

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(SITTING AS A COURT DESIGNATED PURSUANT TO  
THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. C.-36, AS AMENDED)

---

No. : 500-11-045094-139

**IN THE MATTER OF THE ARRANGEMENT  
RELATING TO:**

**MONTREAL, MAINE & ATLANTIC CANADA  
CO. / (MONTREAL, MAINE & ATLANTIQUE  
CANADA CIE)**

Debtor/Respondent

-AND-

**MONTREAL MAINE & ATLANTIC RAILWAY  
LTD.**, corporation organized under the laws of  
Delaware, with its principal place of business  
located at 15 Iron Road, Hermon, Maine,  
United States of America

-AND-

**LMS ACQUISITION CORPORATION**,  
corporation organized under the laws of  
Delaware, with its principal place of business  
located at 15 Iron Road, Hermon, Maine,  
United States of America

-AND-

**MONTREAL MAINE & ATLANTIC  
CORPORATION**, corporation organized under  
the laws of Delaware, with its principal place of  
business located at 15 Iron Road, Hermon,  
Maine, United States of America

Mises en Cause

-AND-

**RICHTER ADVISORY GROUP INC.**

Monitor

-AND-

**TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA**, insurance company organized under the laws of Connecticut, with its principal place of business located at One Tower Square, Hartford, Connecticut, United States of America

Petitioner

**MOTION TO LIFT THE STAY OF PROCEEDINGS**  
**(Section 11 and ss. of the *Companies' Creditors Arrangement Act*)**

**TO THE HONOURABLE MR. JUSTICE MARTIN CASTONGUAY OF THE SUPERIOR COURT, SITTING IN BANKRUPTCY AND INSOLVENCY DIVISION, IN AND FOR THE JUDICIAL DISTRICT OF MONTREAL, THE PETITIONER RESPECTFULLY SUBMITS:**

**I. INTRODUCTION**

1. The Petitioner hereby requests that the stay of proceedings granted in favour of the Debtor and of the Mises en Cause in the Initial Order dated August 8, 2013 (the "**Canadian Stay of Proceedings**") be lifted in order to allow the Petitioner to seek a declaratory judgment regarding the object and scope of a commercial property insurance policy issued by the Petitioner in favour of the Debtor and the Mises en Cause (the "**Declaratory Proceedings**").
2. Given the application of United States of America ("**U.S.**") law, the number of U.S. parties involved and the jurisdiction of U.S. Courts, the Petitioner proposes to file the declaratory proceedings before the United States District Court for the District of Maine (the "**District Court**"), thus outside of the territorial scope of the Canadian Stay of Proceedings.
3. The Canadian Stay of Proceedings purports to apply outside of Canada, and specifically in the United States:  
  
*"[7] [...] Without limiting the generality of the foregoing, Proceedings include all proceedings in Canada and in the United States of America or elsewhere take or that may be taken against, inter alia, the Petitioner and/or Montreal Maine & Atlantic Railway Ltd. ("**MM&AR**"), and/or their liability insurer ("**Liability Insurer**") and/or other members of the Petitioner's corporate group (the "**Petitioner's Corporate Group**") [...]"*
4. The Petitioner believes that the Canadian Stay of Proceedings is not binding in the United States and has no extra-territorial effect.

5. Nevertheless, for reasons more fully detailed below, the Petitioner submits that it is in the best interest of justice and of all parties concerned, that the proposed Declaratory Proceedings be commenced, and as such, that the Canadian Stay of Proceedings be lifted so as to avoid any suggestion of a possible breach of the Canadian Stay of Proceedings in the U.S.

## **II. THE CROSS-BORDER INSOLVENCY PROCEEDINGS**

6. On or about August 8, 2013, the Debtor filed an Amended Petition for the Issuance of an Initial Order under the *Companies' Creditors Arrangement Act* (the "**CCAA**"), the whole as appears from the Court record.
7. On the same day, this Court issued an initial order under the CCAA (the "**Initial Order**") and appointed Richter Advisory Group Inc. as Monitor, the whole as appears from the Court record.
8. Paragraph 7 of the Initial Order included the Canadian Stay of Proceedings, the purpose of which is to stay all proceedings until and including September 6, 2013, against any member of the Petitioner's Corporate Group "*in Canada and in the United States of America or elsewhere*".
9. The Mises en Cause herein form part of the "Petitioner's Corporate Group" as defined in the Initial Order.
10. In parallel to seeking the Initial Order from this Court, one of the Mises en Cause herein, namely Montreal Maine & Atlantic Railway Ltd. ("**MM&AR**"), also filed for protection from its creditors in the U.S., pursuant to Chapter 11 of the United States Code ("**U.S.C.**") on August 7, 2013.
11. Concurrently with this Motion, Petitioner is filing a Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 363(d)(1), in the proceeding of In re Montreal, Maine & Atlantic Railway Ltd., Chapter 11 Case No. 13-10670 (the "**American Motion to Lift the Stay of Proceedings**"), in the United States Bankruptcy Court for the District of Maine (the "**U.S. Bankruptcy Court**"). That motion seeks essentially the same relief sought herein, with respect to MM&AR, under the applicable provisions of U.S. bankruptcy law. A copy of the American Motion to Lift the Stay of Proceedings is filed herewith as **Exhibit R-1**.
12. The American Motion to Lift the Stay is brought before the U.S. Bankruptcy Court to allow MM&AR to participate in the Declaratory Proceedings and therefore allow for a maximum reach of a future declaratory judgment by the District Court.

## **III. THE NEED FOR THE DECLARATORY PROCEEDINGS**

13. Petitioner is an American insurance company.

14. On or about April 19, 2013, Petitioner issued to the Debtor and a number of other related entities, a commercial property insurance policy, bearing Policy No. QT-630-6357L188-TIL-13, with a policy period of April 1, 2013 to April 1, 2014 (the "**Policy**").
15. Following the derailment on July 6, 2013 of a portion of a train in Lac-Mégantic, the Debtor and its related entities made a claim with the Petitioner under the Policy.
16. While the Petitioner has not yet completed its investigation of the claim, a controversy has arisen as to whether, or to what extent, the Policy as issued provides coverage for some of the damages allegedly suffered and whether there was a mutual mistake in the issuance of the Policy.
17. The controversy is centered on the interpretation of the provisions of the Policy as issued, and the intent of the parties at the time when they entered in the contract and concluded the Policy.

