C A N A D A

PROVINCE DE QUÉBEC
DISTRICT DE SAINT-FRANÇOIS

COUR SUPÉRIEURE
(Chambre commerciale)

N° : 450-11-000167-134

DANS L'AFFAIRE DU PLAN DE TRANSACTION DE :

MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE

Débitrice

- et -

RICHTER GROUPE CONSEIL INC.

Contrôleur

- et -

PROCUREUR GÉNÉRAL DU QUÉBEC

Requérant

REQUÊTE DU PROCUREUR GÉNÉRAL DU QUÉBEC POUR LA TENUE D'UNE AUDITION COMMUNE SUR LA REQUÊTE POUR FAIRE DÉTERMINER L'ALLOCATION DU PRIX DE VENTE

AU JUGE GAÉTAN DUMAS, SIÉGEANT EN COUR SUPÉRIEURE DU QUÉBEC, CHAMBRE COMMERCIALE, POUR LE DISTRICT DE ST-FRANÇOIS, LE GOUVERNEMENT DU QUÉBEC EXPOSE :

1. Le gouvernement du Québec a fait signifier une requête pour faire déterminer l'allocation du prix des actifs de la Débitrice au Canada, tel qu'il appert du dossier de la Cour.

2. Le gouvernement des États-Unis, au nom de la Federal Railway Administration, a pour sa part déposé, le 18 juillet 2014, une requête similaire devant la Cour de faillite du district du Maine, sous l'intitulé *United States of America's Motion for an Order (1) Determining the Allocation of the Purchase price for Debtor's Assets and (2) Enforcing Order Approving Carve-Out*, **pièce PGQ-1**.

3. Le gouvernement du Québec est d'avis qu'une audition commune est nécessaire pour déterminer de l'allocation du prix de vente.

4. Le protocole transfrontalier, **pièce PGQ-2**, qui a été approuvé par décision de cette Cour et de la Cour américaine le 4 septembre 2013, vise notamment à permettre une audition commune lorsque la question en litige comporte des aspects transfrontaliers (article 11).

5. En l'instance, la question en litige est l'allocation d'un seul prix de vente pour les actifs situés au Québec et aux États-Unis.

6. Une audition commune serait dans l'intérêt des parties et de la justice, tout en s'inscrivant parfaitement dans l'esprit et la lettre du protocole transfrontalier adopté par les cours compétentes en l'instance.

POUR CES MOTIFS, PLAISE À LA COUR:

ORDONNER la tenue d'une audition commune sur les requêtes pour faire déterminer l'allocation du prix de vente des actifs de la Débitrice et de MMA USA à une date que la Cour déterminera;

LE TOUT sans frais, sauf en cas de contestation.

Montréal, le 12 août 2014

Bernard, Roy (Justice-Québec)

Bernard, Roy (Justice - Québec)
Procureur du requérant
Le gouvernement du Québec

AFFIDAVIT

Je, soussigné, **FRÉDÉRIC MAHEUX**, avocat, résidant et domicilié pour les fins des présentes au 1200, rue de l'Église, Sainte-Foy, Québec, G1V 4M1, affirme solennellement ce qui suit :

1. Depuis le mois de juillet 2013, j'agis comme coordonnateur du dossier relatif à la tragédie de Lac-Mégantic pour le ministère de la Justice.

2. J'ai pris connaissance de la requête du Procureur général du Québec pour la tenue d'une audition commune sur la requête pour faire déterminer l'allocation du prix de vente.

3. Tous les faits allégués dans cette requête sont vrais.

ET J'AI SIGNÉ :

FRÉDÉRIC MAHEUX

Affirmé solennellement devant moi,
à Sainte-Foy, ce 12 août 2014

France Rémillard
Commissaire à l'assermentation
pour le district de Québec

COMMISSAIRE À L'ASSERMENTATION
FRANCE RÉMILLARD
115,011
DISTRICT JUDICIAIRE DE QUÉBEC

C A N A D A

PROVINCE DE QUÉBEC
DISTRICT DE SAINT-FRANÇOIS

N° : 450-11-000167-134

COUR SUPÉRIEURE
(Chambre commerciale)

DANS L'AFFAIRE DU PLAN DE TRANSACTION DE :

MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE

Débitrice

- et -

RICHTER GROUPE CONSEIL INC.

Contrôleur

- et -

PROCUREUR GÉNÉRAL DU QUÉBEC

Requérant

AVIS DE PRÉSENTATION

À: Liste de signification

PRENEZ AVIS que la présente Requête du Procureur général du Québec pour la tenue d'une audition commune sur la requête pour faire déterminer l'allocation du prix de vente sera présentée pour adjudication devant la Cour supérieure du Québec, siégeant en chambre commerciale, pour le district de St-François, au Palais de justice de Sherbrooke, situé au 375 rue King Ouest, à Sherbrooke, au jour et à l'heure que cette Cour voudra bien fixer.

VEUILLEZ AGIR EN CONSÉQUENCE.

