

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**AMENDED OBJECTION TO PROOFS OF CLAIM FILED BY CENTER BEAM
FLATCAR COMPANY ON THE BASIS THAT (A) CLAIM 116-1 IS DUPLICATIVE
OF CLAIM 116-2 AND (B) CERTAIN OF THE AMOUNTS ASSERTED IN
CLAIM 116-2 ARE UNENFORCEABLE UNDER THE BANKRUPTCY CODE**

Robert J. Keach, the estate representative (the “Estate Representative”) of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (“MMA” or the “Debtor”),¹ hereby files this amended objection (the “Amended Objection”)² to Proofs of Claim No. 116-1 (“Claim 116-1”) and 116-2 (“Claim 116-2,” and together with Claim 116-1, the “Claims”) filed by Center Beam Flatcar Company (“Center Beam”). As set forth below, the Estate Representative objects to the Claims on the basis that (a) Claim 116-1 must be disallowed as it is duplicative of Claim 116-2 and (b) certain amounts asserted in Claim 116-2 must be disallowed as unenforceable under the Bankruptcy Code against the Debtor. In support of this Amended Objection, the Estate Representative states as follows:

¹ In accordance with the *Trustee’s Chapter 11 Plan of Liquidation, dated July 15, 2015 (As Amended on October 8, 2015)* [D.E. 1822] (the “Plan”), upon the Effective Date of the Plan (which occurred on December 22, 2015, *see* D.E. 1927), Robert J. Keach is no longer the chapter 11 trustee of the Debtor’s estate, but is the Estate Representative of the Post-Effective Date Estate (as defined in the Plan). *See* Plan § 6.1(a).

² By the *Trustee’s First Omnibus Objection to Certain Proofs of Claim on the Basis that Such Claims (A) Are Duplicative of Other Claims (B) Were Not Timely Filed, (C) Otherwise Do Not Comply with the Applicable Rules or Orders of This Court, or (D) Were Released or Mooted Pursuant to the Confirmation Order* [D.E. 1978] (the “First Omnibus Claims Objection”), the Estate Representative Objected to Claim 116-2. By this Amended Objection, the Estate Representative hereby withdraws his objection to Claim 116-2 contained in the First Omnibus Claims Objection (and will submit a revised form of order reflecting this change) and instead submits the Amended Objection that follows.

JURISDICTION AND VENUE

1. The United States District Court for the District of Maine (the “District Court”) has original, but not exclusive, jurisdiction over this chapter 11 case pursuant to 28 U.S.C. § 1334(a) and over this Amended Objection pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(a) and Rule 83.6 of the District Court’s local rules, the District Court has authority to refer and has referred this chapter 11 case, and, accordingly, this Amended Objection, to this Court.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has constitutional authority to enter judgment in this action.

3. Venue over this chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue over this proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

4. The relief sought in this Amended Objection is predicated upon sections 502(b)(1) and (g)(1) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 3007-1 of the Local Rules for the United States Bankruptcy Court for the District of Maine (the “Local Rules”).

BACKGROUND

5. Prior to the Petition Date (as defined below), the Debtor was party to a lease of railroad equipment with Center Beam, dated as of January 13, 2003 (the “Lease”).

A. The Derailment and the Debtor’s Bankruptcy Filing

6. On July 6, 2013, an unmanned eastbound MMA train with 72 carloads of crude oil, a buffer car, and 5 locomotive units derailed in Lac-Mégantic, Québec (the “Derailment”). The transportation of the crude oil had begun in New Town, North Dakota by the Canadian Pacific Railway (“CP”) and the Debtor’s wholly owned subsidiary, Montreal Maine & Atlantic

Canada Co. (“MMA Canada”), later accepted the rail cars from CP at Saint-Jean, Québec. The crude oil was to be transported via the Saint-Jean-Lac-Mégantic line through Maine to its ultimate destination in Saint John, New Brunswick.

7. The Derailment set off several massive explosions, destroyed part of downtown Lac-Mégantic, and is presumed to have killed 47 people. A large quantity of oil was released into the environment, necessitating an extensive cleanup effort. As a result of the Derailment and the related injuries, deaths, and property damage, lawsuits were filed against the Debtor in both the United States and Canada. After the Derailment, Canadian train activity was temporarily halted between Maine and Québec on the MMA Canada line, resulting in the Debtor losing much of its freight business. These effects of the Derailment caused the Debtor's aggregate gross revenues to fall drastically to approximately \$1 million per month.

8. On August 7, 2013 (the “Petition Date”), the Debtor filed a voluntary petition for relief commencing a case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Maine (the “Case”). Simultaneously, MMA Canada filed for protection under Canada’s Companies’ Creditors Arrangement Act (Court File No. 450-11-000167-134). On August 21, 2013, the U.S. Trustee appointed Robert J. Keach as chapter 11 trustee to serve as trustee in the Debtor’s Case pursuant to 11 U.S.C. § 1163 [D.E. No. 64].