#### **IV. THE PROPOSED DECLARATORY PROCEEDINGS**

18. The Declaratory Proceedings which the Petitioner proposes to file against the Debtor, the Mises en cause and Rail World Inc.<sup>1</sup> are required in order to avoid a multiplicity of litigations raising similar coverage issues in multiple civil actions. Such multiplicity would be costly both from the Petitioner's perspective as well as from the creditors' perspective, and is thus contrary to a proper and efficient administration of justice.
19. Moreover, the funds in a proposed plan of arrangement in Canada will most likely come from the liquidation of assets of the Debtor and Mises en Cause, as well as from various insurance proceeds. In this context, the speedy resolution of Petitioner's potential liability under the Policy will allow for a faster and efficient estimation of the insurance proceeds available for such a proposed plan.
20. If this Court and the U.S. Bankruptcy Court allow, the Petitioner will file a Complaint with the District Court seeking a declaratory judgment. The draft Complaint is filed herewith as **Exhibit R-2**.
21. As appears from the proposed Complaint Exhibit R-2, the Petitioner intends to seek a declaratory judgment that the Policy does not provide coverage for certain losses to railcars and railroad track and roadbed, and certain losses of business income or extra expense resulting therefrom. In the alternative, Petitioner seeks reformation of the Policy to reflect that the parties intended the Policy to provide only extra expense coverage with respect to the rolling stock, and did not intend

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<sup>1</sup> One of the beneficiaries under the Insurance Policy which does not fall within the scope of the Canadian Stay of Proceedings or the U.S. Chapter 11 proceedings

the Policy to provide any coverage for loss of business income caused by damage to the rolling stock.

**V. PROPER FORUM**

22. The Petitioner submits that the United States District Court is the proper forum to hear the Declaratory Proceedings.
23. The Policy was issued by the Petitioner (headquartered in Connecticut).
24. The underwriters and the broker involved with this Policy are all based in Illinois. All of the insured entities except the Debtor are American companies based in the U.S.
25. As appears from the above, the law applicable to the Policy is not the law of Quebec.
26. The United States District Court has competence and is the appropriate jurisdiction to hear the Declaratory Proceedings.
27. Moreover all potential witnesses are located in the U.S., and most of them are located in Maine.

**VI. REMEDY SOUGHT**

28. In conclusion, the Debtor and the Mises en Cause herein are among the designated beneficiaries under the Policy, and as such, the determination of the exact scope of the Policy by the District Court will affect their rights.
29. Therefore, the Petitioner is of the view that it is in the interest of justice and of all parties concerned that the Debtor and Mises en Cause be party to the Declaratory Proceedings in the most appropriate forum and that the Canadian Stay of Proceedings be lifted for the purposes mentioned above.

**WHEREFORE THE PETITIONER PRAYS THAT THIS HONOURABLE COURT:**

**[1] LIFT** the stay of proceedings ordered pursuant to the Initial Order in order to allow the Petitioner to file a Complaint with the United States District Court for the District of Maine seeking a declaratory judgment against the Debtor Montréal, Maine & Atlantic Canada Co. and the Mises en Cause, Montréal Maine & Atlantic Railway Ltd., LMS Acquisition Corporation and Montréal Maine & Atlantic Corporation;

**[2] ISSUE** any other orders that it may see fit;

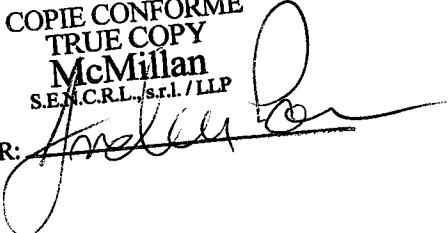
**[3] ORDER** the provisional execution of the judgment to be rendered herein notwithstanding any appeal thereof;

**[4] DECLARE** that the service and notice of presentation concerning this Motion are proper and sufficient;

**[5] THE WHOLE** without costs, except in case of contestation.

MONTREAL, August 27, 2013

(S) / (SGD.) *McMillan*  
S.E.N.C.R.L., s.r.l. / LLP

COPIE CONFORME  
TRUE COPY  
**McMillan**  
S.E.N.C.R.L., s.r.l. / LLP  
PAR/PER: 

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**McMillan S.E.N.C.R.L./S.R.L., LLP**  
Attorneys for Petitioner

## **NOTICE OF PRESENTATION**

**TO:** Me Pierre Legault  
GOWLING LAFLEUR HENDERSON LLP  
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Attorneys for : MONTRÉAL, MAINE & ATLANTIC CANADA CO.  
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Attorneys for : MONTRÉAL MAINE & ATLANTIC RAILWAY LTD.

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15 Iron Road  
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Registered Agent for: LMS ACQUISITION CORPORATION  
MONTREAL MAINE & ATLANTIC RAILWAY LTD

**AND:** Me Sylvain Vauclair  
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Attorneys for : RICHTER ADVISORY GROUP INC.

**TAKE NOTICE THAT** the foregoing Motion to Lift the Stay of Proceedings in Order will be presented for adjudication before one of the Honourable Mr. Justice Martin Castonguay of the Superior Court sitting in Commercial Division for the judicial district of Montréal, at the Montréal Court House, located at 1 Notre-Dame Street East, as soon as counsel may be heard and do you therefore govern yourselves accordingly.

MONTREAL, August 27, 2013

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**McMillan**  
S.E.N.C.R.L./s.r.l./LLP

(S) / (SGD.) *McMillan*  
S.E.N.C.R.L., s.r.l. / LLP

PAR/PER: 

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**McMillan S.E.N.C.R.L./S.R.L., LLP**  
Attorneys for Petitioner

N° / No.: 500-11-045094-139

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SUPERIOR COURT  
DISTRICT DE / OF MONTREAL

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**IN THE MATTER OF THE ARRANGEMENT  
RELATING TO:**

MONTRÉAL, MAINE & ATLANTIC CANADA CO. /  
(MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE)

Debtor/Respondent

-and-

MONTRÉAL MAINE & ATLANTIC RAILWAY LTD.

-and-

LMS ACQUISITION CORPORATION

-and-

MONTRÉAL MAINE & ATLANTIC CORPORATION

Mises-en-cause

-and-

RICHTER ADVISORY GROUP INC.

Monitor

-and-

TRAVELERS PROPERTY CASUALTY COMPANY OF  
AMERICA

Petitioner

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**LIST OF EXHIBITS**

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**M<sup>e</sup> ÉRIC VALLIERES**

Réf. / Ref.: 220972/EV/cl

Procureurs pour / Attorneys for

TRAVELEURS PROPERTY CASUALTY COMPANY  
OF AMERICA

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27.08.13

BM0259



CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(SITTING AS A COURT DESIGNATED PURSUANT TO  
THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. C.-36, AS AMENDED)

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No. : 500-11-045094-139

**IN THE MATTER OF THE ARRANGEMENT  
RELATING TO:**

**MONTREAL, MAINE & ATLANTIC CANADA  
CO. / (MONTREAL, MAINE & ATLANTIQUE  
CANADA CIE)**

Debtor/Respondent

-AND-

**MONTREAL MAINE & ATLANTIC RAILWAY  
LTD.**

-AND-

**LMS ACQUISITION CORPORATION**

-AND-

**MONTREAL MAINE & ATLANTIC  
CORPORATION**

Mises en Cause

-AND-

**RICHTER ADVISORY GROUP INC.**

Monitor

-AND-

**TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA**

Petitioner

**LIST OF EXHIBITS**

EXHIBIT R-1: Motion for relief from the Automatic Stay pursuant to 11 U.S.C. § 362(d)(1);

EXHIBIT R-2: Draft Complaint to the United State District Court, District of Maine, for a declaratory judgment.