Montréal, le 12 août 2014

Bernard, Roy (Justice-Québec)

Bernard, Roy (Justice - Québec)
Procureurs du requérant
Le gouvernement du Québec

C A N A D A

PROVINCE DE QUÉBEC
DISTRICT DE SAINT-FRANÇOIS

N° : 450-11-000167-134

COUR SUPÉRIEURE
(Chambre commerciale)

DANS L'AFFAIRE DU PLAN DE TRANSACTION DE :

MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE

Débitrice

- et -

RICHTER GROUPE CONSEIL INC.

Contrôleur

- et -

PROCUREUR GÉNÉRAL DU QUÉBEC

Requérant

LISTE DE PIÈCES

Pièce PGQ-1: Requête des États-Unis d'Amérique, *United States of America's Motion for an Order (1) Determining the Allocation of the Purchase price for Debtor's Assets and (2) Enforcing Order Approving Carve-Out*

Pièce PGQ-2: Protocole transfrontalier, *Cross-Border Insolvency Protocol*

Montréal, le 12 août 2014

Bernard, Roy (Justice - Québec)

Bernard, Roy (Justice - Québec)
Procureur du requérant
Le gouvernement du Québec

Justice Québec

COUR SUPÉRIEURE
(Chambre commerciale)

PROVINCE DE QUÉBEC
DISTRICT DE ST-FRANÇOIS

N° : 450-11-000167-134

DANS L'AFFAIRE DU PLAN DE TRANSACTION DE :

MONTRÉAL, MAINE & ATLANTIQUE CANADA CIE

Débitrice

- et -

RICHTER GROUPE CONSEIL INC.

Contrôleur

- et -

PROCUREUR GÉNÉRAL DU QUÉBEC

Requérant

REQUÊTE DU PROCUREUR GÉNÉRAL DU QUÉBEC POUR LA TENUE D'UNE AUDITION COMMUNE SUR LA REQUÊTE POUR FAIRE DÉTERMINER L'ALLOCATION DU PRIX DE VENTE, AFFIDAVIT, AVIS DE PRÉSENTATION ET LISTE DE PIÈCES

Bernard, Roy (Justice - Québec)
Louise Comtois, Avocate
Palais de justice
1, rue Notre-Dame Est, bureau 8.00
Montréal (Québec) H2Y 1B6
Téléphone : 514 393-2336
Télécopieur : 514 873-7074
Code d'enregistrement : BB1721
N/Réf.: CM-2013-002850

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

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

UNITED STATES OF AMERICA'S MOTION FOR AN ORDER (1) DETERMINING THE ALLOCATION OF THE PURCHASE PRICE FOR DEBTOR'S ASSETS AND (2) ENFORCING ORDER APPROVING CARVE-OUT

The United States of America, through the Department of Transportation, Federal Railroad Administration ("FRA"), hereby moves this Court, pursuant to sections 105, 361, 363(b) and 506(c) of title 11 of the United States Code (the "Bankruptcy Code"), for an order (1) determining the allocation of the purchase price for the Debtor's assets as contemplated in this Court's *Order Granting Motion to Approve Third Amendment to Asset Purchase Agreement between Robert J. Keach, as Chapter 11 Trustee for the Estate of Montreal Maine & Atlantic Railway, Ltd., Montreal Maine & Atlantic Canada Co. and Railroad Acquisition Holdings LLC* entered May 8, 2014, (Docket No. 865) (the "Closing Authorization Order"); and (2) enforcing the Court's *Order Approving Carve-Out* entered October 18, 2013 (Docket No. 392) (the "Carve-Out Order").

JURISDICTION AND VENUE

1. On August 7, 2013, Montreal, Maine & Atlantic Railway, Ltd. (the "Debtor") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On August 21, 2013, the United States Trustee appointed Robert J. Keach, Esq. (the "Trustee") to serve as Chapter 11 trustee in this case pursuant to 11 U.S.C. § 1163.

2. The Debtor is a Delaware corporation that, since January of 2003 until recently, operated an integrated, shortline freight railroad system with its affiliate, Montreal Maine & Atlantic Canada Co. ("MMA Canada"). On August 7, 2013, MMA Canada filed for protection from creditors in a concurrent proceeding under Canada's Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended, in the Superior Court for the Province of Quebec, District of Montreal (the "Canadian Court").

3. The Court has jurisdiction of this Motion pursuant to 28 U.S.C. §§ 157 and 1334 as well as the standing order of the United States District Court for the District of Maine (the "District Court") dated August 1, 1984, pursuant to which all cases filed in Maine under the Bankruptcy Code are automatically referred by the District Court to this Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The relief requested by the Motion is based upon, *inter alia*, 11 U.S.C. §§ 105(a), 361, 363, and 506(c). This is a core matter pursuant to 28 U.S.C. § 157(b)(2)(A), (K), (M), and (O).

BACKGROUND

4. In September 2013, the Trustee negotiated a carve-out stipulation (the "Carve-Out") with the FRA, in an amount not to exceed $5 million, for the payment of the Trustee's professional fees and expenses in administering the Debtor's estate. The Court approved the Carve-Out by order dated October 18, 2013 (Docket No. 392) (the "Carve-Out Order").[1] The Trustee has funded the Carve-Out from the proceeds of the FRA's otherwise unassailable first-priority lien on the Debtor's assets. *First Interim Application of Trustee Robert J. Keach for Allowance and Payment of Compensation and Reimbursement of Expenses for the Period August*

[1] The Carve-Out Order remains on appeal but is not subject to any stay and is fully enforceable. The Carve-Out stipulation was an exhibit to the motion (Docket No. 257) seeking the Court's approval for it and is attached hereto as Exhibit A.

