  
**Sent:** Friday, May 03, 2013 12:40 PM  
**To:** Ellis, Ryan  
**Subject:** RE: Cash Swap

Ryan  
We are upside down by \$250,000 with the paper payments. But I will send the full oil payment and then pay the items checked off on the attached once I receive the \$650,000.  
This will get us pretty close to even. I hope that the payments have been started or we might not see anything until Wednesday.  
Thanks.

*Don*

**M. Donald Gardner, Jr.**  
*VP Finance & Administration and CFO  
Montreal, Maine & Atlantic Railway  
15 Iron Road  
Hermon, ME 04401  
Ph. 207.848.4203  
Fx. 207.848.4349*



---

**From:** Ellis, Ryan [<mailto:Ellis.Ryan@NBSouthern.com>]  
**Sent:** Friday, May 03, 2013 11:34 AM  
**To:** Gardner, M. Donald  
**Subject:** RE: Cash Swap

Any chance on getting all of the crude on Monday?

Also, would you be able to send me a listing of what is included in the \$449k. I'd like to complete a quick reconciliation of our account to make sure you aren't missing invoices.

Thanks,  
Ryan

---

**From:** Gardner, M. Donald [<mailto:mdgardner@mmarail.com>]  
**Sent:** Friday, May 03, 2013 12:25 PM  
**To:** Ellis, Ryan  
**Subject:** RE: Cash Swap

Ryan  
I would have \$449,000 out of here, \$372,000 to NBSR and 77,000 to MNR.  
About \$600,000 of the oil will come on Monday, the balance at the end of the swap if that works.

**Don**

**M. Donald Gardner, Jr.**  
*VP Finance & Administration and CFO*  
*Montreal, Maine & Atlantic Railway*  
15 Iron Road  
Hermon, ME 04401  
Ph. 207.848.4203  
Fx. 207.848.4349



---

**From:** Ellis, Ryan [<mailto:Ellis.Ryan@NBSouthern.com>]  
**Sent:** Friday, May 03, 2013 10:26 AM  
**To:** Gardner, M. Donald  
**Subject:** RE: Cash Swap

Hi Don,  
I have approx. \$650,000 approved and ready to go from my end. Please confirm how much you will be paying and we can get this swap started. Also, can you please confirm the timing on the Crude oil payment. I hoping we might see it on Monday.

Thanks,  
Ryan

---

**From:** Gardner, M. Donald [<mailto:mdgardner@mmarail.com>]  
**Sent:** Tuesday, April 30, 2013 12:14 PM  
**To:** Ellis, Ryan  
**Subject:** RE: Cash Swap

Here is the attachment.

**Don**

**M. Donald Gardner, Jr.**

VP Finance & Administration and CFO  
Montreal, Maine & Atlantic Railway  
15 Iron Road  
Hermon, ME 04401  
Ph. 207.848.4203  
Fx. 207.848.4349



---

**From:** Gardner, M. Donald  
**Sent:** Friday, April 26, 2013 2:49 PM  
**To:** Ellis, Ryan  
**Subject:** Cash Swap

Ryan

Attached is a new summary through today. There appear to be some heavier shipments.

Hopefully, we can put another swap together early in the week.

Thanks and have a good weekend.

*Don*

**M. Donald Gardner, Jr.**  
VP Finance & Administration and CFO  
Montreal, Maine & Atlantic Railway  
15 Iron Road  
Hermon, ME 04401  
Ph. 207.848.4203  
Fx. 207.848.4349



Accounts Payable Aged Invoice Report  
Sorted by Vendor Number  
Open Invoices - Aged by Invoice Date - As of 5/3/2013

MONTREAL, MAINE & ATLANTIC RAILWAY (MMA)

Vendor Number/ Invoice Number	Dates		Discount	Hold	Invoice Balance	Discount Amount	Current	30 Days	60 Days	90 Days	120 Days	Retention Balance
	Invoice	Due										
MAI5311 Maine Northern Railway												
Company Code: MMA MONTREAL, MAINE & ATLANTIC RAILWAY												
200129	3/2/2013	4/16/2013		No	3,552.00	0.00	0.00	0.00	0.00	3,552.00	0.00	0.00
200130	3/2/2013	4/16/2013		No	3,386.25	0.00	0.00	0.00	0.00	3,386.25	0.00	0.00
200131	4/6/2013	5/21/2013		No	1,138.85	0.00	1,138.85	0.00	0.00	0.00	0.00	0.00
200132	4/6/2013	5/21/2013		No	26,146.64	0.00	26,146.64	0.00	0.00	0.00	0.00	0.00
200133	3/9/2013	4/23/2013		No	5,083.10	0.00	0.00	5,083.10	0.00	0.00	0.00	0.00
200134	3/9/2013	4/23/2013		No	42,587.43	0.00	0.00	42,587.43	0.00	0.00	0.00	0.00
200135	3/16/2013	4/30/2013		No	7,306.80	0.00	0.00	7,306.80	0.00	0.00	0.00	0.00
200136	3/16/2013	4/30/2013		No	13,534.08	0.00	0.00	13,534.08	0.00	0.00	0.00	0.00
200137	3/23/2013	5/7/2013		No	3,995.00	0.00	0.00	3,995.00	0.00	0.00	0.00	0.00
200138	3/23/2013	5/7/2013		No	19,564.02	0.00	0.00	19,564.02	0.00	0.00	0.00	0.00
200139	3/30/2013	5/14/2013		No	851.40	0.00	0.00	851.40	0.00	0.00	0.00	0.00
200140	3/30/2013	5/14/2013		No	12,370.44	0.00	0.00	12,370.44	0.00	0.00	0.00	0.00
200141	4/13/2013	5/28/2013		No	9,117.85	0.00	9,117.85	0.00	0.00	0.00	0.00	0.00
200142	4/13/2013	5/28/2013		No	19,813.07	0.00	19,813.07	0.00	0.00	0.00	0.00	0.00
500055	2/16/2013	4/2/2013		No	670.15	0.00	0.00	0.00	670.15	0.00	0.00	0.00
500057	2/23/2013	4/9/2013		No	490.10	0.00	0.00	0.00	490.10	0.00	0.00	0.00
500058	3/2/2013	4/16/2013		No	460.20	0.00	0.00	0.00	460.20	0.00	0.00	0.00
500059	4/6/2013	5/21/2013		No	115.70	0.00	115.70	0.00	0.00	0.00	0.00	0.00
500060	3/9/2013	4/23/2013		No	874.90	0.00	0.00	874.90	0.00	0.00	0.00	0.00
500061	3/16/2013	4/30/2013		No	807.95	0.00	0.00	807.95	0.00	0.00	0.00	0.00
500062	3/23/2013	5/7/2013		No	943.15	0.00	0.00	943.15	0.00	0.00	0.00	0.00
500063	3/30/2013	5/14/2013		No	456.30	0.00	0.00	456.30	0.00	0.00	0.00	0.00
500064	4/13/2013	5/28/2013		No	1,278.55	0.00	1,278.55	0.00	0.00	0.00	0.00	0.00
Vendor MAI5311 Totals:					174,543.93	0.00	57,610.66	108,374.57	8,558.70	0.00	0.00	0.00
Report Totals:					174,543.93	0.00	57,610.66	108,374.57	8,558.70	0.00	0.00	0.00

68,571.41

Accounts Payable Aged Invoice Report  
Sorted by Vendor Number  
Open Invoices - Aged by Invoice Date - As of 5/3/2013

Montreal, Maine & Atlantic Canada (MCC)

Vendor Number/ Invoice Number	Dates		Discount	Hold	Invoice Balance	Discount Amount	Current	30 Days	60 Days	90 Days	120 Days	Retention Balance
	Invoice	Due										
NEW0020 NEW BRUNSWICK SOUTHERN												
Company Code: MCC Montreal, Maine & Atlantic Canada												
*** Vendor On Hold ***												
100796	3/4/2013	3/25/2013		Yes	108,816.13	0.00	0.00	0.00	108,816.13	0.00	0.00	0.00
100800	3/2/2013	3/25/2013		Yes	82,218.13	0.00	0.00	0.00	82,218.13	0.00	0.00	0.00
100807	3/9/2013	4/15/2013		Yes	111,797.88	0.00	0.00	111,797.88	0.00	0.00	0.00	0.00
100811	3/16/2013	4/15/2013		Yes	69,659.53	0.00	0.00	69,659.53	0.00	0.00	0.00	0.00
100814	3/23/2013	4/15/2013		Yes	58,949.60	0.00	0.00	58,949.60	0.00	0.00	0.00	0.00
100818	3/30/2013	5/1/2013		Yes	96,999.73	0.00	0.00	96,999.73	0.00	0.00	0.00	0.00
400570	12/13/2012	1/3/2013		Yes	0.15	0.00	0.00	0.00	0.00	0.00	0.00	0.00
400650	3/23/2013	4/15/2013		Yes	2,119.78	0.00	0.00	2,119.78	0.00	0.00	0.15	0.00
400654	3/30/2013	5/1/2013		Yes	2,672.68	0.00	0.00	2,672.68	0.00	0.00	0.00	0.00
60069	4/15/2013	5/2/2013		Yes	810,030.00	0.00	810,030.00	0.00	0.00	0.00	0.00	0.00
60070	4/15/2013	5/2/2013		Yes	62,572.64	0.00	62,572.64	0.00	0.00	0.00	0.00	0.00
Vendor NEW0020 Totals:					1,405,836.25	0.00	872,602.64	342,199.20	191,034.26	0.00	0.15	0.00
Report Totals:					1,405,836.25	0.00	872,602.64	342,199.20	191,034.26	0.00	0.15	0.00

650  
480  
449,561.78  
191,034.26  
21.67



## IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Walter Energy Canada Holdings, Inc. (Re)*,  
2017 BCSC 709

Date: 20170501  
Docket: S1510120  
Registry: Vancouver

***In the Matter of the Companies' Creditors Arrangement Act,***  
**R.S.C. 1985, c. C-36 as Amended**

**And**

***In the Matter of the Business Corporations Act,***  
**S.B.C. 2002, c. 57, as Amended**

**And**

**In the Matter of a Plan of Compromise or Arrangement of Walter Energy  
Canada Holdings, Inc. and the Other Petitioners Listed on Schedule "A"**

The text of the judgment was corrected on page 2 and in paragraph 5 on May 5,  
2017.

Before: The Honourable Madam Justice Fitzpatrick

### **Reasons for Judgment**

Counsel for the Petitioners:

M. Paterson  
M.I.A. Buttery  
P. Riesterer  
M.A. Rowe  
K. Sachar



Counsel for United Mine Workers of America  
1974 Pension Plan and Trust:

C. Dennis, Q.C.  
J. Sandrelli  
T. Jeffries  
O. James

Counsel for the United Steelworkers, Local 1-  
424:

C.D. Bavis  
J. Sanders

Counsel for KPMG Inc., Monitor:

P.J. Reardon

Place and Date of Hearing:

Vancouver, B.C.  
January 9-13, 16, 18-20, 2017

Place and Date of Written Reasons:

Vancouver, B.C.  
May 1, 2017

**I INTRODUCTION..... 3**

**II PROCEDURAL BACKGROUND..... 4**

**III ISSUES..... 6**

**IV IS A SUMMARY HEARING APPROPRIATE?..... 6**

**V BACKGROUND FACTS..... 11**

(1) The Walter Energy Group and U.S. Operations..... 14

(2) Acquisition leading to Creation of Walter Canada Group ..... 14

(3) Walter Resources and the 1974 Plan ..... 16

(4) Walter Canada Group Corporate Structure ..... 18

(5) The U.S. Chapter 11 Proceedings..... 19

(6) Estimated Recoveries..... 22

**VI ERISA’S PROVISIONS..... 22**

**VII THE CHOICE OF LAW QUESTION ..... 25**

(1) What is the Characterization of the 1974 Plan’s Claim? ..... 27

(2) What Choice of Law Rule Applies? ..... 44

**VIII THE SECOND AND THIRD QUESTIONS..... 51**

**IX CONCLUSION..... 51**

2017 BCSC 709 (CanLII)

**I INTRODUCTION**

[1] These are proceedings brought by the petitioners pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “CCAA”). The petitioner companies are part of what I will describe as the “Walter Canada Group” which includes other entities, as I will discuss below.

[2] This application is brought by the Walter Canada Group to determine the validity of a claim filed in these proceedings by the UMWA 1974 Pension Plan and Trust (the “1974 Plan”).

[3] The 1974 Plan’s claim is asserted as a liability of the Walter Canada Group based on the provisions of U.S. legislation, namely the *Employee Retirement and Income Security Act of 1974*, 29 U.S.C. § 1001, as amended (“ERISA”). The amount of the claim arises from certain unfunded pension liabilities owed to former

employees of a U.S. entity within the larger international Walter Energy Group. For context, the Walter Canada Group is the Canadian part of the international “Walter Energy Group”. *ERISA* is sometimes referred to as “long arm” legislation in that the 1974 Plan asserts that this U.S. legislation applies to the Walter Canada Group even though they were all Canadian corporations or entities conducting their mining businesses only in Canada and not in the U.S.