MONTREAL, August 27, 2013

COPIE CONFORME  
TRUE COPY  
**McMillan**  
S.E.N.C.R.L., s.r.l. / LLP

(S) / (SGD.) *McMillan*  
S.E.N.C.R.L., s.r.l. / LLP

PAR/PER: 

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**McMillan S.E.N.C.R.L./S.R.L., LLP**  
Attorneys for Petitioner

N° / No.: 500-11-045094-139

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SUPERIOR COURT  
DISTRICT DE / OF MONTREAL

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**IN THE MATTER OF THE ARRANGEMENT  
RELATING TO:**

MONTRÉAL, MAINE & ATLANTIC CANADA CO. /  
(MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE)  
Debtor/Respondent

-and-

MONTRÉAL MAINE & ATLANTIC RAILWAY LTD.

-and-

LMS ACQUISITION CORPORATION

-and-

MONTRÉAL MAINE & ATLANTIC CORPORATION

Mises-en-cause

-and-

RICHTER ADVISORY GROUP INC.

Monitor

-and-

TRAVELERS PROPERTY CASUALTY COMPANY OF  
AMERICA

Petitioner

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**EXHIBIT R-1**

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**M<sup>e</sup> ÉRIC VALLIERES**  
Réf. / Ref.: 220972/EV/cl  
Procureurs pour / Attorneys for  
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OF AMERICA

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27.08.13

BM0259

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MAINE

|                        |   |                   |
|------------------------|---|-------------------|
| In re:                 | ) |                   |
|                        | ) |                   |
| MONTREAL, MAINE &      | ) | CHAPTER 11        |
| ATLANTIC RAILWAY LTD., | ) | Case No. 13-10670 |
|                        | ) |                   |
| Debtor.                | ) |                   |
|                        | ) |                   |

MOTION OF TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA  
FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), Fed. R. Bankr. P. 4001, and D. Me. LBR 400-1

Travelers Property Casualty Company of America (“Travelers”) requests relief from the automatic stay, for cause, to file a declaratory judgment action (the “Declaratory Judgment Action”) in the United States District Court for the District of Maine (the “District Court”), that would include the Debtor, Montreal, Maine & Atlantic Railway Ltd. (the “Debtor”), as a defendant.<sup>1</sup> A copy of the proposed Complaint in the Declaratory Judgment Action is attached as Exhibit A hereto. The proposed Declaratory Judgment Action seeks a judicial declaration, pursuant to 28 U.S.C. § 2201, that a commercial property insurance policy issued by Travelers to the Debtor, the Canadian Debtor, and affiliates and parent companies thereof does not provide coverage for certain losses to railcars and railroad track and roadbed being claimed, and certain losses of business income or extra expense resulting therefrom, arising out of the derailment of parts of a train in Lac-Megantic, Quebec, Canada, on July 6, 2013 (the “Incident”). The Declaratory Judgment Action

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<sup>1</sup> Travelers also contemplates that the Declaratory Judgment Action would name as a defendant Montreal, Maine & Atlantic Canada Company (the “Canadian Debtor”), which filed a petition seeking relief under Canada’s Companies’ Creditors Arrangement Act in the Superior Court of Quebec. Accordingly, on this date, Travelers is also filing a Motion to Lift the Stay of Proceedings in the *Matter of the Arrangement Relating to Montreal, Maine & Atlantic Canada Co. et al.*, No. 500-11-045094-139 in the Superior Court of the Province of Quebec, District of Montreal.

also seeks, alternatively, reformation of the insurance policy to reflect that the mutual intent of the parties was not to provide insurance for losses of business income arising from damage to the railroad rolling stock.

Relief from stay is appropriate because: the issues to be determined with respect to the Debtor in the Declaratory Judgment Action are identical to those issues presented with respect to each of the other U.S. defendants that have not filed for bankruptcy protection; with respect to the Debtor, the Declaratory Judgment Action is a non-core proceeding which would require ultimate determination by the District Court even if initially litigated in this Court; the Declaratory Judgment Action will not interfere with the orderly administration of the Debtor's estate; and the hardship to Travelers by the continuation of the automatic stay outweighs the hardship to the Debtor if the requested relief is granted.

In support of its Motion, Travelers states as follows:

#### JURISDICTION

1. This motion is a core proceeding over which the Court has jurisdiction pursuant to 28 U.S.C. §157(b)(2)(G) and 1334. Venue is proper pursuant to 28 U.S.C. §1409.

#### FACTS

##### A. The Policy

2. Travelers issued to the defendants in the proposed Declaratory Judgment Action a commercial property insurance policy, bearing Policy no. QT-630-6357L188-TIL-13, with a policy period of April 1, 2013 to April 1, 2014 (the "Policy"). The Policy was issued in Maine.

3. The Policy provides only first-party property insurance coverage for certain "Covered Property" described in the Declarations of the Policy, which include certain locomotives involved in the Incident (the "Covered Property"), but do not include the railcars, the railroad track

or the roadbed. The Policy does not provide any third-party liability coverage, and therefore does not provide liability insurance for any claims which may be asserted against the Debtor or its affiliates by third parties who sustained personal injuries or damage to their property as a result of the Incident.

4. The Policy provides coverage only for that property which is described within the Policy's declarations and specifically excludes from coverage "[p]roperty contained on or in railroad rolling stock," and, subject to an endorsements described in paragraphs 5 and 6, "[r]ailroad tracks, [and] beds."

5. The Policy contains an endorsement entitled "Railroad Rolling Stock Damage to Track and Roadbed Coverage" which, subject to certain conditions, provides \$250,000 of coverage for the Debtor's "reasonable and necessary expense to repair or replace damaged track and roadbed."<sup>2</sup>

6. The Policy also contains an endorsement entitled "Railroad Track & Roadbed Deductible" providing for a deductible of \$250,000 with respect to the track and roadbed coverage provided through the endorsement described in paragraph 5.

7. The Policy contains an additional endorsement entitled "Railroad Rolling Stock Business Income" and "Extra Expense Coverage," which provides certain coverage for loss of business income and extra expenses occasioned by a "loss of or damage to Covered Property from a Covered Cause of Loss."