21, 2013 through April 30, 2014 ("First Interim Application") (Docket No. 873) at Exhibit B (closing statement from sale of Debtor's assets). As the Trustee has admitted, without the Carve-Out, this case could not have been effectively administered, to the detriment of all creditors, the state and regional economies, and, most of all, the derailment victims. *Id*. at para. 15.

5. In the Carve-Out, the Trustee "acknowledge[d] and agree[d] that: (a) the Debtor and the Debtor's estate are indebted to the FRA in the approximate amount of $27,999,703.72 as of the Petition Date (the 'FRA Claim'); and (b) that the FRA Claim is secured by a valid, perfected, and unavoidable first priority security interests in and liens on the Collateral." *Carve-Out* at para. 1. The Carve-Out's definition of Collateral includes, among other things, substantially all of the Debtor's real property. *Id*. at 2.[2]

7. The Trustee further "acknowledge[d] and agree[d] that the proceeds from any sale of the Collateral in excess of the Carve-Out shall be immediately disbursed to the FRA upon the Trustee's receipt of such proceeds." *Carve-Out* at para. 2.E.

8. Additionally, the Trustee negotiated two separate financings with Camden National Bank ("Camden") to ensure that the Debtor possessed sufficient working capital to continue operations pending a sale and resolution of the case. The first, Court approved financing was a revolving, $3 million line of credit secured by a first mortgage and security interest on all assets located in the United States that secured FRA's Claim and subordinated the interests of the FRA in the Debtor's assets to Camden's. (Docket No. 367). Absent this financing, the Debtor would have run out of sufficient cash before the end of October 2013 and been forced to wind-down or abandon its operations. *First Interim Application* at para. 16.

[2] The FRA Claim is also secured by all real property owned by MMA Canada located in the province of Quebec, Canada as well as all of MMA Canada's personal property. *Carve-Out* at 2.

Through a series of orders (Docket Nos. 649, 672 and 742), the second, Court approved financing extended the first line of credit to $4.8 million, which was again necessary to provide the Debtor sufficient working capital to continue operations pending a sale of the Debtor's assets and resolution of the case (the "Second Financing Order"). *First Interim Application* at para. 16. As part of his negotiations with the FRA regarding the Second Financing Order, the Trustee agreed to reduce the Carve-Out to $4 million and provide other adequate protection to FRA in order to complete the financing.

9. The additional adequate protection provided FRA was a first-priority lien, subject to the interests, if any, of Wheeling & Lake Erie Railway Company ("Wheeling") in the Debtor's interests in (a) the proceeds of a settlement with Travelers Property Casualty Company of America, which settlement the Court approved December 24, 2013 (the "Travelers Insurance Settlement Proceeds") (Docket No. 550); and (b) the proceeds of the agreement relating to the assignment of 45G tax credits, which agreement the Court approved December 17, 2013 (the "45G Tax Credits") (Docket No. 511).

10. On January 24, 2014, the Court approved the sale of substantially all of the Debtor's assets to Railroad Acquisition Holdings LLC ("RAH") (the "Sale Order") (Docket No. 594) pursuant to an Asset Purchase Agreement dated December 12, 2013 (as amended, the "APA") between the Trustee, the Debtor, MMA Canada and RAH. In conjunction with this approval, the Canadian Court also approved a sale of substantially all of MMA Canada's assets to RAH on January 23, 2014.

11. On May 8, 2014, the Court entered the Closing Authorization Order approving a third amendment to the APA, which, among other things, authorized the Trustee, the Debtor and

RAH to close the sale of the Debtor's assets and MMA Canada's assets either simultaneously or separately (Docket No. 865). *Closing Authorization Order* at para. 4.

12. The Closing Authorization Order further provided that "the rights, if any, of any party holding a lien upon any of the MMA Assets to contest the allocation of the Purchase Price as among certain MMA Assets are hereby expressly preserved, and the rights, if any, of any party to contest the allocation of value as between the Debtor and MMA Canada are hereby expressly preserved." *Id*. at para. 10. The APA, as amended pursuant to the Closing Authorization Order, defined the Purchase Price. *Trustee's Motion for an Order Approving the Third Amendment to Asset Purchase Agreement* (Docket No. 847), Exhibit A at 4-5.

13. A closing of the sale of the Debtor's assets to RAH occurred on May 15, 2014. According to the purchaser's allocation: (a) $3,200,000 of the gross purchase price under the APA was allocable to the assets of MMA Canada, with the balance allocable to the Debtor's assets; and (b) of the amount allocable to the Debtor's assets, $288,000 was allocated to inventory in which Wheeling had a first security interest (the "Wheeling Inventory Allocation"). A closing of the sale of MMA Canada's assets closed on June 30, 2014, and the closing statement for that closing assumed that $3,200,000.00 (U.S.) was allocated to the assets of MMA Canada.