[4] As far as I’m aware, and all counsel agree on this point, this is the first time that a Canadian court will have considered whether *ERISA* applies in Canada and in these circumstances. It also appears to be the case that no U.S. court has yet considered whether *ERISA* applies to entities outside of the U.S.

[5] The 1974 Plan’s claim is extremely large - approximately \$1.25 billion. If the 1974 Plan’s claim is valid, it will swamp all other valid claims that have been filed in the estate against the Walter Canada Group. The result would be that the vast majority of the realizations from the estate assets - estimated by mid-2017 to be approximately \$63 million - would be paid to the 1974 Plan and not in respect of the claims of other creditors. These other creditors include the Walter Canada Group’s former employees, which in turn include union members represented by the United Steelworkers, Local 1-424 (the “Union”), to whom substantial amounts are owed.

## **II PROCEDURAL BACKGROUND**

[6] The Claims Process Order that was granted on August 16, 2016 (see *Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 1746 at paras. 86-87) put in place a specific claims process designed to address the 1974 Plan’s claim. Pursuant to the Claims Process Order, and with the objective of clarifying the issues as between the parties, the 1974 Plan filed a notice of civil claim on August 26, 2016 in this action. Responsive pleadings were filed by the Walter Canada Group and the Union shortly thereafter.

[7] Paragraph 30 of the Claims Process Order provided that, upon the filing of the pleadings, the 1974 Plan’s claim was to be adjudicated by the Court “under a procedure to be determined more fully by subsequent Order of this Court”.

[8] There were various disagreements between the Walter Canada Group, the Union and the 1974 Plan as to whether pre-hearing discovery procedures were required or necessary prior to a determination of certain preliminary issues raised by the Walter Canada Group. Since at least the fall of 2016, the 1974 Plan has taken the position that it is inappropriate to determine these preliminary issues on a summary basis without allowing it to conduct discovery of the Walter Canada Group.

[9] This disagreement led the Monitor to apply for directions on the procedure to adjudicate the 1974 Plan's claim, as was expressly directed under paragraph 31 of the Claims Process Order. I denied the oral and document discovery sought by the 1974 Plan arising from two hearings: firstly, on October 26, 2016 (*Walter Energy Canada Holdings, Inc. (Re)*) (Unreported; October 26, 2016) and secondly, on November 28/December 2, 2016 (*Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 2470). Those decisions were made in light of the Walter Canada Group's position that the preliminary issues could be resolved on a summary basis, consistent with the legislative objective under the CCAA to determine claims in that manner.

[10] After the October 26, 2016 hearing, the parties agreed to a Case Plan Order which set out various deadlines for the delivery of the applications and responses, evidence and written arguments, all in advance of the January 2017 hearing.

[11] In November 2016, the Walter Canada Group filed their application for a summary hearing to decide these issues. Although described as a "summary hearing", the nature of the hearing can be described as a hybrid one. In addition to the pleadings, applications and responses, the evidence before the Court consisted of various affidavits, the Walter Canada Group's notice to admit and the 1974 Plan's response to the notice to admit. In addition, as the answer to one of the issues - namely, whether *ERISA* applies extr territorially to the Walter Canada Group - is a matter of U.S. law, the Walter Canada Group and the 1974 Plan both filed expert reports from U.S. attorneys. All three of these experts were cross examined on their reports at this hearing.

### **III ISSUES**

[12] The Walter Canada Group seeks the following declaratory relief:

- a) under Canadian conflict of laws rules, the 1974 Plan's claim as against the Walter Canada Group is governed by Canadian substantive law and not U.S. substantive law (including *ERISA*);
- b) in the alternative, if the 1974 Plan's claim against the Walter Canada Group is governed by U.S. substantive law (including *ERISA*), then as a matter of U.S. law, "controlled group" liability for withdrawal liability related to a multiemployer pension plan under *ERISA* does not extend extraterritorially; and
- c) in the further alternative, if the 1974 Plan's claim against the Walter Canada Group is governed by U.S. substantive law (including *ERISA*), and *ERISA* applies extraterritorially, that law is unenforceable in Canada because it conflicts with Canadian public policy.

[13] It is common ground that if the Walter Canada Group succeeds on any one of the above arguments, the 1974 Plan's claim is not a valid claim against the estate. While I have referred to the arguments below as that of the Walter Canada Group, I have considered the similar arguments advanced by the Union even if they are not specifically referenced as such.

### **IV IS A SUMMARY HEARING APPROPRIATE?**

[14] The 1974 Plan argues that the hearing should not proceed summarily and has brought a cross application to dismiss the Walter Canada Group's application. Consistent with Rule 9-7 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 (the "*Rules*") regarding summary trials, the 1974 Plan argues:

- a) the matter is not suitable for a summary hearing: Rule 9-7(11)(b)(i);
- b) a summary hearing on the preliminary issues will not assist in the efficient resolution of the validity of its claim: Rule 9-7(11)(b)(ii);

- c) the Court will be unable to find the necessary facts to determine the issues: Rule 9-7(15)(a)(i);
- d) the Court should find it unjust to determine the preliminary issues in the circumstances: Rule 9-7(15)(a)(ii); and
- e) the Walter Canada Group is “litigating in slices” by attempting to obtain a decision on only some of the issues.

[15] The CCAA mandates that any dispute about claims will be determined, if possible, in a summary manner. Specifically, the CCAA provides for a summary determination of the validity of a disputed unsecured claim, such as that asserted here by the 1974 Plan:

**Determination of amount of claims**

20 (1) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor is to be determined as follows:

(a) the amount of an unsecured claim is the amount

...

(iii) in the case of any other company, proof of which might be made under the *Bankruptcy and Insolvency Act*, but if the amount so provable is not admitted by the company, the amount is to be determined by the court on summary application by the company or by the creditor;

[Emphasis added]

[16] The requirement for a summary determination of claims in a CCAA proceeding is similar to that found in the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3: see *San Juan Resources Inc. (Re)*, 2009 ABQB 55 at para. 30. Both recognize the need to determine claims as quickly as possible to allow for a timely distribution to creditors, as creditors will suffer more prejudice if there is delay in receipt of whatever recovery they can expect from an insolvent estate. In addition, proceeding by summary application respects the need to resolve claims without undue cost, which would exacerbate the already insolvent circumstances and lessen the recovery of the parties.

[17] Other than directing a “summary” determination of the issue, the CCAA provides no further guidance as to how a claim is to be determined. In this legislative vacuum, courts across Canada have drawn upon their statutory jurisdiction under the CCAA to fashion a process to do just that. This typically takes the form of a claims process order, as was granted in this proceeding on August 16, 2016.

[18] There was agreement that the process typically found in a claims process order, allowing for review by the monitor and a revision/disallowance process, was not appropriate in these circumstances. The 1974 Plan’s claim raised unique issues and it was recognized early in these proceedings that a resolution of that claim would likely require a more complex procedure.

[19] There are examples where the courts in CCAA proceedings have fashioned a process that was “summary” in the sense of not requiring full pre-trial and trial procedures, but still allowed for certain appropriate pre-hearing steps.

[20] A similar issue was before the Court in the CCAA proceedings in *Pine Valley Mining Corporation (Re)*, 2008 BCSC 356. A substantial claim had been advanced and the Court addressed how the claim should be resolved and the format of the summary trial. Justice Garson (as she then was) said:

[16] The second issue I have been asked to determine is the question of the format of this trial. Section 12 of the CCAA [now s. 20] requires a summary trial. I recognize that in some cases, courts have held that that does not preclude a conventional trial. (See *Algoma Steel Corporation v. Royal Bank of Canada* (1992), 8 O.R. (3d) 449 (C.A.). I do not understand Mr. McLean to object in principle to an order that this matter be determined in a summary way but, rather, I think he reserves his right to object to the suitability of such a procedure depending on how the evidence unfolds. It is my view that s.12 [now s. 20] of the CCAA informs any decision the court must make as to the format of a trial and that trial must surely be as the section dictates, a summary trial, unless to do otherwise would be unjust, or there is some other compelling reason against a summary trial. I am not persuaded that this claim cannot be tried summarily on the date reserved in May of this year. The parties have one week to work out an agreement as to a time line for the necessary steps to prepare for that trial, including the exchange of pleadings, disclosure of documents as requested by Tercon, agreed facts, delivery of affidavits, expert reports (including notice of reliance on all or part of the Monitor’s reports), delivery and responses to notices to admit, examination for discovery if consented to, and delivery of written arguments. I acknowledge that many of these steps are underway.

[17] ... Either party has leave to apply to cross-examine the deponent of an affidavit out of court or in court. Either party has leave to apply to convert this summary trial to a conventional trial but I expect the parties to make their best efforts to manage this generally as a summary trial.

[Emphasis added]

[21] Similarly, in *Jameson House Properties Ltd. (Re)*, 2011 BCSC 965 at paras. 13-14, Justice Adair departed from the strict terms of a claims process order and ordered the filing of pleadings and oral discovery after the filing of affidavits. An agreed statement of facts was also later filed although some facts remained in dispute. At para. 15, the Court stated that it was approaching the summary hearing as in a conventional trial; in other words, if the party bearing the onus of proof failed to establish the necessary facts, that party's case would fail.

[22] In *Coast Capital Savings Credit Union v. The Symphony Development Corp.*, 2011 BCSC 333 at paras. 23-27, the Court referred to a "principled" approach to the determination of claims, albeit in a receivership context, which respected the summary claims process while also ensuring that the claim was adjudicated in a just manner.

[23] Accordingly, although the CCAA requires that, presumptively, claims be determined on a summary basis, the court has the discretion to order another procedure where it is appropriate. That other procedure may, but will not usually, involve a full trial procedure. One possible approach is to conduct a hybrid hearing, such as occurred here.

[24] Needless to say, the exercise of the court's discretion will be guided by the statutory objectives of the CCAA toward a timely and inexpensive resolution of claims and distribution to creditors, while also ensuring that the determination of claims is made in a manner that is just and fair to all the stakeholders, including the debtor company, the claimant and other creditors: *0487826 B.C. Ltd. (Re)*, 2012 BCSC 1501 at para. 38. These objectives are consistent with Rule 1-3(1) which states that the object of the *Rules* is to secure the "just, speedy and inexpensive determination of every proceeding on its merits". These objectives are also



consistent with the Supreme Court of Canada's recent exhortation to the legal profession and the courts to embrace more summary forms of adjudication where appropriate, as found in *Hryniak v. Mauldin*, 2014 SCC 7.

[25] In exercising the court's discretion to move beyond a pure summary determination in accordance with s. 20 of the CCAA, factors to be considered by the court will vary from case to case depending on the circumstances, but may include: the nature and complexity of the claim or issues arising; the amount in issue; the nature of the evidence (including whether credibility is in issue); the importance of the claim to the creditor and the estate; the cost and delay of further procedures; and what prejudice, if any, may arise from a summary hearing.

[26] There is no "one size fits all" solution as to how any claim can be determined; ideally, the answer will no doubt be driven by the willingness of the parties to streamline the process and the creativity of the parties, and their counsel, in fashioning an efficient and expeditious means of obtaining the necessary evidence to put before the court. If agreement can't be reached, then it will fall to the court to consider the issue.

[27] Procedural issues that may be considered include:

- a) whether pre-trial oral or document discovery is truly necessary and if so, whether limits can be put on such discovery;
- b) whether affidavits should be filed as opposed to *viva voce* evidence at a full trial;
- c) whether cross-examinations on affidavits or expert reports are necessary and whether that can be done ahead of the hearing or at the hearing itself;
- d) whether timelines for delivery of materials, such as affidavits, or any pre-hearing procedures, can be fixed so to expedite the determination of the issues;

- e) whether other means of establishing the evidentiary record can be ordered, such as through notices to admit, agreed statement of facts and common documents so as to minimize or eliminate any conflict as to the facts; and
- f) whether written arguments can be exchanged in advance of the hearing.

[28] The 1974 Plan continues to take the position that the issues raised in the Walter Canada Group's application cannot and should not be determined at this hearing without providing it the opportunity to undertake the discovery that it earlier sought. It specifically seeks to examine William G. Harvey, the former executive vice-president and chief financial officer of the Canadian holding company within the Walter Canada Group, who was also the person who gave evidence in support of the initial CCAA filing. That evidence was accepted by this Court and various orders were made based on that evidence.

[29] In substance, the 1974 Plan advocated for a reversal of what I consider to be the proper approach (and onus) here, as discussed above. The 1974 Plan submits that a full trial is required, unless the Walter Canada Group can successfully argue in favour of abbreviated procedures. Consistent with its goal of embarking upon a full scale litigation process, the 1974 Plan prepared its list of documents dated December 23, 2016. The Walter Canada Group has not yet provided any discovery, either oral or documentary.

