

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

IN RE:

CASE NO. 13-10670

MONTREAL MAINE & ATLANTIC RAILWAY,
LTD.,

CHAPTER 11

Debtor.

**OBJECTION OF IRVING PAPER LIMITED, IRVING PULP & PAPER, LIMITED
AND J.D. IRVING, LIMITED TO THE CHAPTER 11 TRUSTEE’S MOTION
FOR EXPEDITED HEARING, SHORTENED OBJECTION PERIOD AND
LIMITED NOTICE WITH RESPECT TO MOTION FOR ORDER
PURSUANT TO 11 U.S.C. § 542(b)**

Irving Paper Limited, Irving Pulp & Paper, Limited and J.D. Irving, Limited (collectively, “Irving”), by and through their undersigned counsel, hereby object to the *Motion for Expedited Hearing, Shortened Objection Period and Limited Notice with Respect to Motion for Order Pursuant to 11 U.S.C. § 542(b)* (Doc. # 125, the “Motion”) filed by Robert J. Keach, chapter 11 trustee (the “Trustee”) of Montreal, Maine & Atlantic Railway Ltd. (the “Debtor”), seeking approval of a shortened objection period and expedited hearing date on its motion (Doc. # 124, the “Turnover Motion”) for turnover of \$885,733 in accounts receivable allegedly owed to the Debtor by Irving. As set forth herein, the Motion is procedurally improper, deprives Irving of its basic due process rights and should be denied.

In support of this Objection, Irving states as follows:

1. The instant Motion is procedurally defective. The Federal Rules of Bankruptcy Procedure have safeguards in place to assure necessary due process for certain kind of relief, including the relief sought by the Trustee in the Turnover Motion. “The following are adversary proceedings: (1) a proceeding to recover money or property...” See Fed. R. Bankr. P 7001 (1); *Camall Co. v. Steadfast Ins. Co. (In re Camall Co.)*, 16 Fed. Appx. 403 (6th Cir. 2001) (affirming bankruptcy court's decision denying a motion for turnover because it was filed as a motion rather than as an adversary proceeding as required under Rule 7001); *In re Perkins*, 902 F.2d 1254, 1258 (7th Cir. 1990) (finding that a turnover order entered in an action commenced by motion rather than by complaint must be vacated); *In re Wheeler Tech., Inc.*, 139 B.R. 235, 239 (B.A.P. 9th Cir. 1992) (vacating bankruptcy court's order for turnover because proceeding was "inappropriately brought by . . . motion where an adversary proceeding is required"); *In re Mobley*, 2012 Bankr. LEXIS 5658, *9 (Bankr. N.D. Ohio 2012) (“The [procedural] deficiencies in the Trustee's Motion for Turnover also cannot be sidestepped...”); *In re Barringer*, 244 B.R. 402, 410 (Bankr. E.D. Mich. 1999); *In re Riding*, 44 B.R. 846, 859 (Bankr. Utah 1984) (stating that “[t]he Bankruptcy Rules mandate that the court await the commencement of an adversary proceeding before determining whether turnover shall be required”).

2. If the Court accepts the current procedural posture implemented by the Trustee, the Federal Rules of Bankruptcy Procedure and local rules for this Court require 21 days’ notice and a response date must be set more than seven calendar days prior to any hearing date. See Fed. R. Bankr. P. 2002(a) and D. Me. LBR 9013-1(d)(5).

3. The Motion seeks an objection deadline on **one business days' notice and a hearing on two business days' notice.**¹

4. While Irving understands the Trustee's need to collect and preserve cash for operating expenses, such notice is woefully inadequate and does not provide adequate due process to Irving and its affiliates.

5. Moreover, Irving, its affiliates, the Debtor, MMA Canada and their affiliates have a multi-year relationship and are parties to multiple contracts with differing performance and payment obligations which may provide a basis for setoff against the amounts claimed by the Trustee. Irving is entitled to adequate time to gather the appropriate documents, data, witnesses and other evidence to support its position. That is why the Federal Rules of Bankruptcy Procedure contemplate an adversary proceeding to ensure these due process safeguards.