14. As a result of the closing of the sale of the Debtor's assets, the Trustee received $11,096,279.02 (the "Sales Proceeds"). *First Interim Application* at Ex. 2. From this amount, the Trustee has paid (1) closing expenses; (2) administrative expenses related to the sale; and (3) all amounts due Camden under the financing authorized under the Second Financing Order. *Id*. In addition, the Trustee has funded the $4 million Carve-Out. *Id*. After these payments from the

Sale Proceeds, the Trustee holds net sales proceeds in escrow of $1,286,186.36 (the "Net Escrow Sales Proceeds"). *First Interim Application* at Ex.2.

15. Moreover, the Court has issued orders determining the extent of the Debtor's interest in both the Travelers Insurance Settlement Proceeds and the 45G Tax Credits (Docket Nos. 832 and 761, respectively).[3] As a result of these orders, the Trustee holds an additional $1,478,000 in escrow (the "Other Escrowed Amounts"). *Id*.

RELIEF REQUESTED

16. As described above, FRA has valid first priority liens on both the Net Escrow Sales Proceeds and the Other Escrowed Amounts. Under the terms of the Carve-Out and the Second Financing Order, respectively, FRA is entitled to the distribution of the Net Escrow Sales Proceeds and the Other Escrowed Amounts. Moreover, the Closing Authorization Order permits FRA to request a determination of the allocation of (a) the Purchase Price as among the Debtor's assets and (b) the value from the sale as between the Debtor and MMA Canada. Accordingly, pursuant to section 105 of the Bankruptcy Code and the Court's inherent powers to enforce its own orders, FRA seeks entry of an order (a) determining the allocation of (i) the Purchase Price as among the Debtor's assets and (ii) the value from the sale as between the Debtor and MMA Canada, such that $3,200,000 is allocated to the assets of MMA Canada and the balance of the Purchase Price under the APA is allocated to the Debtor's assets; and (b) authorizing the Trustee to disburse immediately to the FRA both the Net Escrow Sales Proceeds and the Other Escrowed Amounts, minus the Wheeling Inventory Allocation.

[3] The order determining the Debtor's interest in the Travelers Insurance Settlement Proceeds (Docket No. 832) remains on appeal but is not subject to any stay and is fully enforceable.

In accordance with Local Rule 9013-1, D. Me. LBR 9013-1, FRA has consulted with counsel to the Trustee who represented that the Trustee does not oppose the relief requested herein.

ARGUMENT

17. This Court has the well settled authority to interpret and enforce its own orders. *Negron-Almeda v. Santiago*, 528 F.2d 15, 22-23 (1st Cir. 2008) (unambiguous orders must be enforced as written); *Iskric v. Commonwealth Fin. Sys., Inc.* (*In re Iskric*), 496 B.R. 355, 363 (M.D. Pa. 2013) ("Bankruptcy courts have the inherent power to enforce compliance with their lawful orders."); *Rosen v. Breitner & Hoffman, P.C. (In re Flushing Hosp. and Medical Ctr.)*, 395 B.R. 229, 241 (E.D.N.Y. 2008) ("Section 105(a) may be invoked to enforce or implement the Court's earlier orders, and to prevent abuses of process.") (internal quotation omitted). Indeed, "[e]xercise of the Court's section 105(a) authority in this manner, and for this purpose, vindicates the interests of the *Court*, as much as (and perhaps more than) it vindicates the interest of an individual litigant." *In re Flushing Hosp. and Medical Ctr.*, 395 B.R. at 241 (emphasis in original).

18. The Carve-Out is clear – proceeds from any sale of the Debtor's assets in excess of the Carve-Out "shall be immediately disbursed to the FRA upon Trustee's receipt of such proceeds." The FRA's right to receive right now the Net Escrow Sales Proceeds could not be clearer. Moreover, in the Second Financing Order the FRA was granted a first priority lien on the Debtor's interest in the Travelers Insurance Settlement Proceeds and the 45G Tax Credits, which interest, as described above, this Court has determined in separate, unstayed orders. Again, the FRA's right to receive the Other Escrowed Amounts (representing the aggregate

amount of the Travelers Insurance Settlement Proceeds and the 45G Tax Credits) is superior to any other possible claim thereto, and the FRA should receive those amounts immediately.

19. Finally, the Closing Authorization Order explicitly affords (a) "any party holding a lien [on] the MMA Assets the right to contest the allocation" of the Purchase Price as among the Debtor's assets and (b) any party generally the right to contest the value from the sale as between the Debtor and MMA Canada. As the undisputed first lien holder on the Debtor's real estate, FRA meets both criteria for requesting the allocation determinations.

CONCLUSION

20. For all of the foregoing reasons, the FRA requests that the Court enter an order: (a) determining the allocation of (i) the Purchase Price as among the Debtor's assets and (ii) the value from the sale as between the Debtor and MMA Canada, such that $3,200,000 is allocated to the assets of MMA Canada and the balance of the Purchase Price under the APA is allocated to the Debtor's assets; and (b) authorizing the Trustee to disburse immediately to the FRA both the Net Escrow Sales Proceeds and the Other Escrowed Amounts, minus the Wheeling Inventory Allocation.

