

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE

---

In re:

Bk. No. 13-10670

MONTREAL, MAINE & ATLANTIC  
RAILWAY, LTD.,

Adversary Proceeding No. 14-1001

Debtor.

---

ROBERT J. KEACH, solely in his capacity  
as the chapter 11 trustee for MONTREAL,  
MAINE & ATLANTIC RAILWAY, LTD.,

Plaintiff

**Canadian Pacific Railway Company's  
answer to the second amended  
complaint and jury demand**

v.

WORLD FUEL SERVICES  
CORPORATION, WORLD FUEL  
SERVICES, INC., WESTERN  
PETROLEUM COMPANY, WORLD  
FUEL SERVICES, CANADA, INC.,  
PETROLEUM TRANSPORT  
SOLUTIONS, LLC, IRVING OIL  
LIMITED, CANADIAN PACIFIC  
RAILWAY COMPANY AND SMBC  
RAIL SERVICES, LLC,

Defendants.

---

Canadian Pacific Railway Company (CP) answers the second amended complaint  
as follows:

1. Generally denies except as admitted or qualified. Because plaintiff directs  
most allegations at “defendants” in the aggregate, states that, in most cases, CP cannot  
discern to which defendant the second amended complaint refers.

2. As to paragraph 1, admits only that a crude oil train derailed in Lac-Mégantic, Quebec on July 6, 2013; denies the remainder.

3. As to paragraphs 2-4, lacks information sufficient to form a belief as to the truth of the allegations.

4. Denies paragraphs 5 and 6, and states that the federal hazardous materials regulations charge the shipper, and not the carrier, with lading classification duties.

5. As to paragraph 7, admits only that the Bill of Lading, which was based on shipper provided information, identified the oil as Packing Group III; lacks information sufficient to form a belief as to the truth of the remainder of the allegations.

6. As to paragraphs 8 and 9, denies that CP made false representations; lacks information sufficient to form a belief as to the truth of the remainder of allegations.

7. Denies paragraph 10.

8. As to paragraph 11, admits only that the Derailment caused tank cars to rupture, which resulted in explosions and fire; lacks information sufficient to form a belief as to the truth of the remainder of allegations.

9. Admits paragraph 12.

10. As to paragraphs 13 and 14, lacks information sufficient to form a belief as to the truth of the allegations.

11. Denies paragraphs 15-17, and states that in the U.S., federal regulations govern all U.S. rail carrier duties and establish all U.S. rail carrier standards of care.

12. As to paragraphs 19-21, admits only that CP filed a proof of claim; denies the remainder.

13. As to paragraphs 22-27, lacks information sufficient to form a belief as to the truth of the allegations.

14. As to paragraph 28, admits that CP has a place of business in Montreal, Quebec, Canada – but not a principal place of business; admits that CP’s principal place of business is Calgary, Alberta; denies the remainder.

15. As to paragraphs 29 and 30, lacks information sufficient to form a belief as to the truth of the allegations.

16. Admits paragraphs 31-37.

17. As to paragraphs 38-40, lacks information sufficient to form a belief as to the truth of the allegations.

18. Admits paragraphs 41 and 42.

19. As to paragraph 43, admits that crude oil has historically been transported in DOT-111 cars and remains authorized by U.S. law to be shipped in those cars; denies the remainder; and states that U.S. federal law and Interstate Commerce Commission Termination Act (ICCTA) common carrier obligations require U.S. rail carriers to accept DOT-111 tank cars tendered in the U.S. for the transport of authorized lading, such as crude oil.

20. As to paragraph 44, lacks information sufficient to form a belief as to the truth of the allegations, and states that applicable federal regulations and ICCTA common carrier obligations require U.S. rail carriers to accept crude oil tendered in the U.S. for the transport in DOT-111 cars.

21. As to paragraph 45, lacks information sufficient to form a belief as to the truth of allegations about what the petroleum industry, shippers, and tank car lessors knew, but admits that beginning in 2011 the design of newly manufactured tank cars changed.

22. Denies paragraphs 46-48, and states that federal law and regulations govern U.S. rail carrier obligations to accept lading for transport.

23. As to paragraph 49, states that U.S. federal law and regulations define and impose all U.S. rail carrier duties; denies that CP is or can be subject to U.S. railroad laws and regulations.

24. As to paragraph 50, states Canadian Transportation of Dangerous Goods Regulations (TDGR) speak for themselves.

25. Admits that paragraphs 51-55 generally summarize various TDGRs and U.S. federal regulations, but states that the full text of those regulations speak for themselves and more accurately describe regulatory effects.