9. After the Petition Date, the Debtor returned the cars subject to the Lease to Center Beam as promptly as possible, though that process took time because the cars had to be collected from their locations across the country. The Estate Representative is not aware of any benefit that the Debtor derived from the Lease after the Petition Date.

B. Rejection of the Center Beam Agreement and the Filing of the Claims

10. On August 21, 2013 (the “Motion Date”), the Debtor filed a motion to reject, *nunc pro tunc* to the Petition Date, certain executory contracts and unexpired leases that were of

no value, in the Debtor’s business judgment, to the estate. *See* D.E. 66 (the “Motion”). The Lease was subject to the Motion. *See* D.E. 67. On November 1, 2013, the Court granted the Motion, including with respect to the Lease. *See* D.E. 421 (the “Order”). By virtue of the Order, the Lease was rejected as of August 7, 2013 (the “Rejection Date”). *Id.*

11. On June 12, 2014, Center Beam filed Claim 116-1 pursuant to Bankruptcy Code section 502(a). Claim 116-1 asserts (a) a general unsecured claim against the Debtor in the amount of \$288,692.24 (the “Asserted Unsecured Claim”) relating to rental payments that allegedly accrued prior to the Petition Date and post-petition costs allegedly payable under the Lease and (b) an administrative claim against the Debtor in the amount of \$83,403.23 (the “Asserted Admin Claim”) relating to rental payments that accrued after the Petition Date. Claim 116-1 includes a spreadsheet summarizing the amounts due and a key as to how they were calculated, which can be broken down as follows:

| Date Range | Amount | Center Beam’s Characterization |
|---|---------------|---------------------------------------|
| <i>Prepetition Rent</i> | \$106,466.82 | Unsecured |
| <i>Postpetition Expenses Payable Under Lease</i> | \$182,225.42 | Unsecured |
| <i>Postpetition Rent Accrued Pre-Motion Date</i> | \$198.90 | Administrative |
| <i>Postpetition Rent Accrued Post-Motion Date</i> | \$83,204.32 | Administrative |

12. The Asserted Admin Claim thus comprises (a) \$198.90 that accrued prior to the Motion Date—the date on which Center Beam was put on notice of the Debtor’s intent to reject the Lease (the “Pre-Motion Admin Claim”), and (b) \$83,204.32 that accrued after the Motion Date (the “Unenforceable Claim”).

13. On June 13, 2014, Center Beam filed Claim 116-2 pursuant to Bankruptcy Code section 502(a). The amounts asserted in Claim 116-2 are identical to those asserted in Claim 116-1.

RELIEF REQUESTED

14. By this Amended Objection, the Estate Representative requests entry of an order, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1, (a) sustaining the Amended Objection, (b) disallowing Claim 116-1 in its entirety, (c) disallowing the Unenforceable Claim portion of Claim 116-2 in its entirety, and (d) granting such other and further relief as this Court deems just and equitable.

BASIS FOR RELIEF

A. The Legal Standard

15. Section 502(a) provides that “[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). When the claim at issue is asserted to warrant administrative expense status, the claimant bears the burden of showing entitlement to that status. *See In re PMC Mktg. Corp.*, 517 B.R. 386, 391 (B.A.P. 1st Cir. 2014) (“An administrative expense claimant bears the burden of establishing that its claim qualifies for priority status.”) (internal citations omitted).

16. Bankruptcy Code section 365(g) provides that “the rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease— (1) if such contract or lease has not been assumed . . . , immediately before the date of the filing of the petition” 11 U.S.C. § 365(g). As to any damages incurred after rejection, “a claim for post-rejection rent ha[s] to qualify as an administrative claim under section 503(b)(1)[,] [a]s a lessor would be entitled to rent for the post-rejection period only ‘to the extent the use of the leased premises directly benefited the estate.’” *In re Ames Dep’t Stores, Inc.*, 306 B.R. 43, 63 (Bankr. S.D.N.Y. 2004) (citing *In re Trak Auto Corporation*, 277 B.R. 655 (Bankr. E. D. Va. 2002); *In re National Refractories & Minerals Corp.*, 297 B.R. 614 (Bankr. N. D. Cal. 2003)).