Dated: July 18, 2014

Respectfully submitted,

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Assistant Attorney General

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United States Attorney

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Acting Director

/s/ Matthew J. Troy
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EXHIBIT
A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re: MONTREAL MAINE & ATLANTIC RAILWAY, LTD. Debtor.	Bk. No. 13-10670 Chapter 11

STIPULATION CONCERNING CARVE-OUT FROM COLLATERAL
OF THE FEDERAL RAILROAD ADMINISTRATION

THIS STIPULATION is made as of September 16, 2013, by and between Robert J. Keach, the Chapter 11 trustee in the above-captioned case (the "Trustee") and the United States of America, represented by the Secretary of the Department of Transportation acting through the Administrator of the Federal Railroad Administration (the "FRA").

BACKGROUND

WHEREAS, Montreal Maine & Atlantic Railway, Ltd. (the "Debtor") filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") on August 7, 2013 (the "Petition Date") with this Court;

WHEREAS, the United States Trustee appointed the Trustee to serve in the Debtor's Chapter 11 case (the "Case") pursuant to 11 U.S.C. § 1163;

WHEREAS, to assist him in discharging his duties and administering the Case, the Trustee has retained and will retain, subject to the approval of the Court, various attorneys, accountants, financial advisors and other professional persons (collectively, the "Trustee's Professionals");

WHEREAS, the FRA has an interest in the efficient administration of the Chapter 11 Case and the safe and reliable operation of the Debtor railroad, pending a possible sale of the railroad via an orderly and comprehensive sale process;

WHEREAS, on March 24, 2005, the Debtor and FRA entered into a financing agreement pursuant to which the Debtor received a $34 million loan pursuant to Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, 45 U.S.C.§ 821 *et seq.*, as such agreement may have been amended, modified, renewed or extended from time to time (the "FRA Credit Agreement" or "FRA Credit Facility") and together with all other agreements, instruments, or documents executed in connection therewith and including any amendments, modifications, renewals or extensions thereto (the "Loan Documents");

WHEREAS, the FRA Credit Facility has been fully drawn and the outstanding balance thereunder was $27,999,703.72 as of the Petition Date;

WHEREAS, the Debtor's obligations under the FRA Credit Agreement are secured, *inter alia*, by a first priority lien against (a) substantially all of the Debtor's real property, including, without limitation, the U.S. rail corridor; (b) all of the Debtor's real property located in the province of Quebec, Canada; (c) all of the Debtor's shares in its wholly owned subsidiary Montreal, Maine & Atlantic Canada Co. ("MM&A Canada"); (d) all of the real property owned by MM&A Canada and located in the province of Quebec, Canada; and (e) all of MM&A Canada's personal property, all as further described in the Loan Documents (together, the "Collateral").

WHEREAS, subject to the terms and conditions of this Stipulation, the FRA has agreed to a carve-out from the proceeds of a sale of the Collateral in order to support certain administrative expenses of the Case, specifically the fees and expenses of the Trustee and the Trustee's Professionals and the UST Fees as defined below.

NOW, THEREFORE, subject to Bankruptcy Court approval of this Stipulation, it is hereby stipulated and agreed by and between the Trustee and the FRA as follows:

1. ACKNOWLEDGMENT OF INDEBTEDNESS. The Trustee hereby acknowledges and agrees that: (a) the Debtor and the Debtor's estate are indebted to the FRA in the approximate

amount of $27,999,703.72 as of the Petition Date (the "FRA Claim"); and (b) that the FRA Claim is secured by a valid, perfected, and unavoidable first priority security interests in and liens on the Collateral (the "FRA Lien").

2. TERMS OF CARVE-OUT.

A. The FRA agrees to a carve-out in the amount of $5 million from the proceeds of a sale of the Collateral (the "Carve-Out") to be used, subject to the limitations set forth herein, solely for the payment of all allowed fees and expenses of the Trustee and Trustee's Professionals and quarterly fees of the United States Trustee under 28 U.S.C. § 1930(a)(6) (the "UST Fees").

B. The Carve-Out will be allocated as follows:

1) The first $2.5 million will be used for the payment of allowed fees and expenses of the Trustee and the Trustee's Professionals and UST Fees incurred up to the time of the sale of substantially all of the assets of the Debtor's estate to another entity that will operate the railroad, subject to all appropriate approvals of the Surface Transportation Board and other regulatory agencies; and

2) The second $2.5 million, plus any unused portion of the Carve-Out under subparagraph (1) above, will be used to pay the allowed fees and expenses of the Trustee and the Trustee's Professionals and UST Fees for the remainder of the Case.

C. The Carve-Out will be used only (1) to pay allowed fees and expenses of the Trustee and the Trustee's Professionals and UST Fees and (2) in the event that such fees and expenses are not paid from another source prior to the sale or other disposition of FRA's collateral, such as from the operating revenue generated by the railroad, or from excess sale proceeds after holders of secured claims have been paid in full.

D. The Trustee acknowledges and agrees that the sole and only source of funds for the Carve-Out are the proceeds, if any, from a sale of the Collateral and that FRA does not, and will not, have any obligation to provide the Debtor or its estate with cash or any other form of credit or financing to fund the Carve-Out or otherwise pay the fees and expenses of the Trustee and the Trustee's professionals.

E. The Trustee acknowledges and agrees that the proceeds from any sale of the Collateral in excess of the Carve-Out shall be immediately disbursed to the FRA upon the Trustee's receipt of such proceeds.