[30] I intend to address the 1974 Plan's objection to the lack of discovery from the Walter Canada Group in the context of the individual issues discussed below. It will suffice at this point to note that I reject the approach advocated by the 1974 Plan, although I will consider its arguments in the context of the relevant and material evidence needed to decide the issues raised on this application.

## **V BACKGROUND FACTS**

[31] In support of its overall position that this summary hearing is inappropriate, the 1974 Plan has steadfastly refused to admit to most facts as proposed by the

Walter Canada Group. It insists on what it calls “trial quality” evidence on all issues and says that there remain “disputed facts” which are relevant to the determination of these issues, principally relating to the degree of integration between the Walter Canada Group and the entities within the U.S. arm of the Walter Energy Group.

[32] The stridency of this position is particularly puzzling given the 1974 Plan’s refusal to acknowledge even its own “facts” and documents, as found in its evidence filed in the course of this proceeding.

[33] The 1974 Plan has shown absolutely no willingness to consider and co-operate in the development of a streamlined process which would have allowed the Walter Canada Group to put what I consider uncontroversial facts before the court. The more extreme examples of this obdurate position are found in the 1974 Plan’s refusal to admit that: the Canadian mine operations and assets in this jurisdiction were governed by Canadian and British Columbian environment and mining legislation; and, that the Walter Canada Group’s relationship with its Canadian employees (both unionized and non-unionized) were governed by Canadian and British Columbian labour and employment laws. To suggest otherwise is a confounding proposition and needless to say, the 1974 Plan never did explain how it could not be so. The 1974 Plan would only admit that the mines were located in British Columbia and that the Walter Canada Group employed persons working in British Columbia, matters that were in evidence at the beginning of this proceeding and as I said, uncontroversial.

[34] The 1974 Plan has raised virtually every possible objection toward blocking a summary or even hybrid hearing on these preliminary issues, presumably toward the end game of avoiding this hearing and engaging in an extensive and expensive full-scale litigation process with corresponding discovery. In my view, the objections of the 1974 Plan can more accurately be described as angling for a “fishing expedition” so as to search for facts that may conceivably provide some basis for their claim.

[35] I would also note that the 1974 Plan appears to have made no effort to obtain what it describes as relevant evidence from various U.S. sources, including speaking

to Mr. Harvey and also obtaining documentation in the hands of the U.S. debtors within the Walter Energy Group: see *Tassone v. Cardinal*, 2014 BCCA 149 at paras. 38-39. As such, the 1974 Plan has not provided any foundation upon which to argue that further relevant facts may exist in order to prove its claim.

[36] I have concluded that the approach advocated by the 1974 Plan is neither warranted nor appropriate in the circumstances and I am exercising my discretion to proceed otherwise.

[37] Accordingly, I have taken the facts from various sources: the facts asserted by the 1974 Plan which are admitted or which are not contested by the Walter Canada Group or the Union for the purpose of this application; evidence filed by the 1974 Plan in these proceedings generally or in direct response to this application; and, what I consider to be the uncontroverted facts introduced by the Walter Canada Group in its evidence in this proceeding which have been the foundation for numerous orders granted by me. I also rely on the findings in my earlier reasons for judgment in these proceedings (including *Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 107; 2016 BCSC 1413; 2016 BCSC 1746); and, evidence introduced in other proceedings before this court and filed in this action. See *Petrelli v. Lindell Beach Holiday Resort Ltd.*, 2011 BCCA 367 at paras. 36-37; *British Columbia (Attorney General) v. Malik*, 2011 SCC 18 at paras. 46-48.

[38] In my view, there is little, if any, controversy about the following facts which are more accurately described as simply background facts.

[39] Below are my findings of fact. It will become clear from the analysis below that most of the following background facts only provide context for the specific determination of the issues raised by the Walter Canada Group. I will also address any further facts relevant to the analysis in the separate discussion of the issues.

### **(1) The Walter Energy Group and U.S. Operations**

[40] The Walter Energy Group operated its international coal production and export business in two distinct segments: (a) the U.S. operations, and (b) the Canadian and United Kingdom (U.K.) operations.

[41] The parent corporation of all of entities within the Walter Energy Group is Walter Energy, Inc. (“Walter Energy U.S.”), which is a public company incorporated under the laws of Delaware and headquartered in Birmingham, Alabama. The U.S. coal mining operations of the Walter Energy Group were conducted in Alabama and West Virginia through a variety of U.S. corporations.

[42] The Walter Energy Group’s U.S. entities included a wholly owned subsidiary of Walter Energy U.S., Jim Walter Resources, Inc. (“Walter Resources”). Walter Resources was incorporated in Alabama and conducted its coal production business in Alabama.

### **(2) Acquisition leading to Creation of Walter Canada Group**

[43] Before 2011, Walter Energy U.S. did not have any operations or subsidiaries in Canada or the U.K.

[44] In October 2010, Walter Energy U.S. and Western Coal Corp. (“Western”) began negotiating the acquisition of Western’s coal mining operations in British Columbia, the U.K. and the U.S. (the “Western Acquisition”).

[45] Walter Energy U.S. publicly announced the Western Acquisition in November 2010, when Walter Energy U.S. issued a press release and filed both the press release and a Form 8-K with the SEC on its publicly available EDGAR system. The press release referred to Walter Energy U.S.’s intention to complete a “business combination” with Western.

[46] In December 2010, Walter Energy U.S. announced that (admitted for the purpose of these statements having only been made, and not for the truth of the contents):

- a) it had entered into an arrangement agreement with Western whereby Walter Energy U.S. would acquire all of the outstanding common shares of Western;
- b) the “transaction will be implemented by way of a court-approved plan of arrangement under British Columbia law”; and
- c) in connection with the arrangement, Walter Energy U.S. intended to borrow \$2.725 million of senior secured credit facilities, “the proceeds of which will be used (i) to fund the cash consideration for the transaction, (ii) to pay certain fees and expenses in connection with the transaction, (iii) to refinance all existing indebtedness of the Company and Western Coal and their respective subsidiaries and (iv) to provide for the ongoing working capital of [Walter Energy U.S.] and its subsidiaries”.

[47] On March 9, 2011, Walter Energy U.S. incorporated Walter Energy Canada Holdings, Inc. (“Canada Holdings”) and became its sole shareholder. Canada Holdings was incorporated specifically to hold the shares of Western and therefore, indirectly, its subsidiaries.

[48] On March 10, 2011, Justice McEwan of this Court approved the proposed plan of arrangement through which the Western Acquisition was accomplished.

[49] On April 1, 2011, Canada Holdings acquired all outstanding common shares of Western for an estimated total consideration of approximately US\$3.7 billion.

[50] After completing the Western Acquisition, the Walter Energy Group engaged in a series of internal restructurings to rationalize operations and organize the Walter Energy Group into geographical business segments: the Walter U.S. group, the Walter Canada Group and the Walter U.K. Group. As a result, the U.S. assets previously held by Western were transferred from Canada Holdings to Walter Energy U.S. and no longer formed part of the Canadian assets.

### **(3) Walter Resources and the 1974 Plan**

[51] The 1974 Plan is a pension plan and irrevocable trust established in 1974 in accordance with section 302(c)(5) of the *Labour Management Relations Act of 1947*, 29 U.S.C. § 186(c)(5). It is a multiemployer, defined benefit pension plan under section 3(2), (3), (35), (37)(A) of *ERISA*.

[52] The 1974 Plan is resident in Washington, D.C. and administered there. The trustees are resident in the U.S. and all participating employers in the 1974 Plan are resident in the U.S.

[53] The 1974 Plan was established pursuant to a collectively bargained National Bituminous Coal Wage Agreement of 1974 negotiated between the United Mine Workers of America and the Bituminous Coal Operators' Association, Inc., a multiemployer bargaining association. This agreement has been amended from time to time since 1974.

[54] *ERISA* requires that the 1974 Plan be administered in accordance with the most recently negotiated collective bargained agreement and other related documentation, such as the pension plan document and pension trust document. These documents set out, among other things, the contribution obligations of contributing employers to the 1974 Plan, which include:

- a) monthly pension contributions for as long as there were operations covered by the 1974 Plan; and
- b) a "withdrawal liability" accruing upon a partial or complete withdrawal from participation in the 1974 Plan.

[55] The participants and beneficiaries in the 1974 Plan are retired or disabled former hourly coal production employees and their eligible surviving spouses. There are approximately 88,000 such participants and beneficiaries.

[56] All signatories to the collective bargaining agreements are "participating employers". All such "participating employers" are resident in the U.S.

[57] Only one of the U.S. entities, namely Walter Resources (or a predecessor entity), was a signatory to various National Bituminous Coal Wage Agreements from 1978 forward and was therefore, a “participating employer” in the 1974 Plan. The last of such agreements signed by Walter Resources was the one negotiated in 2011 (the “2011 CBA”).

[58] No member of the Walter Canada Group is or ever was a signatory to any National Bituminous Coal Wage Agreement, including the 2011 CBA. The 1974 Plan does not suggest that the Walter Canada Group ever contributed to the 1974 Plan; nor does the 1974 Plan suggest that the Walter Canada Group entities had any obligation to contribute to the 1974 Plan.

[59] At the time of the Western Acquisition in 2011, the 1974 Plan had an unfunded liability of more than US\$4 billion. Its status at that time was said to be “Seriously Endangered Status”, meaning that the 1974 Plan’s funded percentage was less than 80%. If Walter Resources had withdrawn from the 1974 Plan around that time, the estimated withdrawal liability was approximately US\$426 million. There is no indication that the 1974 Plan took any position in this court in respect of the Western Acquisition.

[60] Walter Resources and the 1974 Plan entered into the 2011 CBA after the Walter Acquisition was completed.

[61] As with many pension plans, the fortunes of the 1974 Plan (and hence its beneficiaries) have not escaped the brunt of global market forces over the last decade or so. The global financial crisis in 2008/2009 resulted in declining assets held by such plans. In addition, the demographics of an aging population combined with declining coal mining operations (and hence fewer participating employers) have resulted in added financial pressures on less resources. As of September 2015, the 1974 Plan was certified as being in “Critical and Declining Status”, meaning that it is expected to become insolvent by 2025/2026. The 1974 Plan now asserts that the insolvency is expected to occur in six to seven years.



[62] Beyond benefits available to the beneficiaries of the 1974 Plan under these private contractual arrangements, there is some governmental support. A U.S. government sponsored entity, the Pension Benefits Guaranty Corporation, guarantees payment of a portion of the 1974 Plan's benefits, but at a reduced level.

#### **(4) Walter Canada Group Corporate Structure**

[63] All of the Walter Canada Group entities are organized in Canada and for the most part, in British Columbia. The Canadian business operations principally consisted of the operation of three coal mines in British Columbia, being the Brule, Willow Creek and Wolverine mines. These mining properties have since been sold to a purchaser, as approved in these proceedings last year: *Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 1746 at para. 80.

[64] In particular, the petitioner companies, being Walter Canadian Coal ULC and Canada Holdings, with the latter's wholly owned subsidiary corporations, being Wolverine Coal ULC, Brule Coal ULC, Willow Creek Coal ULC, Cambrian Energybuild Holdings ULC (which in turn owns the Walter Energy Group's U.K. assets) and 0541237 BC Ltd., are all incorporated under the laws of British Columbia. The lone exception is Pine Valley Coal Ltd., a company incorporated under the laws of Alberta.

[65] Similarly, the partnerships in the Walter Canada Group, which are wholly owned by Canada Holdings, being Walter Canadian Coal Partnership, Wolverine Coal Partnership, Brule Coal Partnership, and Willow Creek Coal Partnership, are all organized under the laws of British Columbia.

[66] As I earlier noted in my reasons (*Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 107 at para. 4), "[t]he timing of the Canadian acquisition could not have been worse". In 2011, the market for metallurgical coal fell dramatically, affecting operations of the entire Walter Energy Group in the U.S., Canada and the U.K. One can only assume that other coal producers in those jurisdictions, including signatories to the 1974 Plan in the U.S., similarly suffered the same fate and are struggling or have struggled with this economic downturn in the coal industry.

**(5) The U.S. Chapter 11 Proceedings**

[67] On July 15, 2015, Walter Energy U.S. and some or all of its U.S. subsidiaries, including Walter Resources, commenced proceedings under Chapter 11 of Title 11 of the U.S. *Bankruptcy Code* in the U.S. Bankruptcy Court for the Northern District of Alabama (the “Chapter 11 Proceedings”).

[68] On October 8, 2015, the 1974 Plan filed proofs of claim in the Chapter 11 Proceedings against all of the U.S. debtors, including Walter Resources and Walter Energy U.S., claiming what was anticipated to be the withdrawal liability of Walter Resources if it withdrew from the 1974 Plan. It appears to be the case that everyone anticipated that Walter Resources would seek to withdraw from the 1974 Plan through the Chapter 11 Proceedings. The unsecured claim was for not less than approximately US\$904 million.