8. The endorsement described in paragraph 7 does not provide coverage for loss of business income or extra expense occasioned by a loss of or damage to property which is not "Covered Property."

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<sup>2</sup> As a result of an error, the Policy specifies a \$25,000 limit for damage to railroad track and roadbed. However, the limitation of coverage was intended to be \$250,000 rather than \$25,000.

9. The parties intended the Policy to provide only Extra Expense coverage with respect to the rolling stock, and did not intend the Policy to provide any coverage for loss of Business Income caused by damage to the rolling stock. Due to mistake and inadvertence, the written Policy that was issued and accepted contained form CM T5 27 02 08, which stated that it was providing both "Business Income" and "Extra Expense" coverage for Railroad Rolling Stock. Also due to the mistake and inadvertence, there was no endorsement in the policy which deleted the "Business Income" coverage provided under form CM T5 27 02 08, despite the fact that it was the mutual intent of the parties that the policy provide coverage for Extra Expense only, and not provide coverage for loss of Business Income.

B. The Declaratory Judgment Action

9. On August 23, 2013 Travelers commenced the Declaratory Judgment Action against those parents, subsidiaries and affiliates of the Debtor which are named as insureds under the Policy.

10. The Complaint in the Declaratory Judgment Action alleges, in part:

36. An actual controversy has arisen as to whether, or to what extent, the Policy provides coverage for the Railcars, property contained in the Railcars, the track, the roadbed, and/or loss of business income caused by damage to any such property damage.

37. Travelers is entitled to a declaration that, under the terms of the Policy, it is not required to provide coverage for any damage to the Railcars arising from the Incident.

38. Travelers is also entitled to a declaration that, under the terms of the Policy, it is not required to provide coverage for any damage to property contained in the Railcars arising from the Incident.

39. Travelers is also entitled to a declaration that, under the terms of the Policy, any expense incurred for repairing the track and/or roadbed arising from the Incident is covered only up to a limit of \$250,000, in excess of a deductible of \$250,000.

40. Travelers is also entitled to a declaration that, under the terms of the Policy, it is not required to provide coverage for any loss of 'Business Income' or 'Extra Expense' which was due to loss of or damage to the Railcars, property contained in the Railcars, or the track and/or roadbed.

11. The Complaint in the Declaratory Judgment Action further pleads a claim for reformation, including the following allegations:

42. The parties intended that the Railroad Rolling Stock insurance provided in the Policy not provide insurance for loss of Business Income, and that the only time element coverage to be provided under the Policy would be Extra Expense.

43. The written Policy was mistakenly issued and accepted with form CM T5 27 02 08, and without an endorsement which would make it clear that the Business Income coverage outlined in form CM T5 27 02 08 would not be applicable.

44. The written Policy should be reformed to delete any coverage for Business Income resulting from damage to Railroad Rolling Stock.

#### STANDARD FOR RELIEF

12. Relief from the automatic stay imposed by 11 U.S.C. § 362(a) is governed by 11 U.S.C. § 362(d) which provides, in relevant part, as follows:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay—

(1) for cause.

13. Pursuant to 11 U.S.C. § 362(d)(1), the Court "shall" grant relief from the automatic stay "for cause." Cause is not defined within the statute and courts have generally determined that a finding of cause must be made on a case-by-case basis. See Piombo Corp. v. Castlerock Properties (In re Castlerock Properties), 781 F.2d 159,163 (9th Cir. 1986); Peerless Ins. Co. v. Rivera, 208 B.R. 313, 315 (D.R.I. 1997); Goya Foods, Inc. v. Unanue-Casal (In re Unanue-Casal), 159 B.R. 90, 95-96 (D.P.R. 1993), aff'd, 23 F.3d 395 (1st Cir. 1994). Cause may be found



to exist whenever the stay harms the party seeking relief and “lifting the stay will not unduly harm the debtor or the debtor's estate.” In re Turner, 161 B.R. 1, 3 (Bankr. D. Me. 1993); see also Shaughnessy v. United States (In re Shaughnessy), BAP No. MW 06-068, 2007 Bankr. LEXIS 3164, at \*6-\*7 (BAP 1st Cir. Aug. 17, 2007).

14. Courts have considered a variety of factors to determine whether cause exists. Sonnax Indus., Inc. v. Tri Components Products Corp. (In re Sonnax Indus., Inc.), 907 F.2d 1280, 1286-87 (2d Cir. 1990)(citing In re Curtis, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) which identified twelve factors gleaned from various decisions); Peerless Insurance Co., 208 B.R. at 315 (considering four factors suited to the particular circumstances of the case); In re Unanue-Casal, 159 B.R. at 96 (same). However, no formulaic approach to determine whether cause exists has emerged, and the factors to be considered depend upon the circumstances under which relief from the stay is being sought. In re Shaughnessy, 2007 Bankr. LEXIS 3164, at \*6-\*7; Peerless Insurance Co., 208 B.R. at 315; In re Unanue-Casal, 159 B.R. at 96.

15. In Peerless Ins. Co. v. Rivera, the court identified four factors which were applicable in order to determine whether an insurer had demonstrated cause to pursue a pending declaratory judgment action concerning the scope of coverage under a policy issued to the debtor:

1. the harm to the party seeking relief from the stay if the stay is not lifted;
2. the harm to the debtor if the stay is lifted;
3. the interests of creditors; and
4. the effect on the fair and efficient administration of justice.

Peerless Ins. Co., 208 B.R. at 315.

## BASIS FOR RELIEF

Based upon the factors identified by the Peerless court, cause exists to grant Travelers relief from the automatic stay to include the Debtor as a defendant in the Declaratory Judgment Action.

**A. Travelers will suffer harm if it is not granted relief from the stay.**

If Travelers is not permitted to pursue the Declaratory Judgment Action against the Debtor, it may have to litigate identical coverage issues in multiple actions. For example, even if Travelers were to prevail against the Debtor's co-insureds in a declaratory judgment action, the yet-to-be-appointed trustee of the Debtor's estate might still attempt to subsequently pursue claims against Travelers under the Policy in this Court or perhaps a different court. Since the District Court may not enter a declaratory judgment which binds a non-party, Travelers would have to defend itself against a potential claim from the trustee and assert as defenses those arguments which it had already successfully asserted in the Declaratory Judgment Action. Re-litigation of the same issues would be costly and a waste of the parties' resources and judicial resources.

Additionally, and in light of the complex nature of the Debtor's business and the bankruptcy proceeding, Travelers may be unable to obtain a resolution of its potential liability until the assuredly-long process of the Debtor's reorganization is well underway. Preventing Travelers from obtaining a judicial determination of its liability, if any, on account of the Incident would unduly interfere with Travelers' ability to determine its liability, if any, and set its reserves.