F. Notwithstanding anything set forth herein, the Carve-Out shall exclude any fees and expenses incurred in connection with initiating, prosecuting or participating in any claims, causes of action, adversary proceedings, or other litigation against the United States, or any of its departments, agencies or instrumentalities, including without limitation, the assertion or joinder in any claims, counterclaim, action proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek any order, judgment, determination or similar relief (1) invalidating, setting aside, disallowing, avoiding, challenging or subordinating, in whole or in part, (a) the FRA Claim or (b) the FRA Lien; (2) prosecuting any avoidance action under chapter 5 of the Bankruptcy Code (other than actions under section 549 of the Bankruptcy Code) and any other avoidance or similar actions under the Bankruptcy Code or similar state law against the FRA; or (3) challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense counterclaim, or offset to, the FRA Claim.

G. The FRA will retain all of its rights as a creditor under the Loan Documents and otherwise and its authority as a Federal agency with enforcement responsibility over the Debtor's railroad operations, including, without limitation, (1) its authority to enforce and, where necessary, compel compliance with the Federal hazardous materials transportation laws (49 U.S.C. § 5101 et seq.), the Federal hazardous materials regulations (49 CFR parts 171-180), the Federal railroad safety laws (49

U.S.C. chapters 201-213), the Federal railroad safety regulations (49 CFR parts 200-242) , and all applicable orders issued under such laws or regulations governing railroad safety; (2) its right to object to the retention of any particular professional; (3) its right to object to the allowance of fees and expenses; (4) its right to move for relief from stay; (5) its right to move to dismiss the Case; and (6) its right to move to liquidate the Debtor pursuant to section 1174 of the Bankruptcy Code.

H. The FRA may, on not less than fifteen (15) days' notice, announce that it will no longer fund the Carve-Out after a date certain (at least fifteen (15) days after the notice date). FRA may exercise this right for any reason in its sole discretion, including without limitation, delay in effectuating, or lack of reasonable prospects for, a sale of the Collateral. In the event the FRA exercises this option, the Carve-Out shall only protect allowed fees and expenses incurred through and including the expiration date of the notice.

I. In consideration of the Carve-Out, (1) the Collateral shall not be subject to any surcharge under section 506(c) of the Bankruptcy Code, charge or priming lien without the express written consent of the FRA; (2) FRA is entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception shall not apply with respect to the proceeds, product, offspring or profits of any of the Collateral; and (3) FRA will not be required to file a proof of claim in this Case.

3. NOTICE. Any notice or correspondence required to be sent hereunder shall be forwarded by electronic mail at the addresses set forth below, and by first class mail, and shall be deemed given upon the earlier of (a) successful electronic mail transmission, or (b) two (2) days after being deposited in the United States Mail, postage pre-paid, and addressed as follows:

If to the FRA:
Casey Mendez Symington
Federal Railroad Administration

1200 New Jersey Avenue S.E.
Washington, DC 20590
Casey.Symington@dot.gov

With copies to:
John Stemplewicz
United States Department of Justice
Civil Division
P.O. Box 875
Ben Franklin Station
Washington, DC 20044-0875
john.stemplewicz@usdoj.gov

If to the Trustee:
Robert J. Keach, Esq.
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4. MODIFICATION. The Trustee and the FRA may agree to nonmaterial modifications or amendments to this Stipulation without further Order of the Bankruptcy Court; provided, however, that the Trustee acknowledges and agrees that he will not seek any increase in the amount of the Carve-Out.

5. COURT APPROVAL, CONDITIONS TO EFFECTIVENESS. This Stipulation shall not be effective until the entry of an Order of the Bankruptcy Court approving and authorizing the Trustee to enter into this Stipulation, and setting forth and ordering each and every provision, term, condition, and covenant of this Stipulation, so that the stipulations and agreements herein become the order of the Court.

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

Dated: September 16, 2013

/s/ Robert J. Keach, Esq.
Robert J. Keach, Esq.
BERNSTEIN, SHUR, SAWYER & NELSON
100 Middle Street
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THE FEDERAL RAILROAD ADMINISTRATION

Dated: September 16, 2013

/s/ John T. Stemplewicz, Esq.
JOHN T. STEMPLEWICZ
MATTHEW J. TROY
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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

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

ORDER APPROVING UNITED STATES OF AMERICA'S MOTION FOR AN ORDER (1) DETERMINING THE ALLOCATION OF THE PURCHASE PRICE FOR DEBTOR'S ASSETS AND (2) ENFORCING ORDER APPROVING CARVE-OUT

This matter came before this Court on the United States of America's Motion for an Order (1) Determining the Allocation of the Purchase Price for Debtor's Assets and (2) Enforcing Order Approving Carve-Out (the "Motion"), and sufficient notice of the Motion having been given, and the Court having held a hearing to consider the Motion, and upon consideration of the objections and/or responses to the Motion, if any, having been resolved or overruled, and after due deliberation and sufficient cause appearing therefor, the Court hereby **ORDERED, ADJUDGED** and **DECREED** as follows:[1]

1. The Motion is granted in its entirety.

2. The Purchase Price as among the Debtor's assets and the value from the sale as between the Debtor and MMA Canada is allocated such that $3,200,000 is allocated to the assets of MMA Canada and the balance of the Purchase Price under the APA is allocated to the Debtor's assets.

