

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

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

Robert J. Keach, the trustee (the "Trustee") of Montreal Maine & Atlantic Railway, Ltd. ("MMA" or the "Debtor"), appointed pursuant to 11 U.S.C. § 1163, hereby objects to the *Motion of Travelers Property Casualty Company of America for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1)* [D.E. 105] (the "Motion") filed by Travelers Property Casualty Company of America ("Travelers") seeking relief from the automatic stay for the purpose of filing a declaratory judgment action (the "Declaratory Judgment Action") in the United States District Court for the District of Maine (the "District Court"), naming as defendants, *inter alia*, MMA and Montreal, Maine & Atlantic Canada Company ("MMA Canada"). Travelers does not need relief from the automatic stay to commence the Declaratory Judgment Action in this Court, which is where litigation involving a significant asset of the estate should occur. In further support of this objection, the Trustee states as follows:

I. Objection to Motion and Memorandum of Law

The Trustee recognizes that, absent agreement among interested parties as to the scope of coverage provided by the policy described in the Motion (the "Policy"), an action for declaratory judgment is an appropriate procedural mechanism. The Trustee parts ways with Travelers on the

question of where the Declaratory Judgment Action should be commenced in the first instance. The Trustee believes that the Declaratory Judgment Action should be filed in this Court because: (1) this Court is required to determine whether the Declaratory Judgment Action constitutes a core or non-core proceeding; and (2) any proceeding which determines MMA's and MMA Canada's rights under the Policy should be coordinated with, and conducted in cooperation with, the Canadian Case. Relief from stay under these circumstances is both inappropriate and inefficient, and there is no cause justifying such relief.

A. *This Court must determine, in the first instance, whether the Declaratory Judgment Action constitutes a core proceeding.*

The proposed Declaratory Judgment Action seeks to determine the scope of MMA's rights under the Policy. Therefore, the Declaratory Judgment Action is a core proceeding. *See United States Lines, Inc. v. Am. Steamship Owners Mutual Prot. and Indem. Assocs., Inc. (In re United States Lines, Inc.)*, 197 F.3d 631, 638 (2d Cir. 1999) (proceeding to determine scope of coverage under insurance policies is a core proceeding); *Forman v. Nat's Union Fire Ins. Co. of Pittsburgh*, No. 01 CIV. 2966 (JGK) 2002 WL 141875, *5 (S.D.N.Y. Jan. 31, 2002) (same); *In re Prudential Lines, Inc.*, 170 B.R. 222, 229 (S.D.N.Y. 1994) (declaratory judgment action seeking determination that insurance policy obligated insurer to cover and indemnify the debtor was core because the policy and proceeds were assets of the estate); *In re Nw. Inst. Of Psychiatry Inc.*, 268 B.R. 79 (Bankr. E.D. Pa. 2001) (declaratory judgment action seeking determination that insurance policy covered damage to a psychiatric hospital owned by a debtor was core because the contract was integral to the reorganization case); *Matter of Celotex Corp.*, 152 B.R. 667 (Bankr. M.D. Fla. 1993) (declaratory judgment action seeking determination that insurance policies obligated insurers to defend and indemnify the debtor was core because the policies and

proceeds were assets of the estate); *see also* Kraken Investments Ltd. v. Jacobs (In re Salander-O'Reilly Galleries, LLC), 475 B.R. 9, 29 (S.D.N.Y. 2012).

Even if the Declaratory Judgment Action is not a core proceeding, it is at the very least related to the Debtor's chapter 11 case. Travelers cannot seriously dispute that the outcome of the proceeding will impact the Debtor's estate. *See* Salander-O'Reilly Galleries, LLC, 475 B.R. at 28 (collecting cases defining "related-to" proceedings as ones that could have some conceivable effect on a debtor's bankruptcy estate). If Travelers files the Declaratory Judgment Action in the District Court, the litigation will be referred to this Court pursuant to the applicable local rules. *See* D. Me. Local Rule 83.6(a). Indeed, section 157 specifically directs the Bankruptcy Court to determine whether the Declaratory Judgment Action constitutes a core or non-core proceeding. *See* 28 U.S.C. § 157(b)(3) ("The bankruptcy judge *shall* determine . . . whether a proceeding is a core proceeding under this subsection or is otherwise related to a case under title 11") (emphasis supplied).

Regardless of where the Declaratory Judgment Action is initially filed, therefore, the proceeding will end up back in this Court for a determination as to whether the proceeding is core. Given that reality, the Declaratory Judgment Action should be filed in this Court, at which point the Trustee, Travelers, and other interested parties can seek a core/non-core determination from this Court. The Trustee does not perceive anything other than delay from the process that Travelers seeks to put in place. That makes sense for an insurer facing significant claims under a policy; it does not make sense in light of the statutory framework and the Trustee's duty to liquidate the assets of the estate as expeditiously as possible under the circumstances. Accordingly, no cause exists to justify relief from the automatic stay under section 362(d)(1) and the Motion should be denied.

- B. Any proceedings to determine MMA's and MMA Canada's rights under the Policy should be administered in accordance with the Cross-Border Insolvency Protocol to ensure that those estates are administered consistently and in a coordinated manner.*

The complaint attached to the Motion names both MMA and its affiliate MMA Canada, which filed for protection from creditors in a concurrent proceeding under Canada's Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "Canadian Case"). Travelers filed a Motion to Lift the Stay of Proceedings (the "Canadian Motion") in the Canadian Case seeking relief from the Initial Order entered in that case on August 8, 2013 for the same purpose as set forth in the Motion before this Court. The hearing on the Canadian Motion is scheduled to take place on September 18, 2013.

This case and the Canadian Case are being administered in accordance with a Cross-Border Insolvency Protocol (the "Protocol") adopted by this Court and the Superior Court for the Province of Québec, District of St-François. The Protocol is necessary to ensure that the estates of the Debtor and MMA Canada are administered in a consistent, efficient manner that is mutually beneficial to the creditors of both debtors.

The District Court is not subject to the Protocol, and the Trustee suspects that the District Court would have less familiarity with the Canadian Case than this Court. Accordingly, any proceeding which determines the scope of the Debtor's and MMA Canada's rights to insurance proceeds which constitute property of those debtors' respective estates should be conducted in this Court, which is well-equipped to coordinate the proceedings with the Superior Court of Quebec, to the extent necessary.

II. Responses to Factual Allegations as Required by D. Me. LBR 9013-1(f)

2. The document referenced in ¶ 2 of the Motion speaks for itself and thus no further response is required.

3. The document referenced in ¶ 3 of the Motion speaks for itself and thus no further response is required.

4. The document referenced in ¶ 4 of the Motion speaks for itself and thus no further response is required.

5. The document referenced in ¶ 5 of the Motion speaks for itself and thus no further response is required. Notwithstanding the foregoing, the Trustee reserves his rights with respect to the amount of coverage provided by the Policy.

6. The document referenced in ¶ 6 of the Motion speaks for itself and thus no further response is required.

7. The document referenced in ¶ 7 of the Motion speaks for itself and thus no further response is required.

8. The Trustee denies the allegations contained in ¶ 8 of the Motion.

9. The Trustee denies the allegations contained in ¶ 9 of the Motion.

Dated: September 10, 2013

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

By his attorneys:

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