6. The foregoing notwithstanding, counsel for Irving has discussed with the Trustee's counsel, and believes an agreement among the parties can be reached on the scheduling of a hearing on the issues raised by the Trustee's Turnover Motion at a date and time that is convenient for the parties and the Court.

WHEREFORE, Irving respectfully requests that this Court enter an order denying the Trustee's Motion and granting such other relief as the Court may deem proper.

Dated: September 3, 2013

¹ Irving also notes that the Motion and Turnover Motion were filed after 3 p.m. EDT on the Friday afternoon preceding the Labor Day holiday weekend.

Respectfully submitted,

THOMPSON HINE LLP

/s/ Alan R. Lepene

Alan R. Lepene, Esq.
Jeremy M. Campana, Esq.
3900 Key Center
127 Public Square
Cleveland, Ohio 44114
Phone: 216-566-5500
Facsimile: 216-566-5800
alan.lepene@thompsonhine.com
Jeremy.campana@thompsonhine.com

PIERCE ATWOOD LLP

/s/ Keith Cunningham

Keith Cunningham, Esq.
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
Phone: 207-791-1187
Facsimile: 207-791-1350
kcunningham@pierceatwood.com

*Attorneys for Irving Paper Limited, Irving Pulp
& Paper, Limited and J.D. Irving, Limited*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

IN RE:)
MONTREAL MAINE & ATLANTIC RAILWAY,)
LTD.,)
)
)
)
)
Debtor.)

CASE NO. 13-10670

CHAPTER 11

CERTIFICATE OF SERVICE

I, Michelle S. Pottle, an employee of Pierce Atwood LLP, being over the age of 18, hereby certify that on the date set forth below I caused a copy of the Objection of Irving Paper Limited, Irving Pulp & Paper, Limited and J.D. Irving, Limited to the Chapter 11 Trustee's Motion for Expedited Hearing, Shortened Objection Period and Limited Notice with Respect to Motion for Order Pursuant to 11 U.S.C. § 542(b), to be served upon the parties indicated on the service list attached hereto in the manner described on said service list.

Dated: Portland, Maine
September 3, 2013

/s/ Michelle S. Pottle
Michelle S. Pottle
Paralegal
Pierce Atwood LLP
254 Commercial Street
Portland, ME 04101
(207) 791-1262 (Phone)
(207) 791-1350 (Fax)
mpottle@pierceatwood.com

SERVICE LIST
Chapter 11 Case No. 13-10670

Electronic Mail Notice List – Served electronically by the Court’s ECF System:

- D. Sam Anderson sanderson@bernsteinshur.com, acumings@bernsteinshur.com;sspizuoco@bernsteinshur.com;astewart@bernsteinshur.com
- Fred W. Bopp III, fbopp@perkinsthompson.com, lweliver@perkinsthompson.com;malexander@perkinsthompson.com;tmanhart@perkinsthompson.com;dshigo@perkinsthompson.com
- Roger A. Clement, Jr. rclement@verrilldana.com, nhull@verrilldana.com;bankr@verrilldana.com
- Daniel C. Cohn dcohn@murthalaw.com, njoyce@murthalaw.com
- Randy J. Creswell rcreswell@perkinsthompson.com, malexander@perkinsthompson.com;tmanhart@perkinsthompson.com;sleyden@perkinsthompson.com;lweliver@perkinsthompson.com;dshigo@perkinsthompson.com
- Keith J. Cunningham kcunningham@pierceatwood.com, mpottle@pierceatwood.com;rkelly@pierceatwood.com
- Michael A. Fagone mfagone@bernsteinshur.com, acumings@bernsteinshur.com;astewart@bernsteinshur.com;sspizuoco@bernsteinshur.com;kquirk@bernsteinshur.com;kfox@bernsteinshur.com
- Jeremy R. Fischer jfischer@dwmlaw.com, pfolsom@dwmlaw.com
- Taruna Garg tgarg@murthalaw.com, cball@murthalaw.com;kpatten@murthalaw.com
- Craig Goldblatt craig.goldblatt@wilmerhale.com
- Frank J. Guadagnino fguadagnino@clarkhillthorpreed.com
- Michael F. Hahn mhahn@eatonpeabody.com, clavertu@eatonpeabody.com;dgerry@eatonpeabody.com;dcroizier@eatonpeabody.com;jmiller@eatonpeabody.com
- Nathaniel R. Hull nhull@verrilldana.com, bankr@verrilldana.com
- David C. Johnson bankruptcy@mcm-law.com, djohnson@mcm-law.com
- Jordan M. Kaplan jkaplan@zwerdling.com, mwolly@zwerdling.com
- Robert J. Keach rkeach@bernsteinshur.com, acumings@bernsteinshur.com;jlewis@bernsteinshur.com;astewart@bernsteinshur.com
- George W. Kurr gwcurr@grossminsky.com, tmseymour@grossminsky.com
- Alan R. Lepene Alan.Lepene@ThompsonHine.com, Cathy.Heldt@ThompsonHine.com
- Anthony J. Manhart tmanhart@perkinsthompson.com, rcreswell@perkinsthompson.com;malexander@perkinsthompson.com;sleyden@perkinsthompson.com;dshigo@perkinsthompson.com
- Benjamin E. Marcus bmarcus@dwmlaw.com, hwhite@dwmlaw.com;dsoucy@dwmlaw.com
- George J. Marcus bankruptcy@mcm-law.com
- Patrick C. Maxcy patrick.maxcy@dentons.com
- James F. Molleur jim@molleurlaw.com, cw7431@gmail.com;all@molleurlaw.com;tanya@molleurlaw.com;jen@molleurlaw.com;barry@molleurlaw.com;kati@molleurlaw.com;martine@molleurlaw.com;julie@molleurlaw.com
- Ronald Stephen Louis Molteni moltenir@stb.dot.gov

- Victoria Morales Victoria.Morales@maine.gov,
rhotaling@clarkhillthorpreed.com,Toni.Kemmerle@maine.gov,ehocky@clarkhill.com,N
athan.Moulton@maine.gov,Robert.Elder@maine.gov
- Stephen G. Morrell stephen.g.morrell@usdoj.gov
- Office of U.S. Trustee ustpreregion01.po.ecf@usdoj.gov
- Richard P. Olson rolson@perkinsolson.com,
jmoran@perkinsolson.com;lkubiak@perkinsolson.com
- Jeffrey T. Piampiano jpiampiano@dwmlaw.com,
aprince@dwmlaw.com;hwhite@dwmlaw.com
- Jennifer H. Pincus Jennifer.H.Pincus@usdoj.gov
- William C. Price wprice@clarkhill.com, rhotaling@clarkhillthorpreed.com
- Joshua Aaron Randlett jrandlett@rwlb.com, kmorris@rwlb.com
- Elizabeth L. Slaby bslaby@clarkhillthorpreed.com
- John Thomas Stemplewicz john.stemplewicz@usdoj.gov
- Pamela W. Waite pam.waite@maine.gov
- Jason C. Webster jwebster@thewebsterlawfirm.com,
dgarcia@thewebsterlawfirm.com;hvicknair@thewebsterlawfirm.com

• **Manual Notice List – Served Via First Class Mail, Postage Prepaid:**

Wystan M. Ackerman
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103

Craig D. Brown
Meyers & Flowers, LLC
3 North Second Street, Suite 300
St. Charles, IL 60174

Luc A. Despins
Paul Hastings, LLP
75 East 55th Street
New York, NY 10022

Peter J. Flowers
Meyers & Flowers, LLC
3 North Second Street, Suite 300
St. Charles, IL 60174

Stephen Edward Goldman
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103

Eric M. Hocky
Clark Hill Thorp Reed
2005 Market Street
Suite 1000
Philadelphia, PA 19103

Robert J. Keach
Bernstein Shur Sawyer & Nelson
100 Middle Street
P.O. Box 9729
Portland, ME 04104

Virginia Strasser
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Michael S. Wolly
Zwerdling, Paul, Kahn & Wolly, PC
1025 Connecticut Ave., N.W
Washington, DC 20036