

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670

Chapter 11

**OBJECTION TO PROOF OF CLAIM FILED BY
BANGOR SAVINGS BANK ON THE BASIS THAT
SUCH CLAIM IS UNENFORCEABLE AGAINST THE DEBTOR**

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 objects (the “Objection”) to Proof of Claim No. 51 (the “Claim”) filed by Bangor Savings Bank (“BSB”). As set forth below, the Estate Representative objects to the Claim on the basis that such Claim must be disallowed as unenforceable against the Debtor under the Bankruptcy Code. In support of this Objection, the Estate Representative states as 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 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 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.

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).

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 Objection is predicated upon section 502(b)(1) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 3001 and 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

A. The Debtor’s Guarantee of the LMS Loan

5. LMS Acquisition Corporation (“LMS” or the “Direct Obligor”), an affiliate of the Debtor, entered into a promissory note with BSB in the original principal amount of \$4,000,000.00 (the “BSB Loan”). The obligations arising under the LMS Loan were secured by certain assets of LMS (the “Direct Collateral,” and BSB’s claim against LMS, the “Direct Claim”).

6. In connection with LMS’s entry into the LMS Loan, on or about November 20, 2009, the Debtor and BSB entered into an unconditional guaranty of payment and performance (the “LMS Guarantee”) whereby the Debtor guaranteed certain obligations of LMS under the BSB Loan. The Debtor’s obligations under the LMS Guarantee (the “Guarantee Claim”) were secured by twenty-five of the Debtor’s locomotives (collectively, the “Locomotives”),² identified by the following rail marks of the Debtor.

MMA 21	MMA 23	MMA 79	MMA 100	MMA 2000
MMA 3000	MMA 3603	MMA 3609	MMA 3613	MMA 3614
MMA 5016	MMA 5017	MMA 5018	MMA 5021	MMA 5023
MMA 5026	MMA 5078	MMA 8525	MMA 8541	MMA 8546
MMA 8553	MMA 8569	MMA 8578	MMA 8583	MMA 8592

² Locomotive 5017 shall be referred to as the “Lead Locomotive,” and all Locomotives other than the Lead Locomotives, the “Saleable Locomotives.”

B. The Derailment and the Debtor's Bankruptcy Filing

7. 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.

8. 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.

9. On August 7, 2013, 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 Office of the United States Trustee (the "U.S. Trustee") appointed Robert J. Keach as chapter 11 trustee in the Debtor's Case pursuant to 11 U.S.C. § 1163 [D.E. No. 64].

C. The Debtor's Schedules, the Filing of the Claim, and the Lift Stay Motion

10. On September 11, 2013, the Debtor filed its schedule of assets and liabilities and statement of financial affairs [D.E. 216] (collectively, the "Schedules"). The Schedules listed BSB as having an aggregate disputed claim of \$3,729,000.00 (the "Disputed Claim"), comprising: (a) a disputed secured claim in the amount of \$3,410,000.00 and (b) a disputed unsecured deficiency claim in the amount of \$319,000.00. *See* Schedule E (Creditors Holding Secured Claims), p. 24 of 244.

11. On April 1, 2014, BSB filed Claim 51 pursuant to Bankruptcy Code section 502(a). The Claim asserts a secured claim against the Debtor in the amount of \$3,693,045.52.

12. On July 11, 2014, the Trustee, with the consent of, *inter alia*, BSB, filed a motion for relief from the automatic stay for the Trustee to turn over to BSB the Locomotives upon certain terms and conditions [D.E. 1019] (the "Consent Motion for Stay Relief"). In the Consent Motion for Stay Relief, among other things:

- (a) The Trustee agreed to turn over all 25 Locomotives to BSB immediately, and BSB would incur all costs associated with insurance and transport; *see id.* at ¶¶ 10(a), (b);
- (b) In the event the Direct Claim was paid in full, BSB would remit to MMA that amount of proceeds from the Locomotives which exceeded the amount of the Direct Claim; *see id.* at ¶ 10(d); and
- (c) BSB represented that it was "seeking a buyer for the Locomotives and ha[d] tentatively scheduled an auction . . . for August 5, 2014;" *see id.* at ¶ 10(d).