17. Bankruptcy Code section 502(g)(1) provides that a claim “arising from the rejection, under section 365 of [Title 11] . . . of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined . . . *the same as if such claim had arisen before the date of the filing of the petition.*” 11 U.S.C. § 502(g)(1) (emphasis added); *see also In re Enron Corp.*, 354 B.R. 652, 659 (S.D.N.Y. 2006) (“Section 502(g)(1), provided a different rule [from 502(g)(2)]: namely, . . . that damages are to be determined on the last business day before the petition is filed.”). Importantly, only to the extent the estate benefits from a counterparty’s postpetition performance under an executory contract or unexpired lease that has not yet been rejected will any damages arising post-petition be entitled to administrative priority. *See In re Eckberg*, 446 B.R. 909, 915 (Bankr. C.D. Ill. 2011) (citing *In re FBI Distribution Corp.*, 330 F.3d 36, 42 (1st Cir. 2003)).

18. Bankruptcy Code section 502(b)(1) provides that if an objection to a claim is filed, the court, after notice and a hearing, “shall allow such claim . . . except to the extent that—(1) such claim is unenforceable against the debtor and property of the debtor” 11 U.S.C. § 502(b)(1). The Bankruptcy Code defines a “claim” as a “right to payment,” 11 U.S.C. § 101(5)(A), “usually referring to a right to payment recognized under state law,” *In re Hann*, 476 B.R. 344, 354 (B.A.P. 1st Cir. 2012), *aff’d*, 711 F.3d 235 (1st Cir. 2013) (quoting *Travelers Cas. and Sur. Co. of America v. Pac. Gas and Elec. Co.*, 549 U.S. 443, 451 (2007)). Because a “right to payment” constitutes a claim, “the first step in the claims [allowance] process is always to determine whether there *is* a right to payment.” *In re Taylor*, 289 B.R. 379, 383 (Bankr. N. D. Ind. 2003) (emphasis added).

A. Claim 116-1 is Duplicative of Claim 116-2

19. Putting aside Center Beam’s entitlement to payment a *single* time on the amount asserted in its Claims, Center Beam certainly has no right to double payment from the Debtor

under applicable law. Accordingly, as Claim 116-1 is duplicative of Claim 116-2, Claim 116-1 is not a claim that is “enforceable against the debtor.” See Taylor, 289 B.R. at 383 (finding that in assessing whether to allow a claim, the first step is for the court to determine whether there exists a right to payment under applicable non-bankruptcy law). Claim 116-1 should thus be disallowed in its entirety. See 11 U.S.C. § 502(b)(1); Hann, 473 B.R. at 355 (finding that a claim with “no basis in fact or law” must be disallowed).

B. As a Claim Relating to Post-Rejection, Non-Induced Damages, the Unenforceable Claim is Unenforceable Against the Debtor

20. As an initial matter, Center Beam has failed to carry its burden in establishing entitlement to administrative expense claim status. See PMC Mktg., 517 B.R. at 391 (“An administrative expense claimant bears the burden of establishing that its claim qualifies for priority status.”). The Asserted Admin Claim included in Claim 116-2 comprises the Pre-Motion Admin Claim and the Unenforceable Claim. The Unenforceable Claim accrued after the Motion Date, without any inducement on the part of the Debtor and the Debtor derived no benefit therefrom. Accordingly, there is no basis for the Unenforceable Claim to be entitled to administrative expense priority. See Eckberg, 446 B.R. at 915; FBI Distribution, 330 F.3d at 42.

21. Moreover, the Unenforceable Claim is wholly unenforceable (even as an unsecured claim) because post-rejection damages are only enforceable to the extent they confer a benefit upon the estate (in which case, they are entitled to administrative status).³ See Ames, 306 B.R. at 63. Accordingly, because the Unenforceable Claim conferred no benefit upon the estate and accrued after the Rejection Date, it should be disallowed in its entirety and Claim 116-2 should be revised to reflect such disallowance.

³ For the sake of compromise and in the interests of fairness, the Estate Representative is willing not to object to the Pre-Motion Admin Claim (without admitting that the estate derived any benefit therefrom), given that the Pre-Motion Admin Claim accrued prior to the Motion Date. Once Center Beam learned of the Debtor’s proposed rejection of the Lease, however, this equitable justification no longer exists.

RESERVATION OF RIGHTS

22. Nothing contained herein is or should be construed as: (i) an admission as to the validity of any claim against the Debtor, (ii) a waiver of the Estate Representative's right to dispute any claim on any grounds, or (iii) a promise to pay any claim.

NOTICE

23. Notice of this Amended Objection was served on Center Beam or its counsel on the date and in the manner set forth in the certificate of service. The Estate Representative submits that no other or further notice need be provided.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Estate Representative requests that the Court enter an order, substantially in the form annexed hereto, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rule 3007 and Local Rule 3007-1, (i) sustaining this Amended Objection; (ii) disallowing Claim 116-1 in its entirety, (iii) disallowing the Unenforceable Claim asserted in Claim 116-2 in its entirety, and (iv) granting such other and further relief as may be just.

