

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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In re :

: Chapter 11

MONTREAL, MAINE & ATLANTIC :

RAILWAY, LTD., : Case No. 13-10670 (LHK)

Debtor. :

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**APPLICATION OF CANADIAN PACIFIC RAILWAY COMPANY
FOR ALLOWANCE AND PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM**

Canadian Pacific Railway Company (“*CPR*”) hereby submits this application for allowance and payment of an administrative expense claim in the aggregate amount of \$94,310.20 USD, plus \$8,556.28 CAD, plus additional unliquidated and/or contingent amounts (the “*Application*”) against the estate of Montreal, Maine & Atlantic Railway, Ltd. (“*MMA*” or the “*Debtor*”). In support of this Application, CPR respectfully states as follows:

Background

1. On August 7, 2013 (the “*Petition Date*”), the Debtor commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the District of Maine (the “*Bankruptcy Court*”). On the same day, Montreal Maine and Atlantic Canada Co., MMA’s wholly-owned subsidiary, filed an insolvency proceeding under Canada’s *Companies Creditors Arrangement Act* in the Québec Superior Court.

2. Prior to the Petition Date, CPR and MMA entered into a certain Railcar Lease Agreement (the “*2003 Lease*”), pursuant to which the Debtor leased certain bulkhead flat cars from CPR.

3. Prior to the Petition Date, CPR and MMA, along with MMA Canada, also entered into that certain Master Agreement, dated December 23, 2002, as amended, which expressly incorporates certain schedules, including, but not limited to, Schedule “K” (Lease Agreement) and Schedule “F” (Interchange Trackage Rights Agreement) (collectively, the “*Master Agreement*” and schedules, together with the 2003 Lease, shall be referred to herein as the “*CPR Agreements*”).

4. Pursuant to an order, dated October 22, 2014, the Bankruptcy Court established December 1, 2014 as the deadline to assert certain administrative expenses against the Debtor (the “*Administrative Expense Bar Date*”).¹ As more fully described herein, CPR submits this Application for amounts and other obligations that are owed or may be owed to CPR by the Debtor that are required to be asserted by the Administrative Expense Bar Date.²

Administrative Expense Claim

5. Section 503(b)(1)(A) of the Bankruptcy Code provides, in pertinent part, for the allowance as “administrative expenses . . . , [of] the actual and necessary costs and expenses of preserving the estate.” Costs necessary to preserve the estate include costs related to the “postpetition operation of the business of the debtor.” *In re Hemingway Transport, Inc.*, 954 F.2d 1, 5 (1st Cir. 1992). Accordingly, the First Circuit has held that, “as a general rule,” a claim should be afforded administrative expense status if “(1) the right to payment arose from a postpetition transaction with the debtor estate . . . , and (2) the consideration supporting the right

¹ See *Order Establishing the Deadline for Filing Administrative Claims and Approving the Form and Manner of Notice Thereof*, dated October 22, 2014 [ECF No. 1164] (the “*Administrative Expense Bar Date Order*”).

² CPR has also filed a proof of claim dated June 13, 2014, which was assigned claim number 92-2 (“*POC No. 92-2*”). Included in POC No. 92-2 were certain amounts entitled to administrative expense priority pursuant to section 1171 of the Bankruptcy Code. Pursuant to section 1171(b) of the Bankruptcy Code and applicable law, CPR is entitled to receive certain amounts owed under the CPR Agreements that were earned or incurred during the six months prior to the Petition Date on an administrative priority basis. In accordance with the Administrative Expense Bar Date Order, the Claimant has not asserted any administrative expenses arising by operation of section 1171 of the Bankruptcy Code herein. The Claimant, however, reserves all rights with respect to these claims.

to payment was beneficial to the estate of the debtor.” *Id.* All unpaid expenses related to the Debtor’s postpetition availment of the benefits of the CPR Agreements, and the value of all unpaid actual and necessary costs for which the Debtor must pay CPR by operation of law (including unliquidated and/or contingent amounts), fall within the scope of this rule.

6. A detailed summary of CPR’s administrative expense claim and the bases therefor are reflected on Exhibit A attached hereto.