**B. The Debtor will not be harmed if the stay is lifted in order for Travelers to pursue the Declaratory Judgment Action.**

Whether in the context of the proposed Declaratory Judgment Action or in connection with a claim asserted against Travelers under the Policy, the Debtor will ultimately have to litigate the coverage issues raised in the proposed Declaratory Judgment Action, if it does not accede to Travelers' position. Therefore, the relief requested by Travelers will not impose any additional burden or cost upon the estate beyond those which it should already expect to bear as a consequence of the tragic circumstances. In fact, from a purely economic perspective it would be more efficient for the Debtor to determine its rights under the Policy in one proceeding, in the context of the proposed Declaratory Judgment Action.

**C. The interests of creditors would be best served by the Debtor's involvement in the Declaratory Judgment Action.**

The Debtor presently "contemplates using the proceeds from all [estate] assets, including insurance policies, to fund one or more trusts for the benefit of claimants."<sup>3</sup> If the Debtor, or any trustee appointed to administer its estate, intends to propose a plan which pays creditors out of a limited pool of liquidation and insurance proceeds, then creditors should, to the greatest extent feasible, be made aware in advance of solicitation what assets will be available for distribution on account of their claims. The Debtor's involvement in the proposed Declaratory Judgment Action will allow for the speedy resolution of Travelers' potential liability under the Policy, thereby resolving one variable which will confront the trustee in proposing, and the creditors in evaluating, a proposed plan which depends upon a post-confirmation vehicle for recovering assets and resolving claims.

From a creditor's perspective, it would be best for the issue to be decided expeditiously, in a manner which minimizes the expense of litigation. This is especially true given that the

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<sup>3</sup> Affidavit of Donald Gardner, Jr. in Support of First Day Pleadings, Dkt. No. 11, ¶ 18.

Debtor's rights under the Policy are likely to be determined by the District Court irrespective of the Court's decision on this motion, as explained below.

**D. The Debtor's involvement in the Declaratory Judgment Action is essential to the fair and efficient administration of justice.**

Given the limited authority conferred upon this Court with respect to non-core proceedings, and the importance of the issues presented in the proposed Declaratory Judgment Action, those issues will almost inevitably be determined by the District Court whether or not the Debtor is included as a defendant. A declaratory judgment action to determine the scope of an insurance policy's coverage is a non-core proceeding. See 28 U.S.C. § 157(b); Naf1 Union Fire Ins. Co. v. Titan Energy, Inc. (In re Titan Energy, Inc.), 837 F.2d 325, 330 (8th Cir. 1988); U.S. Brass Corp. v. California Union Ins., 198 B.R. 940, 945-46 (N.D. Ill. 1996) vacated in part on other grounds by 110 F.3d 1261 (7th Cir. 1997); Gray v. Exec. Risk. Indem. Inc. (In re Molten Metal Technology, Inc.), 271 B.R. 711, 714-15 (Bankr. D. Mass. 2002). Therefore, this Court cannot issue a final judgment with respect to the issues raised in the proposed Declaratory Judgment Action. See 28 U.S.C. § 157(c). Rather, any determination made by this Court with respect to the Policy's scope of coverage would be subject to de novo review by the District Court upon objection by Travelers or the Debtor. See 28 U.S.C. § 157(c). It would be inefficient to address the issues raised in the proposed Declaratory Judgment Action in a separate Debtor-specific proceeding in this Court only to later have this Court's report and recommendation sent to the District Court for de novo review.

CONCLUSION

For the foregoing reasons, and for any other reasons which may be stated at any hearing on this motion, Travelers respectfully requests that the Court grant it relief from the automatic stay in order to file the proposed Declaratory Judgment Action against the Debtor.

TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA,

By its attorneys,

/s/ \_\_\_\_\_

N° / No.: 500-11-045094-139

---

SUPERIOR COURT  
DISTRICT DE / OF MONTREAL

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**IN THE MATTER OF THE ARRANGEMENT  
RELATING TO:**

MONTRÉAL, MAINE & ATLANTIC CANADA CO. /  
(MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE)

Debtor/Respondent

-and-

MONTRÉAL MAINE & ATLANTIC RAILWAY LTD.

-and-

LMS ACQUISITION CORPORATION

-and-

MONTRÉAL MAINE & ATLANTIC CORPORATION

Mises-en-cause

-and-

RICHTER ADVISORY GROUP INC.

Monitor

-and-

TRAVELERS PROPERTY CASUALTY COMPANY OF  
AMERICA

Petitioner

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**EXHIBIT R-2**

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**M<sup>e</sup> ÉRIC VALLIERES**

Réf. / Ref.: 220972/EV/cl

Procureurs pour / Attorneys for

TRAVELEURS PROPERTY CASUALTY COMPANY  
OF AMERICA

---

**McMillan S.E.N.C.R.L., s.r.l./LLP**

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27.08.13

BM0259

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA,

Plaintiff,

V.

MONTREAL, MAINE & ATLANTIC  
CORPORATION; MONTREAL, MAINE &  
ATLANTIC RAILWAY, LTD.; LMS  
ACQUISITION CORPORATION;  
MONTREAL, MAINE & ATLANTIC  
CANADA COMPANY; and RAIL WORLD,  
INC.,

Defendants.

Civil Action No. \_\_\_\_\_

**[PROPOSED] COMPLAINT**

**Nature of the Action**

1. This is an action for a declaratory judgment under a commercial property insurance policy issued by Plaintiff, Travelers Property Casualty Company of America (“Travelers”) to Defendants, Montreal, Maine & Atlantic Corporation, LMS Acquisition Corporation, Montreal, Maine & Atlantic Railway, Ltd., Montreal, Maine & Atlantic Canada Company, and Rail World, Inc. (collectively, “MMA”). Travelers seeks a declaratory judgment that the policy does not provide coverage for certain losses to railcars and railroad track and roadbed being claimed by MMA, and certain losses of business income or extra expense resulting therefrom, arising out of the derailment of parts of a train in Lac-Megantic, Quebec, Canada, on July 6, 2013. In the alternative, Travelers seeks reformation of the insurance policy to reflect that the parties intended the policy to provide only Extra Expense

coverage with respect to the rolling stock, and did not intend the policy to provide any coverage for loss of Business Income caused by damage to the rolling stock.

### **Parties**

2. The plaintiff, Travelers, is an insurance company organized under the laws of Connecticut, with its principal place of business located at One Tower Square, Hartford, Connecticut 06103.

3. Defendant Montreal, Maine & Atlantic Corporation is a corporation organized under the laws of Delaware, with its principal place of business located at 15 Iron Road, Hermon, Maine 04401.

4. Defendant Montreal, Maine & Atlantic Railway, Ltd. is a corporation that was organized under the laws of Delaware, with its principal place of business located at 15 Iron Road, Hermon, Maine 04401.

