

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

CHAPTER 11 TRUSTEE'S FIRST REPORT
PURSUANT TO LOCAL RULE 3016-3

Robert J. Keach, the chapter 11 trustee in the above-captioned case (the "Trustee"), hereby files this report pursuant to Rule 3016-3 (the "Local Rule") of this Court's local rules (the "Report"). In accordance with the Local Rule, the Trustee reports that he believes that a chapter 11 plan compliant with sections 1121-1129, 1172 and 1173 can be formulated and filed in a reasonable time subject to, *inter alia*, the challenges and conditions detailed below. In support of the Report, the Trustee states as follows:

BACKGROUND

1. On August 7, 2013 (the "Petition Date"), Montreal Maine & Atlantic Railway, Ltd., the above-captioned debtor (the "Debtor"), filed a voluntary petition for relief under chapter 11 of 11 U.S.C. § 101 *et seq.* Also on August 7, 2013, the Debtor's wholly-owned Canadian subsidiary, Montreal Maine & Atlantic Canada Co. ("MMA Canada") filed for protection from creditors in a concurrent proceeding (the "Canadian Proceeding") under Canada's *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"). Richter Advisory Group, Inc. acts as the court-appointed monitor (the "Monitor") in the Canadian Proceeding. On August 21, 2013, the United States Trustee appointed the Trustee to serve in this chapter 11 case pursuant to 11 U.S.C. § 1163.

2. The Debtor and MMA Canada operate a fully integrated, international shortline freight railroad system involving 510 route miles of track located in Maine, Vermont, and Québec. As this Court is aware, this chapter 11 case and the Canadian Proceeding were precipitated by the July 6, 2013 train derailment in Lac-Mégantic, Quebec (the “Derailement”), which resulted in the loss of 47 lives, the destruction of a substantial portion of downtown Lac-Mégantic, significant environmental damage, the disruption of local businesses, and the evacuation of certain residents of Lac-Mégantic, as well as the resulting claims and litigation arising from the Derailement.

FORMULATION AND FILING OF A PLAN

3. Subject to, *inter alia*, the conditions and challenges noted below, the Trustee believes that a chapter 11 plan can be formulated and filed in a reasonable time that is compliant with 11 U.S.C. §§ 1121-1129, 1172 and 1173. Among the challenges to formulating a chapter 11 plan, without limitation, are the following:

- a. **Administration Expenses.** As the Trustee has previously noted, the unique effect of section 1171(a) of the Bankruptcy Code makes this case impossible to administer absent extraordinary relief. In that respect, the Trustee filed his *Motion to Approve, and Authorize the Trustee to Enter into, Stipulation Concerning Carve-Out from Collateral of the Federal Railroad Administration Pursuant to 11 U.S.C. §§ 105(a), 363(b), 506(c), 1163, and 1165*. Approval of that motion is essential to the continuation of the case as a case under chapter 11, as set forth therein.
- b. **Financing.** Additional financing is required to continue the Debtor’s operations at a stable level through a reasonable sale period. Since his appointment, the Trustee has been working diligently to secure that financing, with the cooperation of the Federal Railroad Administration and other parties. The Trustee is currently in negotiations with a number of finance sources, and is working with the Monitor regarding a potential financing through relevant Canadian agencies. The Trustee hopes to announce the securing of additional financing in the near term, but no financing commitment has been secured as of this date.
- c. **Possible Expiration of MMA Canada’s Operating License.** MMA Canada’s operating license could potentially expire on October 1, 2013. The Trustee is working closely with the Monitor and relevant Canadian authorities to extend that deadline to January 15, 2014, and reasonably

believes that such an extension will occur. However, no definitive agreement has been reached with the relevant Canadian transport agencies and authorities as of this date.

- d. **Successful Management of Litigation.** The Trustee is currently involved in attempting to manage litigation arising out of the Derailment that includes at least one action currently pending in the Circuit Court of Cook County, Illinois (after remand from the United States District Court for the Northern District of Illinois (the "USDC Illinois"), several actions removed to the USDC Illinois and still pending there (and facing various motions to remand and/or abstain), and a putative class action filed in Quebec (for which no class has yet been certified). The Trustee has filed a motion pursuant to 28 U.S.C. § 157(b)(5) to centralize the adjudication of the U.S.-based cases, which motion is currently pending in the United States District Court for the District of Maine. The outcome of the section 157(b)(5) motion proceedings, and other actions related thereto, will affect the Trustee's ability to file a plan, in connection with the Monitor and MMA Canada, providing for a centralized claim facility, and the funding thereof, with respect to claims arising out of the Derailment, including, without limitation, claims covered by section 1171(a).
- e. **Sale of the Assets of the Debtor and MMA Canada.** The Trustee expects that the assets of the Debtor and MMA Canada will be sold either under section 363 (and relevant similar provisions of the CCAA) or pursuant to a plan including provisions allowed under 11 U.S.C. §1172(2)(A) and similar applicable provisions of the CCAA, in all instances in full cooperation with the Monitor, and as approved by this Court and the court presiding over the Canadian Proceeding. Several parties have expressed interest in such a sale, and a sale process has begun informally but, of course, there is no guarantee that such a sale will be consummated on a timely basis. In the event an adequate stalking horse bid is received, that is satisfactory to the Trustee and the Monitor, the Trustee expects to cooperate with the Monitor and MMA Canada in establishing formal bidding, sale and cure procedures and to proceed to a sale via appropriate procedures, whether or not pursuant to a plan, under the Cross Border Protocol.

4. The Trustee will supplement this Report as required by the Court.

NOTICE

5. Notice of this Report was served on the following parties on the date and in the manner set forth in the certificate of service: (1) the United States Trustee; (2) the Debtor's counsel; (3) the non-insider holders of the twenty (20) largest unsecured claims against the Debtor

or, if applicable, the lawyers representing such holders; (4) applicable federal and state taxing authorities; (5) the holders of secured claims against the Debtor, or if applicable, the lawyers representing such holders; and (6) others who have, as of the date of the Report, entered an appearance and requested service of papers in the Case.

Dated: September 20, 2013

ROBERT J. KEACH,
CHAPTER 11 TRUSTEE OF MAINE
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By his attorneys:

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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

CERTIFICATE OF SERVICE

I, Karla M. Quirk, being over the age of eighteen and an employee of Bernstein, Shur, Sawyer & Nelson, P.A. in Portland, Maine, hereby certify that, on September 20, 2013, I filed the *Chapter 11 Trustee's First Report Pursuant to Local Rule 3016-3* (the "Report") via the Court's CM/ECF electronic filing system:

I further certify that I served the above referenced document via CM/ECF, U.S. Mail or Electronic Mail on : (1) the United States Trustee; (2) the Debtor's counsel; (3) the non-insider holders of the twenty (20) largest unsecured claims against the Debtor or, if applicable, the lawyers representing such holders; (4) applicable federal and state taxing authorities; (5) the holders of secured claims against the Debtor, or if applicable, the lawyers representing such holders; and (6) others who have, as of the date of the Report, entered an appearance and requested service of papers in the case, and as detailed on the attached Service List.

Dated: September 20, 2013

/s/ Karla M. Quirk
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