7. In addition to the items stated on Exhibit A, pursuant to shipping instructions issued by various shippers for transportation of certain commodities, CPR had interchanged traffic with MMA for which MMA had continuing and outstanding performance obligations postpetition up to and including July 1, 2014. MMA failed to conduct itself in accordance with the shipping instructions, with governing AAR Interchange Rules and protocols, with AAR Railway Accounting Rules, and other applicable industry practices, commercial arrangements, and other applicable requirements. Specifically, but without limitation, MMA failed to properly and diligently complete the transportation of the commodities as instructed, failed to properly and diligently reroute, detour or otherwise divert affected traffic, failed to return assets, failed to honor contractual commitments, and failed to fully and properly account for all costs, charges, and expenses that arose. For example, MMA failed to properly and diligently reroute traffic that was interchanged to MMA from CPR identified as Trains 815, 281, and 283, as well as various railcars from Train 282. All such postpetition non-performance benefitted MMA to the detriment of CPR, for which postpetition damages may arise that are presently unliquidated and/or contingent .

Reservation of Rights

8. CPR reserves the right to amend, modify, supplement, reclassify, or otherwise revise this Application at any time and in any respect, including, without limitation, as

necessary or appropriate to amend, quantify or correct amounts, to provide additional detail regarding the expenses set forth herein, to assert additional grounds for any of the expenses, to reflect any and all additional administrative expenses of whatever kind or nature that CPR has or may have against MMA or its estate, or to attach or submit additional documents supporting this Application that may become available after further investigation and discovery.

9. CPR reserves the right to file additional applications for administrative expenses with respect to expenses that are not required to be asserted by the Administrative Expense Bar Date.

10. Neither this Application nor any of its contents shall be deemed or construed as an acknowledgment or admission of any liability or obligation on the part of CPR. CPR specifically reserves all of its defenses and rights, procedural and substantive.

11. CPR does not waive or release, and expressly reserves, all rights and remedies at law or in equity that it has or may have against the Debtor or the Debtor's estate, including, without limitation, a right to subrogation under section 509 of the Bankruptcy Code.

12. CPR reserves all rights of setoff and recoupment that it may have, including its right to recoup any amounts asserted herein or to exercise its setoff rights with respect to any amounts asserted herein. To the extent the Trustee on behalf of the Debtor asserts any claim against CPR, CPR shall have a secured claim to the extent of its right of setoff under section 553 of the Bankruptcy Code.

13. Neither this claim nor any subsequent appearance, pleading, claim or suit is intended to waive (i) CPR's right to have final orders in non-core matters entered only after de novo review by a district court judge; (ii) CPR's right to trial by jury; (iii) CPR's right to have the reference withdrawn by the district court in any matter subject to mandatory or discretionary

withdrawal; or (iv) any other rights, claims, actions, defense, setoffs or recoupments to which CPR is or may be entitled, all of which rights, claims, actions, defenses, setoffs and recoupments are expressly reserved.

Notice

14. Copies of all notices and communications concerning this Application should be sent to:

John R. McDonald
Briggs and Morgan, P.A.
2200 IDS Center
80 S 8th Street
Minneapolis, MN 55402

Supporting Documentation

15. The Trustee and/or the Debtor have or should have copies of the CPR Agreements, outstanding invoices, and any other documents referenced herein. Due to the voluminous, confidential and/or commercially sensitive nature of the Leases and other supporting documents, such documents are not attached hereto. Copies of the CPR Agreements, outstanding invoices, and any other documents referenced herein will be made available to the Trustee upon reasonable request.

Conclusion

For the foregoing reasons, CPR should have an allowed administrative expense in the amount of \$94,310.20 USD, plus \$8,556.28 CAD, plus additional unliquidated and/or contingent amounts.

Dated: December 1, 2014.

Respectfully Submitted,

BRIGGS AND MORGAN, P.A.