4. Defendant LMS Acquisition Corporation is a corporation organized under the laws of Delaware, with its principal place of business located at 15 Iron Road, Hermon, Maine 04401.

5. Montreal, Maine & Atlantic Canada Company is organized under the laws of Nova Scotia, Canada, with a registered office in Halifax, Nova Scotia, Canada, and a principal place of business located at 15 Iron Road, Hermon, Maine 04401.

6. Defendant Rail World, Inc. is a corporation organized under the laws of Illinois with its principal place of business located at 6400 Shafer Court, Suite 275, Rosemont, IL 60018.



### **Jurisdiction and Venue**

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the parties are citizens of different States and the amount in controversy exceeds \$75,000, exclusive of interest and costs. The value of the property damage at issue, as described below, substantially exceeds \$75,000, and the total aggregate policy limit is \$7,500,000.

8. All of the Defendants are subject to personal jurisdiction in Maine because the insurance policy was issued in Maine and some or all of the Defendants regularly do business in Maine.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the property that is the subject of the action was garaged in Maine, and/or § 1391(b)(3) because the defendants are subject to personal jurisdiction in this District.

### **Facts**

10. On or about March 15, 2013, Defendants submitted an application for property and inland marine insurance to Travelers that contained the specifications for the insurance they were seeking for the April 1, 2013 to April 1, 2014 policy term. One of the coverages being applied for was Railroad Rolling Stock Insurance, which was intended to insure certain scheduled items of railroad rolling stock owned by and/or in the care, custody, or control of one or more of the Defendants.

11. The application for Railroad Rolling Stock insurance specified that Defendants were seeking limits of \$5,000,000 for “Any One Occurrence inclusive of Extra Expense, Flood and Earth Movement.” (emphasis in original). The application for Railroad Rolling Stock

Insurance did not make any other mention of seeking coverage for either Extra Expense or for loss of business income.

12. On March 20, 2013, Zachary Bowling, the underwriter for Travelers, sent an email to Peter Bleach, the broker for and representative of the Defendants, and asked the following question: "We are doing our final review today, and the BI [i.e., Business Income] for the RRRS [i.e, Railroad Rolling Stock] came up. I know we had discussed, but do we need to include this year?"

13. On March 21, 2013, in the morning, the broker, Peter Bleach, responded to Travelers' question as follows: "Sorry abt the delay in responding. We do not need full BI for the rolling stock. All we need is a combined limit of \$5,000,000 or \$7.5mm to include Extra Expense which is the real exposure. I think the clause is very clear. In the event of a derailment or a collision, the R/R could incur an EE claim for rerouting expenses and other additional costs to clear track, etc.. Freight trains don't have a business income exposure. If there is a derailment or collision, the freight eventually arrives at the intended destination. If the freight is damaged, this is a liability exposure insured under the railroad liability coverage." The Travelers policy did not provide the railroad liability coverage, which was underwritten by a different insurance company unaffiliated with Travelers.

14. Having received this information, during the afternoon of March 21, 2013, Zachary Bowling obtained approval to issue the policy with combined limits of \$7,500,000, in accordance with the application and the March 20, 2013 clarifying email from the broker. The written approval instructions Bowling received from his supervisor contained the following instruction: "RRRS-\$5mm EE not BI-let's review the form."

15. After receiving the above described approval, Zachary Bowling sent a formal detailed proposal to the broker for the Defendants. The proposal included the following specification for the Railroad Rolling Stock insurance: “RR Rolling Stock BI and EE is Extra Expense Only\*\*\*” The proposal was subsequently finalized and accepted by the Defendants without any change to this provision.

16. On or about April 19, 2013, Travelers issued to Defendants a commercial property insurance policy, bearing Policy No. QT-630-6357L188-TIL-13, with a policy period of April 1, 2013 to April 1, 2014 (the “Policy”). A certified copy of the Policy that was issued is attached as Exhibit A hereto. The Policy was issued to Defendants in Maine.

17. Due to mistake and inadvertence, the written Policy that was issued and accepted contained form CM T5 27 02 08, which stated that it was providing both “Business Income” and “Extra Expense” coverage for Railroad Rolling Stock. Also due to the mistake and inadvertence, there was no endorsement in the policy which deleted the “Business Income” coverage provided under form CM T5 27 02 08, despite the fact that it was the mutual intent of the parties that the policy provide coverage for Extra Expense only, and not provide coverage for loss of Business Income.

18. On or about July 6, 2013, a portion of a train operated by MMA, consisting of locomotives, railcars, and a caboose, derailed in Lac-Megantic, Quebec, Canada (the “Incident”). Some of the railcars (the “Railcars”) derailed. Some of the Railcars and their contents were damaged in connection with the derailment.

19. The Policy provides only first-party property insurance coverage for certain “Covered Property” described in the Declarations of the Policy, as described in further detail

below. The Policy does not provide any third-party liability insurance coverage, and therefore does not provide liability insurance for any claims that may be brought against MMA by other third parties who sustained personal injuries or damage to their property as a result of the Incident. Upon information and belief, MMA obtained third-party liability insurance from another insurance company or companies unaffiliated with Travelers. This lawsuit does not involve third-party liability insurance.

20. MMA has made a claim with Travelers under the Policy for damage to a locomotive, the Railcars, and railroad track and roadbed arising from the Incident. Travelers has not yet completed its investigation of the claim because the authorities investigating the Incident have only recently permitted Travelers access to the scene to evaluate the claimed damage. MMA has also made a claim with Travelers under the Policy for losses of business income resulting from the damage to the locomotive, the Railcars and the Track.

**The Policy Does Not Cover the Railcars or Property Contained Therein**

21. The “Railroad Rolling Stock Coverage Form” in the Policy contains the following grant of coverage and provisions concerning “Covered Property”:

We will pay for direct physical loss of or damage to Covered Property from any of the Covered Causes of Loss.

1. Covered Property

Covered Property, as used in this Coverage Form, means the following property described in the Declarations:

- a. Your railroad rolling stock including locomotives, railcars, and other equipment operated on railroad tracks;
- b. Your mobile equipment not licensed for highway use, which you use in the course of your railroad operations; and
- c. Similar property of others in your care, custody or control.

## 2. Property Not Covered

Covered Property does not include:

- a. Property that you loan, lease or rent to others;
- b. Property for sale or in the course of manufacture;
- c. Property while waterborne;
- d. Property contained on or in railroad rolling stock or mobile equipment;
- e. Railroad tracks, beds, switches, signals, trestles, bridges, tunnels or ties; or
- f. Contraband or property in the course of illegal transportation or trade.

(Policy, "Railroad Rolling Stock Coverage Form," at 1 (emphasis added).)