[69] The Proofs of Claim filed by the 1974 Plan do not refer to any entity within the Walter Canada Group as having any potential liability for this claim.

[70] The U.S. insolvency filing in turn sparked the need for the corporations within the Walter Canada Group to seek creditor protection in Canada.

[71] On December 7, 2015, this Court granted an Initial Order in this proceeding in favour of the petitioners. Protection was also granted in favour of the partnerships (see *Walter Energy Canada Holdings, Inc. (Re)*, 2016 BCSC 107 at para. 3). The Walter Canada Group did not seek recognition of the CCAA Proceedings in the U.S.; similarly, the Walter Energy Group’s U.S. debtors did not seek recognition of the Chapter 11 Proceedings in Canada.

[72] At the time of the Canadian CCAA filing, Mr. Harvey indicated that efforts were underway in the Chapter 11 Proceedings to implement a sales process to sell all of Walter Energy U.S.’s Alabama assets. A stalking horse agreement was part of that sales process, as is typical in those proceedings.

[73] It quickly became apparent to the U.S. stakeholders that the stalking horse purchaser in the Chapter 11 Proceedings had no interest in assuming what the U.S. Bankruptcy Court would later describe as Walter Resources' "legacy and current labour costs", including that owing under the 2011 CBA. The asset purchase agreement later signed by the U.S. debtors and the purchaser expressly provided that the sale was subject to the U.S. Bankruptcy Court issuing an order allowing the U.S. debtors to reject the 2011 CBA, in accordance with the U.S. *Bankruptcy Code* provisions. It is common ground that upon such rejection, the withdrawal liability under the 1974 Plan would arise.

[74] Arising from opposition to the stalking horse process from some factions, including the unsecured creditors committee (the "UCC"), a settlement was reached. On December 22, 2015, the U.S. Bankruptcy Court entered an order approving a Settlement Term Sheet between the Walter Energy group's U.S. debtors, a steering committee, the stalking horse purchaser and the UCC. The Settlement Term Sheet entitles unsecured creditors, which includes the 1974 Plan, to receive 1% of the common equity issued in the stalking horse purchaser on closing, as well as the right to participate in any exit financing. Later documentation filed in March 2016 by the Walter Energy Group's U.S. debtors and the UCC in the Chapter 11 Proceedings confirms that this settlement was intended to establish the extent of any recovery by unsecured creditors, such as the 1974 Plan, from the Chapter 11 estates.

[75] The Walter Canada Group entities were not involved in the Chapter 11 Proceedings and were not parties to the Settlement Term Sheet.

[76] On December 28, 2015, the U.S. Bankruptcy Court granted an order allowing Walter Resources to reject the 2011 CBA, over the objections of labour related stakeholders, including the 1974 Plan. The order (the "1113/1114 Order") authorized Walter Energy U.S. and its U.S. affiliates to reject the 2011 CBA and declared that any sale to the stalking horse purchaser was free and clear of any encumbrance or liabilities under the 2011 CBA. The U.S. Bankruptcy Court also declared that upon

such sale, Walter Resources had no further contribution obligations under the 2011 CBA.

[77] The Walter Canada Group did not participate in the hearing which gave rise to the 1113/1114 Order. The reasons of the U.S. Bankruptcy Court which led to the granting of the 1113/1114 Order do not refer at all to the Walter Canada Group entities or any assets or operations in Canada held by those entities.

[78] The 1974 Plan appealed the 1113/1114 Order, although that appeal was later withdrawn in February 2016. At that time, the 1113/1114 Order became final.

[79] By early January 2016, the 1974 Plan clearly anticipated that Walter Resources' withdrawal from the 2011 CBA was imminent. Around that time, the 1974 Plan began filing materials in these CCAA proceedings asserting that the Walter Canada Group entities were jointly and severally liable for the withdrawal liability under the 1974 Plan.

[80] The sale of the U.S. assets, as approved by the U.S. Bankruptcy Court, closed on April 1, 2016. Accordingly, immediately before that date, all contributions by Walter Resources to the 1974 Plan ceased and the withdrawal liability arose. The 1974 Plan now estimates that the withdrawal liability is in excess of US\$933 million.

[81] The 1974 Plan introduced the evidence of Dale Stover, the Director of Finance and General Services employed with the 1974 Plan. He indicates that by reason of Walter Resources' withdrawal, the status of the 1974 Plan has been further jeopardized even beyond that recognized in September 2015. He indicates that the other employers in the 1974 Plan will be further burdened by this loss.

[82] Despite the extensive proceedings before the U.S. Bankruptcy Court, at no time has that Court expressed any opinion on the validity of the 1974 Plan's claim as asserted in the Chapter 11 Proceedings. In addition, at no time did the U.S. Bankruptcy Court address the ability of the 1974 Plan to assert joint and several liability for the withdrawal liability against the other U.S. debtors. Certainly, that court did not address the core (and second) issue before me on this application; namely,

whether the entities within the Walter Canada Group are liable under *ERISA*'s provisions.

### **(6) Estimated Recoveries**

[83] In my view, the evidence and submissions on this point are substantially irrelevant, and completely irrelevant to the determination of some issues. I understand that the parties all agree as to this irrelevancy although they also all saw fit to ensure that I knew the consequences of a win/loss to each side. Accordingly, to round out the narrative, the consequences arising from this application are as follows.

[84] If the 1974 Plan's claim is found to be invalid as against the Walter Canada Group entities, it is anticipated that all other unsecured claims filed against the Canadian estates will be paid in full, including in relation to substantial amounts (approximately \$12.8 million) owed to the Canadian unionized employees who worked in the British Columbia coal mines. In that event, it is also expected that the remaining funds will likely flow to Walter Energy U.S. arising from intercompany claims that have been filed.

[85] I am advised by the 1974 Plan that, if this happens, no funds will be paid to it in respect of its unsecured claim. This appears to arise from the Settlement Term Sheet, discussed above, and which appears to limit recovery for the U.S. unsecured creditors (including the 1974 Plan) to equity in the stalking horse purchaser and participation in exit financing, which I gather provided little or no recovery in the U.S. Accordingly, the 1974 Plan asserts that without recovery from the Walter Canada Group's assets, it will fail to have achieved any recovery, either here in Canada or in the U.S.

## **VI ERISA's PROVISIONS**

[86] A review of the legislative provisions found in *ERISA* is helpful at this point. It is certainly required in order to consider and decide the second question, namely whether the Walter Canada Group is liable under *ERISA* as a matter of U.S. law.

However, an understanding of those provisions is also necessary in order to answer the first question, namely being whether U.S. law (i.e. *ERISA*) even applies here.

[87] The following, which I have largely adopted from the expert report of one of the Walter Canada Group's expert on U.S. law, Marc Abrams, summarizes the relevant legislative provisions under *ERISA* (or Title 29). Some of these provisions have already been generally described above:

- a) a "multiemployer plan" is a collectively bargained pension plan maintained and funded by more than one unrelated employer, typically within the same or related industries: 29 U.S.C. § 1301(a)(3). As stated above, the 1974 Plan is a multiemployer defined benefit pension plan: see 29 U.S.C. § 1002(2), (3), (35) and (37)(A);
- b) if one of the contributing employers withdraws from a multiemployer plan, either partially or completely, *ERISA* requires the "employer" to pay to the plan its share of any unfunded vested benefits, generally determined as of the end of the plan year preceding the plan year in which the withdrawal occurs: 29 U.S.C. § 1386 and § 1391. The withdrawing employer's liability is referred to as the "withdrawal liability": 29 U.S.C. § 1381; and
- c) the plan sponsor has a statutory duty to calculate and collect the withdrawal liability from the withdrawing employer: 29 U.S.C. § 1382. *ERISA* appears to contemplate that payments may be made over time in accordance with a schedule; however, if the withdrawing employer defaults in paying the withdrawal liability, the entire amount of the withdrawal liability becomes subject to collection: 29 U.S.C. § 1399(c)(5).

[88] The key *ERISA* provisions which are said by the 1974 Plan to give rise to its claim against the Walter Canada Group entities are:

- a) withdrawal liability is the joint and several obligation of not only the withdrawing "employer" (as a contributing employer) but also each member of the employer's "controlled group": 29 U.S.C. § 1301(a)(2)(B);

- b) a contributing sponsor's "controlled group" consists of the contributing employer and others who are under "common control" (29 U.S.C. § 1301(a)(14)(A) and 29 U.S.C. § 1002(40)(B));
- c) for a determination as to whether two persons are under "common control" where there is a single-employer plan, *ERISA* then refers to regulations "consistent and coextensive" with regulations under section 414 of Title 26 (also known as the *Internal Revenue Code*): 29 U.S.C. § 1301(a)(14)(B);
- d) with respect to multiemployer plans, two or more trades or businesses are deemed to be a single employer if they are within the same "control group" and "control group" means a group of trades or businesses under "common control" with the employer: 29 U.S.C. § 1002(40)(B); and
- e) for the purposes of *ERISA*, the three principal types of "controlled groups" are found in *Internal Revenue Code* regulations: (i) parent-subsidary controlled groups; (ii) brother-sister controlled groups; and (iii) combined groups: 26 C.F.R. § 1.1563-1(a)(1)(i).

[89] The 1974 Plan asserts that the corporations within the Walter Canada Group are part of Walter Resources' parent-subsidary "controlled group". Under *ERISA*, a parent-subsidary "controlled group" is a group consisting of entities connected through a controlling interest with a common parent where stock ownership of at least 80% of the voting power or value (other than the parent) is owned by one or more corporations and the common parent corporation owns stock with at least 80% of the voting power of at least one of the corporations: 29 U.S.C. § 1301(b)(1); 26 U.S.C. § 414(b); 26 U.S.C. § 1563(a)(1); 26 C.F.R. § 1.1414(c).

[90] The 1974 Plan also relies on other provisions of the *Internal Revenue Code* and its regulations which refers to treating partnerships which are under common control as a single employer: 26 U.S.C. § 414(c); 29 U.S.C. § 1301(b)(1); 26 U.S.C. § 1563(a)(1); 26 C.F.R. § 1.1414(c)-2.

[91] For purposes of this application, the Walter Canada Group and the Union agree that it can be assumed that under the above provisions, the Walter Canada Group entities were under common control and within the “controlled group” of the Walter Energy Group given the level of stock ownership held by Walter Energy U.S. in Canada Holdings and Walter Canadian Coal ULC. Further, as stated above, 100% ownership of all of the Canadian operating entities is held through Canada Holdings. All of the expert witnesses were similarly asked to make this assumption.

[92] Accordingly, *prima facie*, *ERISA* purports to impose joint and several absolute liability on the entities within the Walter Canada Group based on the 1974 Plan having met the numerical (80%) test for stock ownership or voting control with respect to a “controlled group” under *ERISA*. In addition, no issue arises given that some of the entities are partnerships.

## **VII THE CHOICE OF LAW QUESTION**

[93] The first issue posed by the Walter Canada Group is:

Under Canadian conflict of laws rules, is the 1974 Plan’s claim as against the Walter Canada Group governed by Canadian substantive law or U.S. substantive law (including *ERISA*)?

[94] Accordingly, the question for this Court to consider is what choice of law - Canada or the U.S. (ie. *ERISA*) - governs the 1974 Plan’s claim. Since the 1974 Plan has chosen to assert its claim in these Canadian proceedings, it is common ground that Canadian choice of law principles govern the analysis of what law applies to the 1974 Plan’s claim: Janet Walker, *Castel & Walker Canadian Conflicts of Laws*, (Toronto, LexisNexis, 2005) (loose-leaf, 6th ed.) ch. 1 at 1-2.

[95] The overall aim or purpose of the choice of law exercise is to identify the most appropriate law to govern a particular issue: A.V. Dicey, J.H.C. Morris & Lawrence Collins, *The Conflict of Laws*, vol. 1, 15th ed. (London, Sweet & Maxwell, 2012) at 51.

[96] The authorities are clear that determining choice of law is a two-step process: firstly, the Court characterizes the claim to determine which choice of law rule



applies; and secondly, the Court applies the proper choice of law rule to the claim.

This process was described in *Castel & Walker* at 3-1 as follows:

In an action involving legally relevant foreign elements, a court may be asked to apply foreign law. To decide whether to do so, the court must ascertain the legal nature of the questions or issues that require adjudication and then apply its appropriate conflict of laws rules to them. For instance, do the facts raise a question of succession or of matrimonial property, or a question of capacity or of form? This analytical process is called the characterization or classification. Its purpose is to enable the court to find legal categories with which the forum is familiar. In other words, the court must allocate each question or issue to the appropriate legal category. The application of the forum's conflict of laws rule to each legal question or issue will indicate which legal system governs that question or issue. That legal system is called the *lex causae*.

Once the court has characterized the issue, it will consider the connecting factor – a fact or element connecting a legal question or issue with a particular legal system. Finally, the court will apply the law identified as the governing law. In doing so it must separate the rules of substance from the rules of procedure of the legal systems involved, because questions of procedure are governed by the *lex fori*.