Dated: February 24, 2016

**ROBERT J. KEACH,
ESTATE REPRESENTATIVE OF THE
POST-EFFECTIVE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.**

By his attorneys:

/s/ Sam Anderson
Sam Anderson, Esq.
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**ORDER SUSTAINING AMENDED OBJECTION TO PROOFS OF
CLAIM FILED BY CENTER BEAM FLATCAR COMPANY ON THE BASIS
THAT (A) CLAIM 116-1 IS DUPLICATIVE OF CLAIM 116-2 AND
(B) CERTAIN OF THE AMOUNTS ASSERTED IN CLAIM 116-2 ARE
UNENFORCEABLE UNDER THE BANKRUPTCY CODE**

This matter having come before the Court on the *Amended Objection to Proofs of Claim Filed by Center Beam Flatcar Company on the Basis that (A) Claim 116-1 is Duplicative of Claim 116-2 and (B) Certain of the Amounts Asserted in Claim 116-2 Are Unenforceable Against the Debtor* (the “Amended Objection”)¹ filed by Robert J. Keach, the estate representative (the “Estate Representative”) of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (the “Debtor”), in relation to Proof of Claim Nos. 116-1 and 116-2 filed by the Center Beam Flatcar Company and after such notice and opportunity for hearing as was required by the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and this Court’s local rules, and after due deliberation and sufficient cause appearing therefore; it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** that:

1. The Amended Objection is sustained.
2. Claim No. 116-1 shall be disallowed in its entirety and expunged from the Debtor’s claims register.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Amended Objection.

3. The Unenforceable Claim portion of Claim No. 116-2 (\$83,204.32) shall be disallowed in its entirety. The balance of Claim 116-2 shall remain on the Debtor's claims register, subject to the Estate Representative's rights to object to the revised Claim on any other grounds in accordance with the Plan and Confirmation Order.

Dated: _____, 2016

Honorable Peter J. Cary
Chief Judge, United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**NOTICE OF HEARING ON AMENDED OBJECTION TO PROOFS OF
CLAIM FILED BY CENTER BEAM FLATCAR COMPANY ON THE
BASIS THAT (A) CLAIM 116-1 IS DUPLICATIVE OF CLAIM 116-2 AND
(B) CERTAIN OF THE AMOUNTS ASSERTED IN CLAIM 116-2 ARE
UNENFORCEABLE UNDER THE BANKRUPTCY CODE**

On February 24, 2016, Robert J. Keach, the chapter 11 Estate Representative (the “Estate Representative”) of Montreal, Maine & Atlantic Railway, Ltd. (the “Debtor”), filed the *Amended Objection to Proofs of Claim Filed by Center Beam Flatcar Company on the Basis that (A) Claim 116-1 is Duplicative of Claim 116-2 and (B) Certain of the Amounts Asserted in Claim 116-2 are Unenforceable Under the Bankruptcy Code* (the “Amended Objection”). A hearing to consider the Objection has been scheduled for **April 5, 2016 at 9:00 a.m. ET.**

If you oppose the relief requested in the Amended Objection, then on or before **March 25, 2016** (the “Response Deadline”), you or your attorney must file with the Court a response to the Amended Objection explaining your position. If you are not able to access the CM/ECF Filing System, then your response should be served upon the Court at:

Alec Leddy, Clerk
United States Bankruptcy Court for the District of Maine
202 Harlow Street
Bangor, Maine 04401

-and-

Sam Anderson, Esq.
Bernstein, Shur, Sawyer & Nelson, P.A.
100 Middle Street, PO Box 9729
Portland, Maine 04101-5029

If you do have to mail your response to the Court for filing, then you must mail it early enough so that the Court and the Estate Representative will receive it on or before **March 25, 2016 at 5:00 p.m. (ET).**

You may attend the hearing with respect to the Objection, which is scheduled for **April 5, 2016 at 9:00 a.m.** (the “Hearing”) before the Honorable Judge Peter G. Cary, the United

States Bankruptcy Court for the District of Maine (the "Court"), 537 Congress Street, 2nd Floor, Portland, Maine.

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

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought, and may enter an order sustaining the Amended Objection without further notice or hearing.

Nothing in this Notice or the accompanying Amended Objection to Proof of Claim constitutes a waiver of any claims, counterclaims, rights of offset or recoupment, preference actions, fraudulent-transfer actions, or any other bankruptcy claims against you. All parties reserve the right to assert additional objections to your proof(s) of claim.

Dated: February 24, 2016

**ROBERT J. KEACH,
ESTATE REPRESENTATIVE OF THE POST-
EFFECTIVE DATE ESTATE OF MONTREAL
MAINE & ATLANTIC RAILWAY, LTD.**

By his attorneys:

/s/ Sam Anderson
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