[1] Capitalized terms used, but not defined in this Order, have the meaning ascribed to such terms in the Motion.

3. The Trustee is authorized to disburse immediately to the Federal Railroad Administration both the Net Escrow Sales Proceeds and the Other Escrowed Amounts, minus the Wheeling Inventory Allocation.

Dated: August ___, 2014

_____

The Honorable Louis H. Kornreich
United States Bankruptcy Judge for the
District of Maine

THE AMERICAN LAW INSTITUTE

in association with

THE INTERNATIONAL INSOLVENCY INSTITUTE

Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

As Adopted and Promulgated in Transnational Insolvency: Principles of Cooperation Among the NAFTA Countries

BY

THE AMERICAN LAW INSTITUTE
At Washington, D.C., May 16, 2000

And as Adopted by

THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001

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CROSS-BORDER INSOLVENCY PROTOCOL

This cross-border insolvency protocol (the "Protocol") shall govern the conduct of all parties in interest in the Insolvency Proceedings (as such term is defined herein).

The American Law Institute's Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases (the "Guidelines") attached as Schedule "A" hereto, shall be incorporated by reference and form part of this Protocol. Where there is any discrepancy between the Protocol and the Guidelines, this Protocol shall prevail.

A. Background

1. Montreal, Maine & Atlantic Railway Ltd. ("MMA") operates in an integrated, international shortline freight railway system with its wholly-owned Canadian subsidiary, Montreal, Maine & Atlantic Canada Co. ("MMA Canada"). MMA is a Delaware corporation and operates from its head office in Hermon, Maine. MMA and MMA Canada, while separate companies, have fully integrated business operations and accounting, with MMA collecting most of the revenue and then transferring to MMA Canada the funds it requires to pay its expenses.

2. MMA (the "U.S. Debtor") has commenced reorganization proceedings (the "U.S. Proceedings") under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Maine (the "U.S. Court"). The U.S. Debtor is continuing in possession of its properties and is operating and managing its business, as debtor in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. MMA Canada (the "Canadian Debtor"), has commenced a concurrent proceeding (the "Canadian Proceeding") under Canada's Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, seeking relief from its creditors (collectively, the "Canadian Proceedings"). The Canadian Debtor has obtained an initial order of the Canadian Court (as amended and restated, the "Canadian Order"), under which, inter alia: (a) the Canadian Debtor has been determined to be entitled to relief under the CCAA; (b) Richter Advisory Group Inc. has been appointed as monitor (the "Monitor") of the Canadian Debtor, with the rights, powers, duties and limitations upon liabilities set forth in the CCAA and the Canadian Order; and (c) a stay of proceedings in respect of the Canadian Debtor has been granted.

4. For convenience, (a) the U.S. Debtor and the Canadian Debtor shall be referred to herein collectively as the "Debtors," (b) the U.S. Proceedings and the Canadian Proceedings shall be referred to herein collectively as the "Insolvency Proceedings," and (c) the U.S. Court and the Canadian Court shall be referred to herein collectively as the "Courts", and each individually as a "Court."

B. Purpose and Goals

5. Though full and separate plenary proceedings are pending in the United States for the U.S. Debtor and in Canada for the Canadian Debtor, the implementation of administrative

procedures and cross-border guidelines is both necessary and desirable to coordinate certain activities in the Insolvency Proceedings, protect the rights of parties thereto, ensure the maintenance of the Courts' respective independent jurisdiction and give effect to the doctrines of comity. Accordingly, this Protocol has been developed to promote the following mutually desirable goals and objectives in the Insolvency Proceedings:

a. harmonize and coordinate activities in the Insolvency Proceedings before the Courts;

b. promote the orderly and efficient administration of the Insolvency Proceedings to, among other things, maximize the efficiency of the Insolvency Proceedings, reduce the costs associated therewith and avoid duplication of effort;

c. honor the independence and integrity of the Courts and other courts and tribunals of the United States and Canada, respectively;

d. promote international cooperation and respect for comity among the Courts, the Debtors, the Estate Representatives (which include the Chapter 11 Representatives and the Canadian Representatives as such terms are defined below) and other creditors and interested parties in the Insolvency Proceedings;

e. facilitate the fair, open and efficient administration of the Insolvency Proceedings for the benefit of all of the Debtors' creditors and other interested parties, wherever located; and

f. implement a framework of general principles to address basic administrative issues arising out of the cross-border nature of the Insolvency Proceedings.

As the Insolvency Proceedings progress, the Courts may also jointly determine that other cross-border matters that may arise in the Insolvency Proceedings should be dealt with under and in accordance with the principles of this Protocol. Where an issue is to be addressed only to one Court, in rendering a determination in any cross-border matter, such Court may: (a) to the extent practical or advisable, consult with the other Court; and (b) in its sole discretion and bearing in mind the principles of comity, either (i) render a binding decision after such consultation; (ii) defer to the determination of the other Court by transferring the matter, in whole or in part to the other Court; or (iii) seek a joint hearing of both Courts.