26. As to paragraphs 56 and 57, lacks information sufficient to form a belief as to the truth of the allegations.

27. Admits paragraph 58.

28. Denies paragraph 59.

29. As to paragraphs 60-62, lacks information sufficient to form a belief as to the truth of the allegations.

30. Admits paragraph 63.

31. As to paragraphs 64-69, lacks information sufficient to form a belief as to the truth of the allegations, but denies that U.S. federal regulations charged CP with any classification duties.

32. As to paragraph 70, lacks information sufficient to form a belief as to the truth of the allegations, but states that Canadian TDGRs have no applicability to or effect on the rail carrier conduct in the U.S.

33. As to paragraphs 71 and 72, denies that CP had any involvement in classifying or investigating lading; states that U.S. federal regulations govern hazardous material classification and investigation duties in the U.S. and that those regulations have not imposed and cannot impose any classification or investigation duties on CP; and lacks information sufficient to form a belief as to the truth of the remaining allegations.

34. As to paragraph 73, lacks information sufficient to form a belief as to the truth of the allegations.

35. Admits paragraphs 74-77, but states that the original consist comprised more than 72 cars; states further that several cars were bad-ordered and removed from the consist along the route.

36. As to paragraphs 78 and 79, admits only that CP moved the train in Canada to interchange with MMAR; denies the remainder; and states that in the U.S. CP never touched the train that ultimately derailed in Quebec.

37. As to paragraph 80, admits that Canadian law and shipper instructions required CP to interchange the cars to MMAR; denies the remainder.

38. As to paragraphs 81-83, lacks information sufficient to form a belief as to the truth of the allegations.

39. Denies paragraph 84.

40. Based upon media reports and governmental investigations, admits paragraphs 85-93, and admits further that the train derailed while under MMAR's custody and control and that derailment caused extensive damage and loss of life.

41. Based on the trustee's claw back actions, denies paragraphs 94 and 95.

42. Admits paragraphs 96-98.

43. As to paragraphs 99 and 100, lacks information sufficient to form a belief as to the truth of the allegations.

44. Admits paragraph 101.

45. As to paragraphs 102 and 103, lacks information sufficient to form a belief as to the truth of the allegations.

46. Admits paragraph 104.

47. As to paragraphs 105 and 106, lacks information sufficient to form a belief as to the truth of the allegations.

48. Admits paragraphs 107 and 108.

49. Denies paragraph 109.

50. As to paragraph 110, lacks information sufficient to form a belief as to the truth of the allegations.

51. As to CP, denies paragraphs 111-118; lacks information sufficient to form a belief as to the allegations against the other defendants.

52. Paragraphs 119-126 are directed solely at SMBC and therefore require no response from CP.

53. As to paragraphs 127-132, admits only that CP filed a proof of claim in the MMAR's chapter 11 proceedings; denies that the CP proof of claim is unenforceable; and lacks information sufficient to form a belief as to the truth of the allegations regarding other defendants.

### **Affirmative Defenses**

1. As to CP, the second amended complaint fails to state a claim upon which relief can be granted.

2. Claims against a rail carrier based upon conduct in the U.S. are preempted by U.S. federal law.

3. Foreign laws and regulations have no legal effect in the U.S. and create no legal duties.

4. The claims for damages are barred because any of plaintiff's alleged losses, were not actually or proximately caused by, or a result of, CP's alleged actions or inactions. Plaintiff, other defendants, or third parties caused plaintiff's damage, if any.

5. The doctrine of MMAR's *in pari delicto* bars plaintiff's claims against CP.

6. MMAR's own negligence and fault bars plaintiff's claims.

7. The doctrine of MMAR's unclean hands bars or limits plaintiff's claims.

8. The Court lacks personal jurisdiction over CP.

9. CP has no presence in the U.S. except for participation in MMAR's bankruptcy proceeding; to recover some of what was owed, CP had no choice about participating in that proceeding.

\* \* \* \* \*

The following counter claim and cross claims are subject to the not yet final Canadian CCAA orders, the not yet final U.S. chapter 15 enforcement order, and the not yet approved U.S. chapter 11 liquidation plan.

**CP Counter Claims and Cross Claims as follows:**

**Counter and Cross Claim No. 1 – Contribution and indemnification (all parties)**

1. CP denies liability for any damages sought by plaintiff. To the extent plaintiff can prove damages, such damages were caused by plaintiff and defendants other than CP.