[97] The first step therefore requires that the court ascertain or characterize the “legal nature of the questions or issues”. Typical legal categories used for characterization include: property law, the law of obligations, family law, the law of corporations and insolvency. Other categories, or sub-categories, include the law of contract (an “obligation”), tort and equitable remedies, such as unjust enrichment.

[98] In Stephen G.A. Pitel and Nicholas S. Rafferty, *Conflict of Laws*, 2nd ed. (Toronto: Irwin Law Inc., 2016) at 223-226, the authors discuss the somewhat perplexing question as to just what is to be characterized. They conclude that facts are not to be characterized, but the courts have variously referred to both “issues” and “causes of action” as being characterized. At 224, the authors highlight, citing *Macmillan Inc. v. Bishopsgate Investment Trust and Others (No. 3)*, [1996] 1 W.L.R. 387 (C.A.), the possible differences that may arise in that respect and that claimants may attempt to characterize their claims to support their choice of law.

[99] In this case, I see no material difference whether one characterizes the 1974 Plan's claim in terms of a “cause of action” or “issue”. Fundamentally, the claim arises from the express legislative provisions of *ERISA*. As noted by the Walter

Canada Group, there is no equivalent provision of *ERISA* here in Canada or British Columbia. In that event, the claim is to be characterized “as its closest functional equivalent under that [forum’s] law”, namely Canada and British Columbia: Pitel and Rafferty at 227.

[100] The Walter Canada Group and the Union, on one hand, and the 1974 Plan, on the other, present starkly different approaches to the characterization of the 1974 Plan’s claim. As I will describe below, the answer to this first step or question in turn leads to a distinct path or set of considerations as to the choice of law issue. The answers to each of the analytical steps also lead to different considerations in relation to most, if not all, of the evidentiary issues and objections raised by the 1974 Plan.

[101] Accordingly, the statement found in Pitel and Rafferty at 222 that the characterization of the issue is “central to the choice of law process” is particularly apt here.

[102] This two-step process is illustrated by this Court’s decision in *Minera Aquiline Argentina SA v. IMA Exploration Inc.*, 2006 BCSC 1102, aff’d 2007 BCCA 319, upon which both parties rely. At paras. 160-181, this Court addressed the characterization issue, which arose from the competing positions of the parties. The defendant asserted that the claim related to a foreign immovable (in which case Argentina law applied) and the plaintiff asserted that the claim was an *in personam* claim for appropriation through a breach of confidence (in which case British Columbia law applied).

[103] This Court in *Minera* determined that the claim was more appropriately characterized as an equitable claim for unjust enrichment arising from a breach of confidence, with the consequence that the relevant choice of law rule was the “proper law of the obligation” (see paras. 181-184).

**(1) What is the Characterization of the 1974 Plan’s Claim?**

[104] Turning to the first step, there is no disagreement that the 1974 Plan’s claim does not arise as a result of the Walter Canada Group’s conduct. The Walter

Canada Group entities did not employ any beneficiaries of the 1974 Plan or have any direct relationship, contractual or otherwise, with the 1974 Plan. Nor did the Walter Canada Group contribute to or have any obligation to contribute to the 1974 Plan. No other conduct that may be relevant to the Walter Canada Group's liability in that regard has been raised. Simply put, the Walter Canada Group had nothing to do with either the 1974 Plan or Walter Resources' participation in it.

[105] The Walter Canada Group contends that the 1974 Plan's claim is properly characterized as an issue under the law of corporations or as an issue of legal corporate or partnership status or personality. They say that the basis for the claim simply arises under *ERISA* and as a result of Walter Resources' withdrawal from the 1974 Plan. Further, they say that the *only* basis for the claim against the Walter Canada Group arises from *ERISA*'s "common control" provisions, discussed above, and are said to apply solely from the fact that the Walter Canada Group entities and Walter Resources are both owned directly or indirectly by Walter Energy U.S.

[106] It is clear that Walter Resources was the only signatory to the 2011 CBA and that Walter Resources' corporate relationship, *albeit* indirectly, to the Walter Canada Group, is the sole basis upon which the 1974 Plan seeks to apply the "controlled group" concept under *ERISA*.

[107] The 1974 Plan contends that its claim concerns the law of obligations and in particular, contract, such that U.S. law is the "proper law of the obligation". The 1974 Plan asserts that its claim is one based not only on *ERISA*, but also the documents by which the 1974 Plan administers itself: namely, the pension plan document, the pension trust document and the 2011 CBA.

[108] I will first address the arguments of the 1974 Plan.

[109] The arguments of the 1974 Plan rest on the central proposition that where a statute confers a right of action in favour of an entity which is not a party to a contract to which the claim relates, the "essential nature" of the claim is to enforce the terms of that contract, such that the claim is properly characterized as one in

contract. The 1974 Plan describes its claim as seeking to enforce the contractual obligations of Walter Resources against the Walter Canada Group. Three English insurance cases are cited in support.

[110] The court in *Youell v. Kara Mara Shipping Company Ltd.*, [2000] EWHC 220 was addressing the consequences of a collision at sea between two ships. The owners of the “innocent” vessel commenced proceedings in Louisiana. In that jurisdiction, such a party was allowed, by statute, to claim directly against the “at fault” vessel owner’s insurers. The insurers ultimately applied in England to restrain these proceedings on the basis that the “direct action” statutory claim was pursuant to insurance policies which required any litigation to be brought in England. The English court agreed, stating:

58. The position in the present case is that World Tanker has asserted a claim on the H&M Policies by virtue of the *Direct Action Statute* in the Direct Action Claim. It is true that World Tanker have not become a party to the policies by a mechanism of statutory novation or of statutory assignment. But in my view, the nature of the rights that the *Direct Action Statute* confers to World Tanker is contractual; it confers a statutory right to make a claim on a contract to which World Tanker was not originally a party. ... the rights are confined to the “*terms and limits of the policy*”.

...

61. Therefore, I conclude that the nature of the claim by World Tanker against YM Insurers in the Direct Action Claim is contractual and the terms of that contract would include the English proper law clause and the [exclusive jurisdiction clause].

[111] In *Through Transport Mutual Assurance Association (Eurasia) Limited v. New India Assurance Association Company Limited*, [2004] EWCA Civ 1598, the court was considering Finnish legislation that gave a person a direct right to sue the defendants’ insurer for losses caused by the defendant. At para. 56, the court agreed with the trial judge’s approach to consider the “substance” of the claim being advanced. At para. 57, the court adopted the trial judge’s comments on the characterization issue for choice of law purposes:

... If in substance the claim is independent of the contract of insurance and arises under the Finnish legislation simply as a result of its having a right of action against an insolvent insured, the issue would have to be characterized as one of statutory entitlement to which there may be no direct equivalent in

English law. In that case the issue would in my view have to be determined in accordance with Finnish law. If, on the other hand, the claim is in substance one to enforce against the insurer the contract made by the insolvent insured, the issue is to be characterized as one of obligation. In that case the court will resolve it by applying English law because the proper law of the contract creating the obligation is English law.

[112] The Court of Appeal in *Through Transport* agreed with the lower court's conclusions that the claim was, in substance, to enforce the insurance contract between the responsible party and its insurer:

58. ... In short, the title to section 67 [of the Finnish Act] is the "*insured person's entitlement to compensation under general liability insurance*" and the right is defined as a right "to claim compensation in accordance with the insurance contract direct from the insurer" in certain defined circumstances. The claim under the Act is not therefore in any sense independent of the contract of insurance but under or in accordance with it. In these circumstances it seems to us that the judge was correct to hold that the issue under the Act is one of obligation under the contract. The judge noted in passing ... that the Finnish court itself described the Act as giving the injured party the right to claim compensation "according to the insurance policy".

[Emphasis added]

The Court of Appeal also noted at para. 59 that, although the Finnish Act gave the claimant a right of action directly against the insurer without the need of a formal assignment, what he obtained was "essentially a right to enforce the contract in accordance with its terms". Therefore, pursuant to the terms of the insurance contract, that stated English law applied, English law was the proper law of the claim.

[113] The third and final case cited by the 1974 Plan is *The London Steam-Ship Owners' Mutual Insurance Association Ltd. v. The Kingdom of Spain, The French State*, [2013] EWHC 3188 (Comm). There, the court followed the analysis in both *Youell* and *Through Transport*, stating that in deciding whether or not a direct action right under a statute is "in substance" a claim to enforce the contract or a claim to enforce an independent right of recovery, what matters most is the content of the right, rather than the derivation of its content (paras. 82-88). The Court held that the essential content of the right was provided by the insurance contract, despite the Spanish law which also created further liability for an event that would not normally

be insurable. The direct action right conferred by Spanish law against the liability insurers was found to be, in substance, a right to enforce the contract rather than an independent right of recovery.

[114] The 1974 Plan argues that, for choice of law purposes, its claim arises under the law of obligations - namely it is one of contract. It argues that the three English cases above all involve: (a) a plaintiff advancing a claim against another party for a liability arising under a contract where there was no privity of contract; (b) a plaintiff claiming that the defendant's liability arose under a statute from a law other than the *lex fori*; and (c) a court characterizing the claim as a right to enforce a contract which only existed by reference to that contract.

[115] The 1974 Plan contends that its claim is the same because, although Walter Resources was the only signatory to the 2011 CBA, *ERISA* (namely the foreign law) provides that the Walter Canada Group is liable in relation to Walter Resources' rejection of 2011 CBA and the withdrawal liability that arose under that contract.

[116] Despite the 1974 Plan's fervent submissions on this issue, I am not convinced that the three English cases are analogous to the situation here. In my view, they are distinguishable.

[117] Firstly, the foreign statutes in the English cases simply authorized a direct action against a *party* to the contract in question, being the insurance policy. In essence, the plaintiffs were made parties to the insurance contract between the insurer and the insured. In contrast here, *ERISA* does not authorize the 1974 Plan to sue the Walter Canada Group as a party to the 2011 CBA, the pension plan and trust documents. The 1974 Plan relies solely on the provisions in *ERISA* which only references the contractual liability as the basis upon which to monetarily determine the amount of the liability.

[118] Secondly, the reasoning of and results in the English courts was substantially influenced by the fact that even though the plaintiffs were essentially to step into the insurance contracts, the terms of the contract were, by the statutory provisions, still

to govern. This meant that the plaintiffs took the insurance contracts as they found them and were subject to not only the benefits under the contracts, but also other provisions (or burdens) that might, for example, deny or limit coverage and therefore, recovery. As shown in the results found in those cases, that meant that the plaintiffs were subject to exclusive jurisdiction clauses and provisions requiring arbitration, which was the bargain struck in the insurance contracts.

[119] In *Through Transport*, the court stated at para. 58 that the claim was not “independent of the contract of insurance but under or in accordance with it.”

[120] Here, *ERISA*'s provisions are entirely devoid of any mention of the underlying contractual obligations of Walter Resources. Those provisions simply provide that if there is a “withdrawal liability”, the other members of the “controlled group” are liable for that amount. I see no basis upon which one could say that, in substance, the Walter Canada Group became a party to the 2011 CBA and the other pension documents by reason of *ERISA*'s provisions.

[121] For example, there is no suggestion that the other “controlled group” members could contest the amount of the withdrawal liability or advance any other substantive issues that Walter Resources might have raised under the terms of the 2011 CBA and the related documents. The evidence shows that the Walter Canada Group was not even notified of, let alone allowed to participate, in the contractual process by which the 1974 Plan determined the “withdrawal liability” under the 2011 CBA. The discussion of “absolute liability” of “controlled group” liability under *ERISA*, cited by the Union, found in *Connors v. Peles*, 724 F. Supp. 1538 (W.D. Pa. 1989) at 1577-8, is instructive on this point:

... Under certain circumstances, one member of a controlled group may be responsible for the withdrawal liability of another member of the controlled group. These principles apply only when there are two or more separate businesses that are banded or associated together in a “controlled group”. Participation in the controlled group, by itself, imposes equal responsibility upon all members of the controlled group for the withdrawal liability of an “employer” member of the controlled group, i.e., even though the “employer” member of a group of trades or businesses is the only one with a pension plan. Once notice to the “employer” is given, as required by 29 U.S.C. § 1399, it is totally irrelevant as to whether actual or even constructive notice is

given or imputed to the "non-employer" members of a controlled group. The liability of the "non-employer" members of a controlled group does not rest on any notice safeguards under ERISA. The "non-employer" members of the controlled group do not even have to be engaged in the same business enterprise, or even in a similar business. A striking example is provided in *Pension Benefit Guaranty Corp. v. Ouimet Corp.*, 630 F.2d 4, 11-13 (1st Cir.1980), where one member of a controlled group (the "non-employer") did not even have any employees!