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*Attorneys for Canadian Pacific Railway
Company*

EXHIBIT A

Invoice Number	Reference	Basis For Claim	Date	Amount	Curr.
18001434662013	AS	LEASE PAYMENT	08/21/2013	4,335.41	USD
18001437932013	JR	LEASE PAYMENT	09/19/2013	5,600.00	USD
18001441412013	JR	LEASE PAYMENT	10/22/2013	5,600.00	USD
18001445132013	JR	LEASE PAYMENT	11/27/2013	4,105.20	USD
18001452062014	JR	LEASE PAYMENT	01/14/2014	4,000.00	USD
18001459882014	JR	LEASE PAYMENT	02/27/2014	3,200.00	USD
00110647692014	0011064769	SIGNALS & COMM	04/29/2014	187.25	CAD
18001468772014	JR	LEASE PAYMENT	05/08/2014	1,200.00	USD
18001472992014	JR	LEASE PAYMENT	06/06/2014	400.00	USD
18001479912014	JR	LEASE PAYMENT	07/10/2014	400.00	USD
18001438982013	O/C-09/13	OVERCHARGE CLAIMS	09/30/2013	1,406.60	CAD
	O/C-08/14	OVERCHARGE CLAIMS	08/26/2014	3,576.55	USD
18001442452013	L/D-10/13	LOSS/DAMAGE CLAIMS	11/04/2013	1,665.92	USD
18001446932013	C1311193	CAR REPAIR	11/30/2013	1,579.22	USD
18001451332014	C1312189	CAR REPAIR	12/31/2013	1,464.45	USD
18001458552014	C1401188	CAR REPAIR	01/31/2014	39.68	USD
18001456652014	O/C-01/14	OVERCHARGE CLAIMS	01/31/2014	3,335.66	USD
18001463112014	C1402191	CAR REPAIR	02/28/2014	5,082.67	USD
18000903022014	S1403206	CAR REPAIR	03/31/2014	3,514.32	USD
18000248482014	D1403143	CAR REPAIR	03/31/2014	2,185.26	USD
18001466452014	C1403204	CAR REPAIR	03/31/2014	17,090.31	USD
18001470292014	C1404208	CAR REPAIR	04/30/2014	18,641.60	USD
18000255552014	D1410149	CAR REPAIR	10/31/2014	333.41	USD
18001496142014	C1410211	CAR REPAIR	10/31/2014	6,960.54	USD
		PROPERTY TAX REBILL	06/30/2014	6,962.43	CAD
				8,556.28	CAD
				94,310.20	USD

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RAILWAY, LTD.)
) Case No. 13-10670
Debtor.)

CERTIFICATE OF SERVICE

I, the undersigned legal assistant to the attorneys for Canadian Pacific Railway Company and subsidiaries, certify that I have served true and correct copies of (1) the Application of Canadian Pacific Railway Company for Allowance and Payment of Administrative Expense Claim; (2) Notice of Hearing; and (3) Certificate of Service on the following parties, who were served electronically through the Court's ECF System as listed on the Notice of Electronic Filing on this date:

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Dated at Portland, Maine this 1st day of December, 2014.

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:)
) Chapter 11
MONTREAL MAINE & ATLANTIC)
RAILWAY, LTD.)
) Case No. 13-10670
Debtor.)

NOTICE OF HEARING

Canadian Pacific Railway Company has filed an Application for Allowance and Payment of Administrative Expense Claim in the above-captioned case. The Application will be brought for hearing before the United States Bankruptcy Court for the District Court of Maine, 202 Harlow Street, Bangor, Maine 04401 on **March 10, 2015 at 10:00 a.m.**

Your rights may be affected. You should read these papers carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.

If you do not object to the Application, no action is required by you. If you do not want the Court to approve the Application, then on or before **March 3, 2015**, you or your attorney must file with the Court a response or objection explaining your position and addressed to Alec Leddy, Clerk, United States Bankruptcy Court for the District of Maine, 202 Harlow Street, Bangor, Maine 04401. A copy of the response must be sent to the undersigned at the address set forth below, upon the U.S. Trustee, 537 Congress Street, 3rd Floor, Portland, Maine 04101, and upon counsel for the Debtor. If you file an objection, you should also appear at the hearing on the date and time set forth above.

If you mail your response to the Court for filing, you must mail it early enough so that the court will receive it on or before **March 3, 2015**.

If you or your attorney do not file a written response and appear at the hearing, the Court may decide that you do not oppose the relief sought in the Application and may enter an order granting the requested relief.

Dated at Portland, Maine this 1st day of December, 2014.

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