22. The Railcars do not fall within the definition of "Covered Property," quoted in Paragraph 21 above, because the Railcars are not "described in the Declarations" of the Policy, or in the Railroad Rolling Stock Schedule which is incorporated by reference into the Declarations.

23. Property contained in the Railcars is not "Covered Property" as that term is defined in the Policy because: (a) property contained in the Railcars does not fall within the definition of "Covered Property" quoted in Paragraph 21 above; and (b) the "Property Not Covered" section, quoted in Paragraph 21 above, specifies that "Covered Property does not include . . . d. Property contained on or in railroad rolling stock . . . ."

24. The Policy does not provide coverage for damage to the Railcars.

25. The Policy does not provide coverage for damage to any property in the Railcars.

### **Coverage for Damage to the Track Is Limited to \$250,000 Excess of a \$250,000 Deductible**

26. As quoted in Paragraph 21 above, the "Railroad Rolling Stock Coverage Form" in the Policy specifies that "Covered Property does not include . . . Railroad tracks, beds . . . or ties . . . ."

27. The Policy contains an endorsement entitled “Railroad Rolling Stock Damage to Track and Roadbed Coverage,” which provides as follows:

This endorsement modifies insurance provided under the RAILROAD ROLLING STOCK COVERAGE FORM.”

A. The following Additional Coverage is added to Section – A Coverage:

1. Damage to Track and Roadbed

We will pay your reasonable and necessary expense to repair or replace damaged track and roadbed located on your premises or for which you are legally liable if the damage is caused by derailment or collision. The most we will pay under this Additional Coverage is \$25,000 for the sum of all covered expenses arising during each separate 12 month period of this policy.

The limit for this Additional Coverage is in addition to the Limit of Insurance.

28. The endorsement quoted in Paragraph 27 above was intended to provide a limit of \$250,000 instead of \$25,000.

29. The Policy also contains an endorsement entitled “Railroad Track & Road Bed Deductible” providing for a “Railroad Track and Roadbed Deductible” of \$250,000. The Policy thus provides coverage of up to \$250,000 for expense to repair or replace damaged track and roadbed that exceeds \$250,000. For example, if one of the defendants incurs expenses of \$350,000 to repair or replace damaged track or roadbed, the policy would provide coverage of \$100,000.

**The Policy As Written Does Not Provide Coverage for Loss of Business Income or Extra Expense Caused by Damage to the Railcars, Property in the Railcars, or the Track**

30. The Policy (as issued) contains form CM T5 27 02 08, an endorsement entitled “Railroad Rolling Stock ‘Business Income’ and ‘Extra Expense’ Coverage.” That form provides as follows:

This endorsement modifies insurance provided under the RAILROAD ROLLING STOCK COVERAGE FORM.”

A. The following Additional Coverage is added to Section – A Coverage:

1. “Business Income” and “Extra Expense”

We will pay:

- (a) The amount by which your “Business Income” is actually reduced during the “period of restoration” due to loss of or damage to Covered Property from a Covered Cause of Loss; and
- (b) Your necessary “Extra Expense” to continue normal operations following loss of or damage to Covered Property from a Covered Cause of Loss.

31. As noted above, it was not the intent of the parties that the Policy provide insurance for loss of Business Income. In any event, however, even as mistakenly issued, the written Policy does not provide coverage for loss of “Business Income” due to loss of or damage to the Railcars because the Railcars are not “Covered Property” as that term is defined in the “Railroad Rolling Stock Coverage Form.” The Policy also does not provide coverage for “Extra Expense” due to loss of or damage to the Railcars because the Railcars are not “Covered Property” as that term is defined in the “Railroad Rolling Stock Coverage Form.”

32. As noted above, it was not the intent of the parties that the Policy provide insurance for loss of Business Income. In any event, however, even as mistakenly issued, the written Policy does not provide coverage for loss of “Business Income” due to loss of or damage to property contained in the Railcars because property contained in the Railcars was not

“Covered Property” as that term is defined in the “Railroad Rolling Stock Coverage Form.” The Policy also does not provide coverage for “Extra Expense” due to loss of or damage to property contained in the Railcars because property contained in the Railcars was not “Covered Property” as that term is defined in the “Railroad Rolling Stock Coverage Form.”

33. As noted above, it was not the intent of the parties that the Policy provide insurance for loss of Business Income. In any event, however, even as mistakenly issued, the written Policy does not provide coverage for loss of “Business Income” due to loss of or damage to the track or roadbed because neither the track nor the roadbed property were “Covered Property” as that term is defined in the “Railroad Rolling Stock Coverage Form.” The Policy also does not provide coverage for “Extra Expense” due to loss of or damage to the track or roadbed because neither the track nor the roadbed were “Covered Property” as that term is defined in the “Railroad Rolling Stock Coverage Form.”

34. The Policy does not provide coverage for loss of “Business Income” or “Extra Expense” due to loss of or damage to the track or roadbed because neither the track nor the roadbed were “Covered Property” as that term is defined in the “Railroad Rolling Stock Coverage Form.”

**COUNT ONE**  
**(Declaratory Judgment Pursuant To 28 U.S.C. § 2201)**

35. Travelers repeats and realleges the allegations contained in Paragraphs 1 through 34 above, as if fully set forth herein.

36. An actual controversy has arisen as to whether, or to what extent, the Policy as issued provides coverage for the Railcars, property contained in the Railcars, the track, the



roadbed, and/or loss of business income and/or Extra Expense caused by damage to any such property damage.

37. Travelers is entitled to a declaration that, under the terms of the Policy, it is not required to provide coverage for any damage to the Railcars arising from the Incident.

38. Travelers is also entitled to a declaration that, under the terms of the Policy, it is not required to provide coverage for any damage to property contained in the Railcars arising from the Incident.

39. Travelers is also entitled to a declaration that, under the terms of the Policy, any expense incurred for repairing the track and/or roadbed arising from the Incident is covered only up to a limit of \$250,000, in excess of a deductible of \$250,000.

40. Travelers is also entitled to a declaration that, under the terms of the Policy as issued, it is not required to provide coverage for any loss of “Business Income” or “Extra Expense” which was due to loss of or damage to the Railcars, property contained in the Railcars, or the track and/or roadbed.

## **COUNT TWO**

### **(Reformation)**

41. Travelers repeats and realleges the allegations contained in Paragraphs 1 through 34 above, as if fully set forth herein.

42. The parties intended that the Railroad Rolling Stock insurance provided in the Policy not provide insurance for loss of Business Income, and that the only time element coverage to be provided under the Policy would be Extra Expense.

43. The written Policy was mistakenly issued and accepted with form CM T5 27 02 08, and without an endorsement which would make it clear that the Business Income coverage outlined in form CM T5 27 02 08 would not be applicable.