Congress built the equivalent of withdrawal liability "guaranty's" into ERISA, at the time of the enactment of the multiemployer amendments. The "guaranty's", commonly known and referred to as the "controlled group" statutes, 29 U.S.C. § 1301(b)(1), and the regulations adopted thereunder, 29 C.F.R. Part 2612, and consider the entire group as but one "employer", 29 U.S.C. § 1002(5), and impose *absolute* liability upon all members of a control group for the withdrawal liability of any member of a statutory group of enterprises, even though the "employer" member of a group of trades or business is the only one with a pension plan, and regardless of whether their groups have employees. *Pension Benefit Guaranty Corp. v. Ouimet Corporation*, 630 F.2d 4 (1st Cir.1980). Under "controlled group" statutory liability, an inquiry as to the interrelationship of the members of the control group, with the employees of all members of the control group, as required under the "single employer" test, is totally unnecessary and irrelevant.

[Emphasis added in underlining]

[122] During the hearing, the 1974 Plan's counsel referred to the 1974 Plan as having certain "contractual expectations". While this may have been true in relation to Walter Resources, in my view, the 1974 Plan could only have had "statutory expectations" in relation to other "controlled group" members in the Walter Energy Group arising from *ERISA*. Certainly, the Walter Canada Group had no "contractual expectations" in these circumstances; this is in contradistinction to the fact that the insurers in the English cases most certainly would have had "contractual expectations" arising from the insurance contracts they issued.

[123] I turn to consider the argument advanced by the Walter Canada Group that the appropriate choice of law characterization of the 1974 Plan's claim is one of the law of corporations and more specifically, one of separate legal existence or personality.

[124] The 1974 Plan argues that the choice of law rule advocated by the Walter Canada Group is intended only for matters related to corporate existence, such as



whether an entity has the capacity to sue or be sued. The 1974 Plan concedes that it may also apply to issues of corporate governance, such as shareholder rights, the authority of directors, the power to make contracts or rights to issue or transfer shares.

[125] I do not agree that such a narrow approach as advocated by the 1974 Plan is appropriate in characterizing the issue. The references in the cases to looking at the “substance” of the claim support a more far-ranging and holistic analysis. Indeed, although in support of its own argument, the 1974 Plan itself asserted that the characterization exercise is to be done in accordance with the rules and in a “flexible manner”.

[126] In *Macmillan*, the English court of appeal was called upon to settle a dispute about shares that were wrongly offered as security in England, when in fact they were owned by an American company. In the choice of law analysis, Auld L.J., at 407, discussed the need to look beyond the strict or narrow formulation of the claim:

...classification is governed by the *lex fori*. But characterisation or classification of what? It follows from what I have said that the proper approach is to look beyond the formulation of the claim and to identify according to the *lex fori* the true issue or issues thrown up by the claim and defence. This requires a parallel exercise in classification of the relevant rule of law. However, classification of an issue and rule of law for this purpose, the underlying principle of which is to strive for comity between competing legal systems, should not be constrained by particular notions or distinctions of the domestic law of the *lex fori*, or that of the competing system of law, which may have no counterpart in the other’s system. Nor should the issue be defined too narrowly so that it attracts a particular domestic rule under the *lex fori* which may not be applicable under the other system: see *Cheshire & North’s Private International Law*, 12th ed., pp. 45-46, and *Dicey & Morris*, vol. 1, pp. 38-43, 45-48.

Here, the “true issues” that are raised by the claim go well beyond the narrow formulation advanced by the 1974 Plan.

[127] Further, the text authority cited by the 1974 Plan on this issue in fact supports the position of the Walter Canada Group. In *Castel & Walker*, the authors also adopt a wider view of the “law of corporations” as including questions of status, separate

legal personality and the limited liability that flows from that personality. At 30-1, the authors state:

Questions concerning the status of a foreign corporation, especially whether it possesses the attributes of legal personality, are, on the analogy of natural persons, governed by the law of the domicile of the corporation. This domicile is in the state, province or territory of incorporation or organization and it cannot be changed during the corporation's existence even if the corporation carries on business elsewhere.

...

While the state, province or territory in which the foreign corporation intends to carry on business has the right to prescribe the extent to which the corporation may exercise its corporate powers and capacity, this does not mean that proceedings may be taken in this jurisdiction to affect its status as a corporation. ...

There is some controversy over which law determines the liability of a corporation for the obligations of a foreign subsidiary. Since the personality and status of the subsidiary is called into question, it would seem that the law applicable to the status and capacity of the subsidiary should determine whether its corporate veil can be pierced.

[Emphasis added]

[128] The 1974 Plan also argues that this Court should consider the rationale of the choice of law rule it is applying and also the purposes of the substantive law to be characterized and then determine if the conflict rule covers the substantive law at issue (ie. the effect of a certain characterization): Dicey at 51 citing *Raiffeisen Zentralbank Osterreich AG v. An Feng Steel Co. Ltd.*, [2001] EWCA Civ 68 at para. 27. The 1974 Plan then says that the purpose of the substantive law (ie. *ERISA*) is to ensure that employees who are promised retirement benefits actually receive those benefits, citing *Connolly v. Pension Benefit Guaranty Corp.*, 475 US 211, 214 (1986). The 1974 Plan then asserts that this purpose is entirely different than that behind the corporate choice of law rule whose purpose is the determination of corporate matters or more specifically, corporate capacity or governance. After analyzing the underlying policy purposes of the conflicts rule, that corporations are governed by the substantive law of the country of incorporation, the 1974 Plan argues that this substantive law issue is not engaged here since its claim is about employees' pension entitlements, in which case U.S. law should apply.

[129] This argument is entirely without merit in that it confuses the intent or purpose behind the “controlled group” provisions found in *ERISA* with the effect of those provisions. I agree that *ERISA* has been employed by the U.S. Congress with the *intention* and *purpose* of seeking to ensure that U.S. retirees receive contracted for benefits; however, the *effect* of the “controlled group” provisions is to collapse the corporate structure to ensure that as many entities within a corporate group are liable for retirement plan withdrawal and that their assets are available to meet obligations to those retirees.

[130] Seen in that vein, the purpose of the choice of law rule proposed by the Walter Canada Group intersects with the substantive law under *ERISA*, in that both address the corporate status or the separate legal existence or personality of other persons, including the Walter Canada Group entities. *ERISA* ascribes liability based solely on corporate and other legal relationships.

[131] As the Walter Canada Group argues, it is trite law in British Columbia and Canada that corporations have separate legal personalities from that of its shareholders and that shareholders are not *prima facie* liable for the debts of the corporation: *Salomon v. Salomon & Co*, [1897] A.C. 22 (H.L.). A corporation has the capacity and the rights, powers and privileges of an individual of full capacity: *Business Corporations Act*, S.B.C. 2002, c. 57, s. 30.

[132] The well-known decision in *B.G. Preeco I (Pacific Coast) Ltd. v. Bon Street Holdings Ltd.* (1989), 37 B.C.L.R. (2d) 258 (C.A.) at 266-268 affirmed the sanctity of a corporation’s existence per *Salomon* and discussed that the corporate veil may be pierced only in certain and exceptional circumstances. To similar effect, see *Edginton v. Mulek Estate*, 2008 BCCA 505 at paras. 20-25 where, following *B.G. Preeco*, the court stated at para. 21 that the “separate legal personality of the corporation will not be lightly disregarded”. These and other cases were recently discussed in *Emtwo Properties Inc. v. Cineplex (Western Canada) Inc.*, 2011 BCSC 1072 beginning at para. 97 to similar effect.

[133] The intention behind, purpose and effect of *ERISA*'s "common control" or "controlled group" provisions are aided by interpretations of those provisions by the U.S. courts. In that respect, Mr. Abrams' expert report is again of assistance. He states at pp. 6-7 of his report:

Courts have described the operation of *ERISA*'s "controlled group" liability provisions as a "veil-piercing" statute that disregards formal business structures in order to impose liability on related businesses.

...

As the U.S. Supreme Court has recognized, in place of the "subjective, case-by-case analysis that had previously prevailed," Congress purposefully adopted an "objective test" for determining whether a controlled group exists, based on a "mechanical formula" that establishes "a sharp dividing line that is crossed by incremental changes in ownership." [citing *United States v. Vogel Fertilizer Co.*, 455 U.S. 16, 34 (1982)] Thus, the applicable regulations for withdrawal liability of "controlled groups" establish a "brightline test based purely on stock ownership," and affiliates are not required to have actually exercised control over the employer (or vice versa) or engaged in any wrongdoing or misconduct in order to be liable as a member of the "controlled group."

[134] The citations provided by Mr. Abrams for these comments amply support his summary of the U.S. courts' characterization of *ERISA*'s "controlled group" provisions. Other comments found in the U.S. cases cited by him are equally instructive:

- a) the *ERISA* provisions were aimed at "curbing abuses of multiple incorporation": *United States v. Vogel Fertilizer Co.*, 455 U.S.16 (1982) at 36;
- b) in *Board of Trustees of Trucking Employees of North Jersey Welfare Fund, Inc. – Pension Fund v. Gotham Fuel Corp.*, 860 F. Supp. 1044 at 1050, the court stated that members of the controlled group are "deemed, by law" to constitute a single entity. At 1050-1051, the court adopted an earlier statement of the legislative intent underlying *ERISA*:

The legislative background of *ERISA* ... makes it abundantly clear that, for the purpose of [*ERISA*], Congress was unconcerned with the actual corporate form of a business. ...Congress instructed ... the

courts to disregard the corporate form and treat several inter-related corporations are one entity, the ERISA “employer” ...

and also stated:

Controlled group members are statutorily determined to be ‘single entities,’ without the necessity of a finding of improper motive or wrongdoing.

c) in *PBGC v. Smith-Morris Corp.*, C.A. No. 94-cv-60042-AA, 1995 US Lexis 22510 at 8 (E.D. Mich. Sept. 13, 1995), the court stated that *ERISA*’s concern is not whether a stockholder who has a controlling share actually exercised control over corporate affairs but simply whether it had “the ability to control,” as evidenced through stock ownership;

d) in *Sun Cap. Partners III, LP v. New England Teamsters & Trucking Indus. Pension Fund*, 724 F.3d 129 at 138, the court stated that:

... [ERISA’s] broad definition of “employer” extends beyond the business entity withdrawing from the pension fund, thus imposing liability on related entities within the definition, which, in effect, pierces the corporate veil and disregards formal business structures. ...

e) finally, in *Cent. States, S.E. & S.W. Areas Pension Fund v. Messina Prods., LLC*, 706 F.3d 874 (7th Cir. 2013), at 877-878, the court stated:

When an employer participates in a multiemployer pension plan and then withdraws from the plan with unpaid liabilities, federal law can pierce corporate veils and impose liability on owners and related businesses. ...

...

The [joint and several withdrawal liability] provision’s purpose is to “prevent businesses from shirking their ERISA obligations by fractionalizing operations into many separate entities...” (Citing: *Central States, Southeast and Southwest Areas Pension Fund v. White*, 258 F.3d 636, 644 (7th Cir.2001))

[135] The 1974 Plan’s expert witness as to U.S. law and specifically, *ERISA*, Judith Mazo, agrees. She describes at paragraph 37 of her report that the “arithmetic rules” or “bright lines” under *ERISA* apply to determine common control. She further states there is no other relevant consideration as to whether *ERISA* applies:

44. ... Because the law uses mechanical tests and looks at highly concentrated levels of ownership, it does not matter whether the decision-makers actually exercised their control since they had the power to do so if they chose.

[136] Simply put, the 1974 Plan's claim arises solely by reason of Walter Energy U.S. owning more than an 80% stake in both Walter Resources and the Walter Canada Group entities. Arising from that "arithmetic" rule, *ERISA* dictates that the Walter Canada Group is liable for any withdrawal liability of a signatory (ie. Walter Resources) under the 1974 Plan.

[137] Accordingly, I agree with the Walter Canada Group that *ERISA*'s "controlled group" provisions impose liability by ignoring separate corporate personalities and effectively amalgamating, consolidating or collapsing "common control" entities into a single "employer" liable for any withdrawal liability of any other entity within that group. There can be no dispute that, but for *ERISA*'s provisions, the Walter Canada Group would not be liable for any obligations owing by Walter Resources under the 2011 CBA. It is only by reason of the Walter Canada Group's relationship with Walter Resources, through the indirect corporate ownership of Walter Energy U.S., that such liability arises.

[138] As the U.S. cases note, this is the essence of "lifting the corporate veil" so as to look beyond the corporate personality of Walter Resources and impose liability on other entities within the corporate group through common shareholdings.

[139] My conclusions are consistent with the comments found in *Pension Benefit Guaranty Corp. v. Ouimet Corp.*, 711 F.2d 1085, 6 (1st Cir.1983) where the Court of Appeals, First Circuit allocated a termination liability to certain solvent members of the Ouimet Group:

On the surface this result may appear to disregard unduly the legal separateness of the corporate entities. There is precedent, however, for piercing the corporate veil in bankruptcy situations. Under its general equitable powers a bankruptcy court may "substantially consolidate" the assets and liabilities of various entities. Substantial consolidation will usually, but not always, involve only debtors and be granted if absolutely necessary for achieving reorganization or protecting creditors' economic interests. ... Some of the facts a court will look for in deciding whether to grant a

substantive consolidation include the parent owning a majority of the subsidiary's stock, the entities having common officers or directors, the subsidiary being grossly undercapitalized, the subsidiary transacting business solely with the parent, and both entities disregarding the legal requirements of the subsidiary as a separate corporation. ...