13. On July 25, 2014, the Bankruptcy Court granted the Consent Motion for Stay Relief [D.E. 1048] (the "Consent Order").

14. On or around In August 2014, BSB sold the twenty-four Saleable Locomotives for \$1,085,500.00. In addition, around the same time, BSB sold certain other Locomotives that constituted Direct Collateral for an incremental \$35,000.00. In addition, the Trustee remitted

\$18,500.00 to BSB in partial satisfaction of the Guarantee Claim, and counsel to BSB represented to counsel to the Estate Representative that BSB has received \$354,387.04 from the direct obligor or its affiliates in further partial satisfaction of the Direct Claim. The \$1,493,387.04 in payments described in this paragraph collectively, the “Payments.”

15. Applying the Payments against the amount of the amount asserted in the Claim³ results in a maximum Claim of \$2,199,658.48 (the “Reduced Disputed Claim”), before ascribing any value to the Lead Locomotive, which is in BSB’s possession pursuant to the Consent Order.

16. Counsel to BSB recently represented to counsel to the Estate Representative BSB is attempting to sell the Lead Locomotive and the Direct Collateral, the proceeds from which will reduce the Reduced Disputed Claim on a dollar-for-dollar basis.

RELIEF REQUESTED

17. By this Objection, the Estate Representative requests entry of an order, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rules 3001 and 3007, and Local Rule 3007-1, (a) sustaining the Objection, (b) disallowing the Claim in its entirety, and (c) granting such other and further relief as this Court deems just and equitable.

BASIS FOR RELIEF

A. The Legal Standard

18. 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). 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.

³ As set forth below, the Estate Representative contests the full amount of the Claim.

§ 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. 2013), 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)).

19. Section 506(a) of the Bankruptcy Code provides, in pertinent part:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor’s interest in the estate’s interest in such property . . . and is an unsecured claim to the extent that the value of such creditor’s interest . . . is less than the amount of such allowed claim.

11 U.S.C. § 506(a).

B. The Claim is Unenforceable Against the Debtor

20. BSB has (a) failed to reduce its asserted claim to account for amounts received in at least partial satisfaction of the Direct Claim, (b) demonstrated no remaining interest in property of the Debtor that would give rise to a secured claim, and (c) failed to satisfy the remaining Direct Claim from the Direct Collateral, which constitute non-debtor assets of the Direct Obligor. The Claim should thus be disallowed pursuant to Bankruptcy Code section 502(b)(1).

*i. **The Claim Must Be Reduced to Reflect the Payments***

21. Although the Debtor disputed the scheduled amount of BSB’s Claim, the Trustee ultimately consented to BSB’s repossession of the Locomotives. As an initial matter, then, the amount of the Claim must be reduced to the amount of the Reduced Disputed Claim (\$2,199,658.48) to reflect the value received from the auction of the Saleable Locomotives, as well as the other Payments made on the Guarantee and Direct Claims.

ii. BSB's Reduced Disputed Claim Must Be Reduced to Reflect the Value of the Lead Locomotive

22. Starting with the Reduced Disputed Claim of \$2,199,658.48, the claim must be further reduced to reflect the fact that BSB received value in the form of the Lead Locomotive. As BSB has not yet sold the Lead Locomotive (and thus there is no objective indicator of value of that asset), the Estate Representative submits that the average value of the Saleable Locomotives should serve as a proxy. Crediting that average value—\$45,229, leaves BSB with a deficiency claim of \$2,154,429.48 (the "Further Reduced Disputed Claim").

iii. The Remaining BSB Claim is Not Secured by Any Asset of the Debtor, and Must Be Disallowed Due to Imminent Repayment by the Direct Obligor

23. Starting with the Further Reduced Disputed Claim of \$2,154,429.48, that Claim is only secured to the extent of the value of BSB's collateral. *See* 11 U.S.C. § 506(a). But BSB has taken possession of all collateral securing the Guarantee Claim. Left with no collateral, the Further Reduced Disputed Claim is—at best—a fully unsecured "deficiency" claim. *See* 11 U.S.C. § 506(a).