2. If plaintiff has suffered any of the damages alleged by second amended complaint, or otherwise, to the extent such damages were not caused by, or in some manner imputed to, plaintiff, then such damages were caused by defendants or parties other than CP.

3. If CP is found liable for any amount of damages, CP is entitled to contribution and indemnification from other defendants.

4. CP has incurred and will incur substantial costs to defend the claims of various persons and entities arising out of the derailment. While CP should not be held liable, if claimants in any of those actions recover against CP, plaintiff and other

defendants bear all fault for such injuries. Therefore, plaintiff and the other defendants must be held liable to CP for those amounts and must indemnify and hold CP harmless.

**Cross Claim No. 2 – Contractual indemnification (the “World Fuel defendants”:  
World Fuel Services Corporation, World Fuel Services, Inc., and Western  
Petroleum Company)**

5. By the Bill of Lading, the World Fuel Defendants agreed to CP’s “Terms and Conditions for Shipment of freight and any supplemental charges.”

6. CP’s Tariffs 1 (“CP’s Guide to Products and Services”), 6 (“Private Equipment”) and 8 (“Hazardous Commodities”) (collectively the Tariffs) are integral parts of the Bill of Lading for the train that derailed. Item 200 (“Rules and regulations”) of Tariff 1, § 1 makes Tariff 1 rules applicable to all shipments on CP.

7. By Item 200 of Tariff 1, § 4, the World Fuel defendants represented and warranted that the lading, packing, and classification complied with all applicable laws. Insofar as the World Fuel defendants’ obligations were not performed in accordance with all applicable laws, the World Fuel defendants are liable to CP and must indemnify and hold CP harmless.

8. By Item 20 (“Private equipment terms”) of Tariff 6, the World Fuel Defendants committed to the following:

At all times when Private Equipment owned, leased or provided by, or on behalf of, Shipper are used on CP, Shipper shall be responsible for ensuring that the Private Equipment

- are free from mechanical defects and failures;
- contain no prohibited or obsolete parts;
- comply with all applicable tariffs;

- comply with all applicable industry, federal, provincial, state and local laws, regulation, rules, permits, licenses and decisions, including without limitation those issued, decided or established by the Association of American Railroads (“AAR”), Railway Association of Canada (“RAC”), Transport Canada, the U.S. Department of Transportation and the Federal Railroad Administration (FRA) regulations; and
- are otherwise in suitable condition for the safe rail transportation of Commodities.

Shipper shall fully indemnify, defend and hold harmless CP from all losses, including, without limitation, attorneys’ fees and other costs of litigation, damage, injury, death or any other liability including fines, penalties and environmental response costs to the extent such losses are caused by or otherwise arise from mechanical defects in, or failure of, Private Equipment or from Shipper’s failure to comply with the terms and conditions of this Tariff

9. Item 20 (“Private equipment”) of Tariff 8 makes the World Fuel Defendants responsible for “product classification and selection of packaging [i.e., tank cars] in accordance with legal requirements.”

10. Item 21 (“Loading and Documentation”) of Tariff 8 obligated the World Fuels defendants to accurately describe and classify the commodity on the Bill of Lading and other documents associated with the shipment.

11. The World Fuel defendants failed to properly classify, package, describe, and document the crude oil.

12. The World Fuel defendants must therefore indemnify and hold CP harmless for any potential liability resulting from a failure or error in classifying the lading, from any inadequacy attributable to the tank cars used to transport the lading, or from a failure to accurately describe the lading in documents associated with the shipment.

**WHEREFORE**, CP requests the following relief:

1. Dismissal with prejudice of all claims against CP.
2. An award of damages against MMAR and the World Fuels defendants of any amounts assessed against CP plus attorney's fees incurred by CP in this action and to defend against actions arising out of the Derailment.

**Jury trial demand**

CP demands a trial by jury on all issues.

Dated: September 3, 2015

**BRIGGS AND MORGAN, P.A**

By: *s/Timothy R. Thornton*

*s/Paul J. Hemming*

Timothy R. Thornton

John R. McDonald

Paul J. Hemming

2200 IDS Center

80 South Eighth Street

Minneapolis, MN 55402

(612) 977-8400

**And**

**PEARCE & DOW, LLC**

Joshua R. Dow

Two Monument Square, Suite 901

PO Box 108

Portland, Maine 04112-0108

(207) 822-9900 (Tel)

(207) 822-9901 (Fax)

**ATTORNEYS FOR CANADIAN  
PACIFIC RAILWAY COMPANY**