

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

In re:

MONTREAL, MAINE & ATLANTIC
RAILWAY, LTD.,

Debtor.

Bk. No. 13-10670

Chapter 11

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

Plaintiff

v.

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

Defendants.

Adversary Proceeding No. 14-1001

ANSWER AND AFFIRMATIVE DEFENSES TO COUNTERCLAIMS

Plaintiff Robert J. Keach, solely in his capacity as the chapter 11 trustee (the “Trustee”) of Montreal Maine & Atlantic Railway, Ltd. (the “Debtor”), by and through undersigned counsel, hereby answers the counterclaims (the “Counterclaims”) asserted by defendant Canadian Pacific Railway Company (“Defendant”) in the Defendant’s Answer to the Second

Amended Complaint and Jury Demand [Adv. D.E. 158] (the “Answer”) as follows:

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

1. The Trustee admits in part and denies in part the allegations set forth in paragraph 1 of the Counterclaims. The Trustee admits that “CP denies liability for any damages sought by plaintiff.” The Trustee denies the remaining allegations of paragraph 1 of the Counterclaims.

2. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the Counterclaims and therefore denies them.

3. The allegations of paragraph 3 of the Counterclaims set forth legal conclusions and do not require a response. To the extent a response to those allegations is required, the allegations are denied. By way of further answer, the Trustee affirmatively alleges that Defendant is not entitled to seek “contribution and indemnification from other defendants.”

4. The Trustee is without knowledge or information sufficient to form a belief as to the truth of the allegation that “CP has incurred and will incur substantial costs to defend the claims of various persons and entities arising out of the derailment” and therefore denies it. The Trustee denies that “plaintiff and other defendants bear all fault for such injuries.” The remaining allegations of paragraph 4 set forth a legal conclusion and do not require a response. To the extent a response to those allegations is required, the allegations are denied.

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

5. The Trustee denies the allegations set forth in paragraph 5 of the Counterclaims and respectfully refers the Court to the document referenced therein for the terms, conditions and provisions thereof and the interpretation and legal effect of that document.

6. The Trustee denies the allegations set forth in paragraph 6 of the Counterclaims and respectfully refers the Court to the document referenced therein for the terms, conditions and provisions thereof and the interpretation and legal effect of that document.

7. The Trustee denies the allegations set forth in paragraph 7 of the Counterclaims and respectfully refers the Court to the document referenced therein for the terms, conditions and provisions thereof and the interpretation and legal effect of that document.

8. The Trustee denies the allegations set forth in paragraph 8 of the Counterclaims and respectfully refers the Court to the document referenced therein for the terms, conditions and provisions thereof and the interpretation and legal effect of that document.

9. The Trustee denies the allegations set forth in paragraph 9 of the Counterclaims and respectfully refers the Court to the document referenced therein for the terms, conditions and provisions thereof and the interpretation and legal effect of that document.

10. The Trustee denies the allegations set forth in paragraph 10 of the Counterclaims and respectfully refers the Court to the document referenced therein for the terms, conditions and provisions thereof and the interpretation and legal effect of that document.

11. The Trustee admits the allegations set forth in paragraph 11 of the Counterclaims.

12. The allegations of paragraph 12 of the Counterclaims set forth legal conclusions and do not require a response, but which the Trustee nevertheless denies.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

13. Defendant is estopped from advancing, expanding or amending its claims against the Debtor in this adversary proceeding. On March 20, 2014, the Court entered an order setting June 13, 2014 as the deadline for parties to file a proof of claim in connection with a prepetition claim against the Debtor, the Debtor's subsidiaries, and Montreal, Maine & Atlantic Canada Co.

(the “Claims Bar Date”). On June 13, 2014, Defendant filed its amended proof of claim, as well as its Supplement to Its Amendment to Proof of Claim 92-1 [Claim No. 92-1] (together, the “Proof of Claim”).

14. By the Counterclaims, Defendant is attempting to circumvent the claims adjudication process in the Debtor’s bankruptcy case. The Bankruptcy Code provides proper avenues for seeking the allowance of claims such as the ones asserted in the Counterclaims. The Defendant must avail itself to that process and is barred by the Federal Rules of Bankruptcy Procedure and the Bar Date Order, and is otherwise estopped, from circumventing that process simply because it has been named as a defendant in this action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

15. The Counterclaims are barred by documentary evidence, which demonstrates that Defendant is not entitled to contribution and/or indemnification from either the Debtor or any other party.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

16. Defendant waived its right to a jury trial by filing the Proof of Claim.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

17. Defendant is estopped from raising the affirmative defense that the “Court lacks personal jurisdiction over CP.” Answer, p. 7. In denying Defendant’s *Motion to Dismiss and Memorandum of Law in Support of Motion* [Adv. D.E. 140], the Court ruled that it had personal jurisdiction over Defendant in this adversary proceeding.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

18. The cross-claims against the World Fuel defendants are barred, and improper, in light of the order entered by the Court staying this adversary proceeding as against those entities.

See Adv. D.E. 145.

WHEREFORE, Plaintiff Robert J. Keach, solely in his capacity as the chapter 11 trustee of Montreal Maine & Atlantic Railway, Ltd., respectfully requests that the Court dismiss the Counterclaims in their entirety, and grant such other and further relief as may be just and proper.

Dated: September 24, 2015

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

By his attorneys:

/s/ Timothy J. McKeon

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