44. The written Policy should be reformed to delete any coverage for Business Income resulting from damage to Railroad Rolling Stock.

**REQUESTS FOR RELIEF**

WHEREFORE, Travelers respectfully requests that the Court grant it the following relief:

- A. Enter a declaratory judgment that the Policy does not provide coverage for any damage to the Railcars, or to property contained in the Railcars;
- B. Enter a declaratory judgment that any expense incurred for repairing damage to the track or the roadbed arising from the Incident is covered only up to a limit of \$250,000, in excess of a deductible of \$250,000;
- C. Enter a declaratory judgment that the Policy does not provide coverage for any loss of "Business Income" or "Extra Expense" which was due to loss of or damage to the Railcars, property contained in the Railcars, or the track or the roadbed;
- D. Reform the Policy to delete any coverage for loss of Business Income resulting from loss to Railroad Rolling Stock; and
- E. Grant such other relief as this Court deems just and appropriate.

N° / No.: 500-11-045094-139

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SUPERIOR COURT  
DISTRICT DE / OF MONTREAL

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**IN THE MATTER OF THE ARRANGEMENT  
RELATING TO:**

MONTRÉAL, MAINE & ATLANTIC CANADA CO. /  
(MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE)

Debtor/Respondent

-and-

MONTRÉAL MAINE & ATLANTIC RAILWAY LTD.

-and-

LMS ACQUISITION CORPORATION

-and-

MONTRÉAL MAINE & ATLANTIC CORPORATION

Mises-en-cause

-and-

RICHTER ADVISORY GROUP INC.

Monitor

-and-

TRAVELERS PROPERTY CASUALTY COMPANY OF  
AMERICA

Petitioner

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**AUTHENTICITY ATTESTATION**

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**M<sup>e</sup> ÉRIC VALLIERES**

Réf. / Ref.: 220972/EV/cl

Procureurs pour / Attorneys for

TRAVELEURS PROPERTY CASUALTY COMPANY  
OF AMERICA

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27.08.13

BM0259

## AUTHENTICITY ATTESTATION

(Article 82.1 C.C.P.)

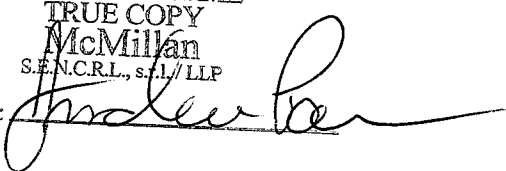
I, the undersigned, Andrei Pascu, Attorney, practicing my profession at 1000 Sherbrooke Street West, 27<sup>th</sup> Floor, District of Montreal, attest the following:

1. On August 27, 2013 at 11h26 (Montreal time), I received, by fax, from Mr. John Callahan, Executive General Adjuster, Property Major Case Unit, for Travelers Property Casualty Company of America, an Affidavit in the Superior Court file No. 500-11-045094-139, sitting as a court designated by the *Companies' Creditors Arrangement Act*, in the District of Montreal, in support of the Motion to Lift the Stay of Proceedings dated August 27, 2013.
2. Mr. John Callahan has sent to me the said Affidavit from Rochester, New York, his fax number being 1-877-245-1148.
3. The copies of the said Affidavit annexed to this Attestation and to the said Motion are in strict conformity with the document received by fax from Mr. John Callahan.

August 27, 2013

(S) / (SGD.) *Andrei Pascu*

\_\_\_\_\_  
Andrei Pascu, Attorney

COPIE CONFORME  
TRUE COPY  
McMillan  
S.E.N.C.R.L., s.r.l./LLP  
PAR/PER: 

N° / No.: 500-11-045094-139

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SUPERIOR COURT  
DISTRICT DE / OF MONTREAL

---

**IN THE MATTER OF THE ARRANGEMENT  
RELATING TO:**

MONTRÉAL, MAINE & ATLANTIC CANADA CO. /  
(MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE)  
Debtor/Respondent

-and-

MONTRÉAL MAINE & ATLANTIC RAILWAY LTD.

-and-

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-and-

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Mises-en-cause

-and-

RICHTER ADVISORY GROUP INC.

Monitor

-and-

TRAVELERS PROPERTY CASUALTY COMPANY OF  
AMERICA

Petitioner

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**AFFIDAVIT**

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**M<sup>e</sup> ÉRIC VALLIERES**  
Réf. / Ref.: 220972/EV/cl  
Procureurs pour / Attorneys for  
TRAVELEURS PROPERTY CASUALTY COMPANY  
OF AMERICA

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27.08.13

BM0259

**AFFIDAVIT**

I, the undersigned, John Callahan, Executive General Adjuster, Property Major Case Unit, for Travelers Property Casualty Company of America, residing at 245 Winesap Point, Rochester, New York, United States of America, solemnly declare that:

- 1. I am a duly authorized representative of Travelers Property Casualty Company of America for the purposes of these presents.
- 3. I have read the foregoing Motion to Lift the Stay of Proceedings and the facts therein alleged are true and correct.

AND I HAVE SIGNED

TINA MARIE DOELL  
 Notary Public, State of New York  
 No. 01DO6224274  
 Qualified in Wayne County  
 Commission Expires 4/28/14

John Callahan  
 JOHN CALLAHAN

SWORN AND SUBSCRIBED TO BEFORE ME  
 AT Rochester NEW YORK,  
 UNITED STATES OF AMERICA,  
 THIS 27<sup>TH</sup> DAY OF AUGUST, 2013

Tina Marie Doell

COPIE CONFORME  
 TRUE COPY  
**McMillan**  
 S.E.M.C.P.A., s.r.l. / LLP

PAR/PER: [Signature]

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SUPERIOR COURT  
DISTRICT DE / OF MONTREAL

---

**IN THE MATTER OF THE ARRANGEMENT  
RELATING TO:**

MONTRÉAL, MAINE & ATLANTIC CANADA CO. /  
(MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE)  
Debtor/Respondent

-and-

MONTRÉAL MAINE & ATLANTIC RAILWAY LTD.

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Mises-en-cause

-and-

RICHTER ADVISORY GROUP INC.

Monitor

-and-

TRAVELERS PROPERTY CASUALTY COMPANY OF  
AMERICA

Petitioner

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**MOTION TO LIFT THE STAY OF  
PROCEEDINGS; NOTICE OF  
PRESENTATION; LIST OF EXHIBITS;  
EXHIBIT R-1; EXHIBIT R-2;  
AUTHENTICITY ATTESTATION;  
AFFIDAVIT**

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**M<sup>e</sup> ÉRIC VALLIERES**

Réf. / Ref.: 220972/EV/cl

Procureurs pour / Attorneys for  
TRAVELEURS PROPERTY CASUALTY COMPANY  
OF AMERICA

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27.08.13

BM0259

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