There is no need to show that any or all of these factors are present to justify holding the solvent members of the Ouimet Group responsible for the entire liability in this case. Avon's corporate veil was, in effect, pierced by Congress when it enacted the termination liability provisions of ERISA. The corporate form is a creation of state law and states may impose stringent limitations on attempts to disregard it; the factors courts consider in deciding whether to grant substantive consolidations reflect such limitations. These limitations, however, do not constrict a federal statute regulating interstate commerce for the purpose of effectuating certain social policies ... *Corn Products Refining Co. v. Benson*, 232 F.2d 554, 565 (2d Cir.1956) (existence of separate corporate entity may be disregarded when necessary to further the purpose of a federal regulatory statute). Thus, concerns for corporate separateness are secondary to what we view as the mandate of ERISA in this case.

[Emphasis added]

[140] Since *ERISA* is a creature of the U.S. Congress, there is no similar legislation in Canada that might be considered in this characterization exercise. There is no case authority from Canada that addresses *ERISA*, nor any case authority involving the type of characterization exercise involved here. Nevertheless, the Walter Canada Group argues that characterizing the 1974 Plan's claim as one implicating legal personality is consistent with at least one British Columbia authority.

[141] In *JTI-Macdonald Corp. v. British Columbia (Attorney General)*, 2000 BCSC 312, this court considered the constitutionality of the *Tobacco Damages and Health Care Costs Recovery Act*, S.B.C. 1997, c. 41 (the "*Tobacco Act*"). The *Tobacco Act* created a cause of action permitting the government to directly recoup medical costs from the tobacco industry. The *Tobacco Act* defined "manufacturer" broadly and, coupled with the group liability provisions, extended liability to affiliated (perhaps also foreign) companies (see paras. 156-158). Similar to *ERISA*, the *Tobacco Act* "imposed liability upon a foreign defendant not on the basis of wrongful conduct but on the basis of being deemed a member of a group in which another member commits a wrongful act." (para. 233).

[142] I agree with the 1974 Plan that the result in *JTI-Macdonald Corp.* is limited since it arose in the context of a constitutional challenge which is not involved here. Nevertheless, many of the comments of Justice Holmes in respect of the *Tobacco Act* strike a similar chord in terms of what *ERISA* seeks to accomplish as against the Walter Canada Group. I have included lengthy quotes of Holmes J. here, particularly given the degree of reliance placed on this case by the Walter Canada Group:

[172] The combined effect of [provisions of the Act] purport to affect the status, structure and corporate personality of foreign corporations and the rights of their shareholders.

[173] The Act has the effect of abolishing the separate corporate personalities of companies incorporated under federal or foreign law with domiciles outside British Columbia.

[174] A company's registered office establishes its domicile. [*Gasque v. Inland Revenue Commissioners*, [1940], 2 K.B. 80; *Fraser & Stewart*, op. cit. at p.144; *National Trust Co. Ltd. v. Ebro Irrigation & Power Co. Ltd.*, [1954], 3 D.L.R. 326 (Ont.H.C.); *Voyage Co. Industries v. Craster*, [1998] B.C.J. No. 1884 (Unreported) (B.C.S.C.)].

[175] A corporation's domicile determines the law respecting its creation and continuation (corporate personality), matters of internal management, share capital structure, and shareholder rights. [*Castel*, J.G., *Canadian Conflict of Laws* 4<sup>th</sup> ed., (Toronto: Butterworths, 1997) pp.574-575; *Voyage Co. Industries v. Craster*, *supra*; *National Trust Co. Ltd. v. Ebro Irrigation & Power Co. Ltd.*, *supra*; *Fraser & Stewart*, op. cit. p.144; *Palmer's Company Law* (looseleaf ed.) Vol. I, (London: Sweet & Maxwell, 1997) pp.2105-2106]:

Questions concerning the status of a foreign corporation, especially whether it possesses the attributes of legal personality, are, on the analogy of natural persons, governed by the law of the domicile of the corporation. This domicile is in the state or province of incorporation or organization and cannot be changed during the corporation's existence even if it carries on business elsewhere. Thus, the law of the state or province under which a corporation has been incorporated or organized determines whether it has come into existence, its corporate powers and capacity to enter into any legal transaction, the persons entitled to act on its behalf, including the extent of their liability for the corporation's debts, and the rights of the shareholders.

[*Castel*, *supra*, at p.574-575].

[176] It is a fundamental principle of company law that a corporation is a legal entity distinct from its shareholders. [*Salomon v. Salomon & Co. Ltd.*, [1897] A.C. 22 (H.C.); *Palmer's Company Law* 24<sup>th</sup> ed., Schmitthoff, C.M. Ed., (London: Stevens & Sons, 1987) pp.200-201; *Fraser & Stewart Company Law of Canada* 6<sup>th</sup> ed., (Carswell, 1993) at p.17; *Canada Business Corporations Act*, R.S.C. 1985, c.C-44, S.15(1)].



[177] This distinction is operative in a parent and subsidiary relationship and applies to related corporations owned by a common shareholder. [Fraser & Stewart, op. cit. at p.21, Davies, P.L., Gower's Principles of Modern Company Law 6<sup>th</sup> ed. (London: Sweet & Maxwell, 1997) at pp.80, 159-163; BG Preeco I (Pacific Coast) Ltd. v. Bon Street Developments Ltd. (1989), 60 D.L.R. (4<sup>th</sup>) 30 (B.C.C.A.)].

[178] There is a distinction in Canadian constitutional law between the power to incorporate and the power to regulate the activities of a company. The power to incorporate a company is the ability to bestow legal personality on an association of persons, regulate a corporate structure and define the rights of shareholders.

[179] A company once incorporated however will be responsible to the laws of jurisdictions in which it operates. A federally incorporated company is, for example, accountable under provincial security laws.

....

[189] The Act therefore attempts to alter and derogate from what are clearly domiciliary rights under the law of foreign jurisdictions, ...

...

[205] The Act overrides the substantive laws of extra-territorial Canadian or foreign jurisdictions in four major areas:

(a) in respect of the status and corporate personalities of corporate tobacco manufacturers with domiciles outside British Columbia;

.... and

(d) in respect of shareholder's rights and liabilities regarding shares of federal or foreign corporations.

....

[213] Sections [of the *Tobacco Act*], when they purport to govern the status, structure and corporate personality of a federally-incorporated company under the *Canada Business Corporations Act* are not only extra-territorial in effect they trench upon the exclusive jurisdiction of the Parliament of Canada.

[214] There is much force to the argument that a practical cumulative effect of these provisions of the Act is to "amalgamate" or "merge" defendant tobacco companies such that those "amalgamated" by the operation of the provisions of the Act incur liability for civil claims against others in the involuntary merger. That is a fundamental interference with a federal jurisdiction reserved under Part XV of the *Canada Business Corporations Act*.

[215] The combined effect of Sections...of the Act ignores the separate identities of federally-incorporated companies for the purpose of establishing a tobacco related wrong committed by a related company and for the purpose of calculating amounts assessed against them.

[216] The separate legal personality conferred under s.15(1) of the Canada Business Corporations Act is removed and the corporation loses its legal status as distinct from its shareholders.

...

[218] The provisions of the Act appear not so much designed to "pierce the corporate veil" as they are to strip away separate identities and treat them as if they had legally merged or amalgamated. The effect of provisions of the Act is not to look through the façade of a company shell; it is to deny the right to any separate corporate existence.

[Emphasis added]

[143] Applying these same comments to *ERISA*, it is clear that the "controlled group" provisions simply disregard the separate corporate personalities of other companies within the Walter Energy Group (including those within the Walter Canada Group) by lifting their corporate veils. It does this by ignoring the separate legal existence and personality of the Walter Canada Group entities (and limited liability per *Salomon*), effectively amalgamating or consolidating those entities, in deeming them to be one "employer" along with Walter Resources.

[144] I agree that *JTI-Macdonald* provides substantial support that a claim which purports to impose liability arising purely as a result of corporate relationships, such as *ERISA* does, are properly classified as claims concerning the status and legal personality of corporations. To use the words of Holmes J., the application of *ERISA* to the Walter Canada Group results in those entities' "separate legal personality" being removed or "stripped away" such that they lose their legal status as distinct from their shareholders.

[145] I agree that the 1974 Plan's claim against the Walter Canada Group, being founded on *ERISA*'s "controlled group" liability provisions, should be characterized as concerning the status and legal personality of corporations and partnerships within the Walter Canada Group.

[146] In conclusion, in my view, the legal nature of the 1974 Plan's claim is appropriately characterized as one of corporate or partnership law and specifically, a claim which results in a challenge to the status and separate legal personalities of the entities within the Walter Canada Group.

## (2) What Choice of Law Rule Applies?

[147] Having characterized the claim, I now turn to the second step in the choice of law analysis. This involves a consideration of relevant “connecting factors”.

[148] At page 221, Pitel and Rafferty state:

As we will see, the selection of the connecting factor is critical in formulating the choice of law rule. There are many possible connecting factors. Some are relatively certain and predictable. These include the person's domicile or habitual residence and the place where a specific act occurs, such as the commission of a tort or the making of the contract. These sorts of connecting factors have a relatively narrow focus. They are quite specific and can therefore be described as rigid connecting factors. Other connecting factors have a broader focus and are thought to be more flexible. These include the “proper law” of a contract, ascertained by weighing several factual connections to various legal systems. One of the core debates in choice of law is how rigid or how flexible the connecting factor should be for a particular rule.

[149] It is worthwhile being reminded at this time of Castel & Walker's comment at 3-1, quoted above, that a “connecting factor” is a “fact or element connecting a legal question or issue with a particular legal system” which is then identified as the governing law.

[150] What then are the “connecting factors” to be considered after having characterized the 1974 Plan's claim as I have?

[151] Under Canadian choice of law rules, issues concerning a person's legal personality are governed by the law of the person's domicile: *Castel & Walker* at 30-1, quoted above. Similarly, Pitel and Rafferty state that the “status of non-natural persons is governed by the law of the person's ‘home’ jurisdiction” (at 245) and that there is a “well-established principle that a corporation's domicile is the country in which it was incorporated” (at 26-27).

[152] To similar effect, Dicey states at 1532-1533:

Whether an entity exists as a matter of law must, in principle, depend upon the law of the country under which it was formed. That law will determine whether the entity has a separate legal existence. The law of that country will determine the legal nature of the entity so create, e.g. whether the entity is a

corporation or partnership, and, if the latter, the legal incidents which attach to it.

[153] Domicile was addressed in *National Trust Co. v. Ebro Irrigation and Power Co. Ltd.* [1954] O.R. 463 (S.C.), where the court stated at 476:

It is well established that the domicile of a corporation is in the country in which it was incorporated. In *Cheshire on Private International Law*, 4<sup>th</sup> ed. 1952, at pp. 193-4, it is stated that: "Questions concerning the status of a body of persons associated together for some enterprise, including the fundamental question whether it possesses the attribute of legal personality, must on principle be governed by the same law that governs the status of the individual, *i.e.* by the law of the domicile. ... In the case of the natural person it is the domicile of his father, in the case of the juristic person it is the country in which it is born, *i.e.* in which it is incorporated." ...

[154] The Walter Canada Group also refers to *Singer Sewing Machine Co. of Canada Ltd (Re)*, 2000 ABQB 116, a decision of the colourful Registrar Funduk. There, the Alberta court was considering whether to recognize an order from the U.S. Bankruptcy Court. It appears that the U.S. court has assumed jurisdiction not only over the Singer Sewing Machine entities in the U.S., but also over the Canadian subsidiary who only conducted business in Canada and whose assets were held in Canada. The intention of the U.S. court seemed to be toward assuming overall jurisdiction over the entire corporate group in terms of administering assets and presumably, claims against those assets.

[155] This case was decided before amendments to Part IV of the CCAA which provides for a robust degree of comity in terms of addressing cross-border insolvencies. Nevertheless, the comments of the Registrar in terms of rejecting what he considered was a collapsing of the Canadian entity and its assets within the broader international group have, in my view, some relevance here:

11. Canadian law says that a corporation is a person in law. Canadian law says that a corporation has an existence separate from its shareholders. Canadian law says that a shareholder is not liable for the corporation's debts. Canadian law says that a shareholder does not own the corporation's assets. Canadian law says that a corporation's business activities are not the shareholder's business activities.

[156] Similarly, amalgamation of corporations, characterized as a change of status, is governed by the law of the place of incorporation: *Castel & Walker*, vol. 2, at 30-5. If the merged or amalgamated corporations were incorporated in different jurisdictions, the merger must be valid under the laws of both jurisdictions: *Dicey* 1534. See also *Concept Oil Services Ltd. v. En-Gin Group LLP*, [2013] EWHC 1897 (Comm) at paras. 70-72.