24. But the Further Reduced Disputed Claim should be fully disallowed because the direct obligation will be repaid with the proceeds from the liquidation of the Direct Collateral in the very near term. BSB has had state-law rights over the Direct Collateral—assets of a non-debtor—since the Derailment, and counsel to BSB has recently confirmed BSB's imminent sale of the Direct Collateral. As an initial matter, then, BSB has had the power to liquidate assets to satisfy the Direct Claim for over a year, and it continues to have those rights as against the Director Obligor. Moreover, if the proceeds from the liquidation of the Direct Collateral exceed the amount of the Direct Claim, BSB will be required to remit to the Debtor's estate the amount by which those proceeds exceed the amount of the Direct Claim in accordance with the Consent Order. When taken together, it would be inequitable for the Estate Representative to

be forced to make a distribution to BSB on the Guaranty Claim—at the expense of other general unsecured creditors with no means of recourse against a non-debtor for satisfaction of their claims—when BSB has a claim *secured by assets of a non-debtor* that it simply has chosen not to avail itself of.

25. Accordingly, the Estate Representative submits that the Claim should (a) be reduced to the Further Reduced Disputed Claim and (b) be disallowed in its entirety on account of the imminent repayment from the Direct Obligor.⁴ *See* 11 U.S.C. § 502(b)(1).

RESERVATION OF RIGHTS

26. 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

27. Notice of this Objection was served on counsel to BSB on the date and in the manner set forth in the certificate of service. The Estate Representative submits that no other notice need be provided.

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⁴ As an alternative, the Further Reduced Disputed Claim could be estimated at \$0.00 under Bankruptcy Code section 502(c)(1) if the Direct Collateral has not yet been liquidated.

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 Rules 3001 and 3007 and Local Rule 3007-1, (i) sustaining this Objection; (ii) disallowing the Claim in its entirety, and (iii) granting such other and further relief as may be just.

Dated: March 1, 2016

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

By his attorneys:

/s/ Sam Anderson

Sam Anderson, Esq.
Lindsay K. Zahradka, Esq. (admitted *pro hac vice*)
BERNSTEIN, SHUR, SAWYER & NELSON, P.A.
100 Middle Street
P.O. Box 9729
Portland, ME 04104
Telephone: (207) 774-1200
Facsimile: (207) 774-1127

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**ORDER SUSTAINING OBJECTION TO PROOF OF CLAIM FILED BY
BANGOR SAVINGS BANK ON THE BASIS THAT
SUCH CLAIM IS UNENFORCEABLE AGAINST THE DEBTOR**

This matter having come before the Court on the *Objection to Proof of Claim Filed by Bangor Savings Bank on the Basis that Such Claim Is Unenforceable Against the Debtor* (the “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 No. 51 filed by the Bangor Savings Bank, and after such notice and opportunity for hearing as was required by the Bankruptcy Code, the Bankruptcy Rules, 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 Objection is sustained.
2. Claim No. 51 shall be disallowed in its entirety and expunged from the Debtor’s claims register.

Dated: _____, 2016

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

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

**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 OBJECTION TO PROOF OF CLAIM FILED BY
BANGOR SAVINGS BANK ON THE BASIS THAT
SUCH CLAIM IS UNENFORCEABLE AGAINST THE DEBTOR**

On March 1, 2016, Robert J. Keach, the chapter 11 Estate Representative (the "Estate Representative") of Montreal, Maine & Atlantic Railway, Ltd. (the "Debtor"), filed the *Objection to Proof of Claim Filed by Bangor Savings Bank on the Basis that Such Claim is Unenforceable Against the Debtor* (the "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 Objection, then on or before **March 31, 2016** (the "Response Deadline"), you or your attorney must file with the Court a response to the 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 31, 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 Objection without further notice or hearing.

Nothing in this Notice or the accompanying 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: March 1, 2016

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

By his attorneys:

/s/ Sam Anderson
D. Sam Anderson, Esq.
Lindsay K. Zahradka, Esq. (admitted *pro hac vice*)
BERNSTEIN, SHUR, SAWYER & NELSON, P.A.
100 Middle Street
P.O. Box 9729
Portland, ME 04104
Telephone: (207) 774-1200
Facsimile: (207) 774-1127
Email: sanderson@bernsteinshur.com
lzahradka@bernsteinshur.com