[157] I agree with the Walter Canada Group that the 1974 Plan's claim depends entirely on *ERISA*'s provisions which allow the 1974 Plan to disregard the separate legal personalities of the Walter Canada Group entities as being distinct from that of Walter Resources. The 1974 Plan has not advanced any other theory of liability for its claim under British Columbia law or any other law; rather, it relies exclusively on *ERISA*'s "controlled group" provisions as the basis for its claim against the Walter Canada Group. Further, as I have already stated, the 1974 Plan's claim against the Walter Canada Group does not stem from any conduct by or contract with the Walter Canada Group.

[158] During its submissions, the 1974 Plan did not draw any particular distinction between its claims against the corporations within the Walter Canada Group (who are the only *CCAA* petitioners) and the partnerships, who are not petitioners, but who were granted certain protections under the Initial Order. The claim of the 1974 Plan advanced in its pleading is only as against the "petitioners". The Walter Canada Group suggests that since the 1974 Plan chose to assert its claim only against the "petitioners", any claim against the partnerships is barred pursuant to the claims bar date set under the Claims Procedure Order. I am not sure as to the effect of such a distinction in terms of the recovery under the claims.

[159] This "claims bar date" argument may have some merit, but I do not propose to base my decision as regards the partnerships solely on this basis. The simple answer is that the same analysis set out above in relation to the corporations applies equally to the partnerships, as was noted in *Dicey* at 1532-33, quoted above, which refers to the law of the country in which an "entity" was formed.

[160] The issue as to whether the Walter Canada Group's separate legal personalities can be ignored is subject to the Canadian choice of law rule that the status and legal personality of a corporation is governed by the law of the place in which it was incorporated, namely British Columbia and Alberta. Here, as with the corporations within the Walter Canada Group, both with limited liability and unlimited liability, it is admitted that all of the partnerships were organized under British Columbia law. Accordingly, the choice of law analysis leads to the same result in relation to the partnerships, namely British Columbia law, including under the *Partnership Act*, R.S.B.C. 1996, c. 348.

[161] The place of incorporation or organization is a matter of public record and all persons who would do business with or otherwise deal with the Walter Canada Group entities would or should be well aware of that fact.

[162] I agree that, under Canadian choice of law rules, the place of incorporation or organization of the Walter Canada Group entities is the appropriate "connecting factor" in relation to the issue arising from the 1974 Plan's claim. As a result, British Columbia and Alberta law determine whether the separate legal personalities of the Walter Canada Group entities can be ignored.

[163] The 1974 Plan also made substantial submissions concerning the choice of law rule applicable to its claim. Relying on this Court's analysis in *Minera* at paras. 184-207, the 1974 Plan asserts that one must consider which law has the "closest and most real connection" to the issue. Its further submissions are that the court must examine a non-exhaustive list of factors in that context (*Minera* at para. 200). This, of course led to the 1974 Plan's objection to this summary hearing and its position that, since it has been denied any discovery from the Walter Energy Group, it has been hampered in its ability to put into evidence all relevant factors at this summary hearing.

[164] However, the analysis in *Minera* was made in the context of the Court's conclusion that the choice of law rule that applied to the unjust enrichment claim was the "proper law of the obligation". In addition, contrary to the two-step approach

illustrated in *Minera*, at the end of its submissions, the 1974 Plan's argument essentially conflated that process by suggesting that the Court should consider connecting factors (most of which it says have yet to be disclosed through discovery from the Walter Canada Group) in the characterization exercise in the first step.

[165] Rejecting the 1974 Plan's contention that its claim should be characterized as one of contract inevitably leads to the further conclusion that the appropriate choice of law rule is not the "proper law of the obligation".

[166] Accordingly, I do not intend to address the 1974 Plan's detailed submissions on the second step within the choice of law issue other than to briefly comment on certain aspects.

[167] The 1974 Plan argued that even if I accepted the characterization of the claim advanced by the Walter Canada Group, the Court would still need to address facts other than the place of incorporation. These facts were said to include the degree to which the Walter Canada Group was managed out of the U.S. and an understanding of the Walter Energy Group's global business. I reject these submissions on the basis of the above authorities. There is no need to look beyond the clear facts that when these Canadian entities were incorporated or organized, they were expressly created within these Canadian jurisdictions with the intention that their legal status and personality would be governed by Canadian laws. The same comment could presumably be made concerning the U.S. and English entities.

[168] The 1974 Plan argued that the "proper law of the obligation" approach would allow this court to consider the connecting factors that exist between the 1974 Plan's claim and the Walter Canada Group, including the degree to which the U.S. and Canadian operations were integrated, citing *Imperial Life Assurance Co. of Canada v. Colmenares*, [1967] S.C.R. 443 at 448 and *Minera*.

[169] However, my conclusions above have the effect of rendering moot the 1974 Plan's objections arising from the lack of discovery. In addition, it is clear enough that even if there was no degree of integration or management between the U.S.

and Canadian entities, the 1974 Plan's position is that all "contract" factors point to the U.S. - including the contractual documents, the location of and management of the 1974 Plan, the location of Walter Resources (the only counterparty to the 2011 CBA), that the benefits under the 2011 CBA are for Walter Resources' U.S. employees and that the withdrawal by Walter Resources from the 1974 Plan arose in the U.S. As I have emphasized, as regards the choice of law analysis, there is absolutely no contractual connecting factor between the 1974 Plan and the Canadian entities.

[170] In that regard, it is difficult to conceive (although I need not decide the issue) that any Canadian court would conclude that these "contractual" connecting factors pointed to anything other than the U.S. Any degree of integration or joint management could only add to such arguments; conversely, it is difficult to see that any lack of integration or joint management would detract from them.

[171] On this last point (ie. the degree of integration), what emerges as crystal clear from the 1974 Plan's position, supported by Ms. Mazo's opinion, is that *ERISA* expressly makes such a factual enquiry entirely irrelevant. The "bright line" or "arithmetic" test under *ERISA* entirely disregards anything other than the level of stock ownership: see *Pension Benefit Guaranty Corp. v. Ouimet Corp.*, 470 F.Supp 945 (1975).

[172] Other so-called "connecting factors" suggested by the 1974 Plan are bizarre to say the least. The 1974 Plan suggests that Walter Energy U.S. will be "enriched" given the potential payment of estate funds to that corporate level after payment to the Canadian creditors. This is hardly a relevant consideration. Further, any recovery available to the 1974 Plan against the U.S. entities is entirely driven by U.S. law, including *ERISA*, the Chapter 11 Proceedings and its participation in the Settlement Term Sheet. If the 1974 Plan obtains no recovery from the U.S. entities within the Walter Energy Group, that is of no moment as regards its claim against the Canadian entities.



[173] The other “connecting factor” said to arise by the 1974 Plan is that the application of Canadian law works an injustice on the 1974 Plan “because of the removal of assets out of reach of *ERISA*”. This proposition begs the very question as to whether *ERISA* applies to the Walter Canada Group at all. If *ERISA* does not apply to the Walter Canada Group in these circumstances, the Canadian assets were never within reach of the 1974 Plan.

[174] The 1974 Plan further argues that accepting the Walter Canada Group’s argument on choice of law would result in a “blanket denial” of all *ERISA* claims against Canadian entities in Canadian courts. In my view, this is an exaggeration. Canadian law allows for the imposition of liability on persons in a variety of ways - including tort and fraud (see *B.G. Preeco*). This decision is only intended to address whether these Canadian entities are subject to *ERISA* which seeks to impose liability on them, not by reason of any conduct or contract, but simply by reason of a corporate relationship.

[175] The 1974 Plan also suggests that a decision that *ERISA* does not apply to the Walter Canada Group would threaten principles of international comity in that a Canadian court could not recognize a judgment made by a U.S. court in respect of a Canadian entity for withdrawal liability under *ERISA*. This other “chicken little” argument is entirely speculative. Firstly, this case does not involve any judgment obtained against the Walter Canada Group. Further, in my view, my decision does not detract from the well-entrenched and long standing comity that has existed between Canada and the U.S. courts, particularly in the field of insolvency.

[176] As described above, the only facts and connecting factors relevant here given my characterization of the 1974 Plan’s claim are uncontroversial and have been admitted. In these circumstances, I see no difficulty in proceeding to determine this matter in a summary fashion, based on the considerations discussed earlier in these reasons.

[177] In conclusion, I find that the 1974 Plan’s claim is characterized as one of corporate or partnership law and specifically, one relating to the status, legal

existence and personality of corporations and partnerships. The appropriate choice of law rule is one of domicile or place of incorporation or organization. In the case of the entities within the Walter Canada Group, that is British Columbia or Alberta.

[178] *ERISA* is not part of British Columbia or Alberta law. Accordingly, the 1974 Plan's claim must fail for that reason.

### **VIII THE SECOND AND THIRD QUESTIONS**

[179] The second and third issues posed by the Walter Canada Group are:

If the 1974 Plan's claim against the Walter Canada Group is governed by United States substantive law (including *ERISA*), then as a matter of U.S. law, does "controlled group" liability for withdrawal liability related to a multiemployer pension plan under *ERISA* extend extraterritorially?

If the 1974 Plan's claim against the Walter Canada Group is governed by U.S. substantive law (including *ERISA*), and *ERISA* applies extraterritorially, is that law unenforceable in Canada because it conflicts with Canadian public policy?

[180] As I noted above, the Walter Canada Group only needed to succeed on one of the questions raised in this application in order to defeat the 1974 Plan's claim.

[181] Accordingly, having found in favour of the Walter Canada Group on the first issue, it is not necessary to decide the other two questions. While they pose interesting issues, I see no need to delay these proceedings further in order to consider and decide those issues. A timely resolution is in the interests of justice and furthers the purposes of the CCAA.

### **IX CONCLUSION**

[182] In conclusion, I grant a declaration that, under Canadian conflict of laws rules, the 1974 Plan's claim as against the Walter Canada Group is governed by Canadian substantive law and not U.S. substantive law (including *ERISA*).

[183] Costs are awarded against the 1974 Plan in favour of both the Walter Canada Group and the Union on the usual scale. If any party should wish to seek a different order of costs, such an application must be filed within 30 days of the release of

these reasons and the hearing to determine the matter should be set as soon as possible. Failing such application(s) being filed, my costs award shall stand.

“Fitzpatrick J.”

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670  
Chapter 11

**ORDER SUSTAINING AMENDED OBJECTION OF ESTATE REPRESENTATIVE  
TO PROOFS OF CLAIM FILED BY NEW BRUNSWICK SOUTHERN RAILWAY  
COMPANY LIMITED AND MAINE NORTHERN RAILWAY COMPANY ON THE  
BASIS THAT CERTAIN OF SUCH CLAIMS ARE DUPLICATIVE OF OTHERS, AND  
SUCH OTHERS ARE IMPROPERLY ASSERTED AS ADMINISTRATIVE AND/OR  
PRIORITY CLAIMS AND, IN AN INACCURATE AMOUNT, AND SUBJECT TO  
DISALLOWANCE UNDER BANKRUPTCY CODE SECTION 502(d)**

This matter having come before the Court on the *Amended Objection of Estate Representative to Proofs of Claim Filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company on the Basis That Certain of Such Claims Are Duplicative of Others, and Such Others are Improperly Asserted As Administrative and/or Priority Claims, in an Inaccurate Amount, and Subject to Disallowance Under Bankruptcy Code Section 502(d)* [D.E. 2313] (the “Amended Objection”)<sup>1</sup> filed by Robert J. Keach, the estate representative (the “Estate Representative”) of MMA and, *inter alia*, the Estate Representative’s reply in support of the Amended Objection; and after such notice and opportunity for hearing as was required by the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and this Court’s local rules, and after due deliberation and sufficient cause appearing therefore; it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** on a final basis that:

1. The Amended Objection is sustained as set forth herein.

---

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

2. The Duplicate Claims are disallowed in their entireties and expunged from the Debtor's claims register.

3. The Asserted 1171(b) Claims are disallowed, and allowed only as general unsecured claims against the Debtor, and only as and in the amounts set forth below.

4. MMA owes MN Railway US \$144,276.74. Of that amount, \$0.00 is entitled to priority status under Bankruptcy Code section 1171(b) and US \$144,276.74 is allowed as a Class 13 Allowed General Unsecured Claim (as defined in the Plan).

5. MN Railway owes MMA US \$330,177.28.

6. MMA owes NB Railway \$0.00. NB Railway's Asserted 1171(b) Claim [Claim No. 259-1] is therefore disallowed in its entirety and expunged from the Debtor's claims register. For the avoidance of doubt, NB Railway holds no Allowed General Unsecured Claim.

7. NB Railway owes MMA US \$1,361.82.

8. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
**Honorable Peter G. Cary**  
**Chief Judge, United States Bankruptcy Court**  
**District of Maine**