C. Comity and Independence of the Courts

6. The approval and implementation of this Protocol shall not divest nor diminish the U.S. Court's and the Canadian Court's respective independent jurisdiction over the subject matter of the U.S. Proceedings and the Canadian Proceedings, respectively. By approving and implementing this Protocol, neither the U.S. Court, the Canadian Court, the Debtors nor any

creditors or interested parties shall be deemed to have approved or engaged in any infringement on the sovereignty of the United States of America or Canada.

7. The U.S. Court shall have sole and exclusive jurisdiction and power over the conduct of the U.S. Proceedings and the hearing and determination of matters arising in the U.S. Proceedings. The Canadian Court shall have sole and exclusive jurisdiction and power over the conduct of the Canadian Proceedings and the hearing and determination of matters arising in the Canadian Proceedings.

8. In accordance with the principles of comity and independence recognized herein, nothing contained herein shall be construed to:

a. increase, decrease or otherwise modify the independence, sovereignty or jurisdiction of the U.S. Court, the Canadian Court or any other court or tribunal in the United States or Canada, including the ability of any such court or tribunal to provide appropriate relief under applicable law on an ex parte or "limited notice" basis;

b. require the U.S. Court to take any action that is inconsistent with its obligations under the laws of the United States;

c. require the Canadian Court to take any action that is inconsistent with its obligations under the laws of Canada;

d. require the Debtors, the Estate Representatives or the U.S. Trustee to take any action or refrain from taking any action that would result in a breach of any duty imposed on them by any applicable law;

e. authorize any action that requires the specific approval of one or both of the Courts under the Bankruptcy Code or the CCAA after appropriate notice and a hearing (except to the extent that such action is specifically described in this Protocol); or preclude the Debtors, the U.S. Trustee, any creditor or other interested party from asserting such party's substantive rights under the applicable laws of the United States, Canada or any other relevant jurisdiction including, without limitation, the rights of parties in interest to appeal from the decisions taken by one or both of the Courts.

9. The Debtors, the Estate Representative and their respective employees, members, agents and professionals shall respect and comply with the independent, non-delegable duties imposed upon them, if any, by the Bankruptcy Code, the CCAA, the CCAA Order and other applicable laws.

D. Cooperation

10. To assist in the efficient administration of the Insolvency Proceedings and in recognizing that the U.S. Debtor and Canadian Debtor may be creditors of the others' estates, the

Debtors and their respective Estate Representatives shall, where appropriate: (a) cooperate with each other in connection with actions taken in both the U.S. Court and the Canadian Court and (b) take any other appropriate steps to coordinate the administration of the Insolvency Proceedings for the benefit of the Debtors' respective estates.

11. To harmonize and coordinate the administration of the Insolvency Proceedings, the U.S. Court and the Canadian Court each may coordinate activities and consider whether it is appropriate to defer to the judgment of the other Court. In furtherance of the foregoing:

a. The U.S. Court and the Canadian Court may communicate with one another with respect to any procedural matter relating to the Insolvency Proceedings.

b. Where the issue of the proper jurisdiction or Court to determine an issue is raised by an interested party in either of the Insolvency Proceedings with respect to a motion or application filed in either Court, the Court before which such motion or application was initially filed may contact the other Court to determine an appropriate process by which the issue of jurisdiction will be determined; which process shall be subject to submissions by the Debtors, the U.S. Trustee, the Monitor and any interested party prior to a determination on the issue of jurisdiction being made by either Court.

c. The Courts may, but are not obligated to, coordinate activities in the Insolvency Proceedings such that the subject matter of any particular action, suit, request, application, contested matter or other proceeding is determined in a single Court.

d. The U.S. Court and the Canadian Court may conduct joint hearings with respect to any cross-border matter or the interpretation or implementation of this Protocol where both the U.S. Court and the Canadian Court consider such a joint hearing to be necessary or advisable. With respect to any joint hearings, unless otherwise ordered, the following procedures will be followed:

(i) A telephone or video link shall be established so that both the U.S. Court and the Canadian Court shall be able to simultaneously hear the proceedings in the other Court.

(ii) Submissions or applications by any party that are or become the subject of a joint hearing of the Courts (collectively, "Pleadings") shall be made or filed initially only to the Court in which such party is appearing and seeking relief Promptly after the scheduling of any joint hearing, the party submitting such Pleadings to one Court shall file courtesy copies with the other Court. In any event, Pleadings seeking relief from both Courts shall be filed with both Courts.

(iii)Any party intending to rely on any written evidentiary materials in support of a submission to the U.S. Court or the Canadian Court in

connection with any joint hearing or application (collectively, "Evidentiary Materials") shall file or otherwise submit such materials to both Courts in advance of the joint hearing. To the fullest extent possible, the Evidentiary Materials filed in each Court shall be identical and shall be consistent with the procedural and evidentiary rules and requirements of each Court.

(iv) If a party has not previously appeared in or attorned or does not wish to attorn to the jurisdiction of a Court, it shall be entitled to file Pleadings or Evidentiary Materials in connection with the joint hearing without, by the mere act of such filings, being deemed to have attorned to the jurisdiction of the Court in which such material is filed, so long as it does not request in its materials or submissions any affirmative relief from such Court.

(v) The Judge of the U.S. Court and the Justice of the Canadian Court who will preside over the joint hearing shall be entitled to communicate with each other in advance of any joint hearing, with or without counsel being present, to establish guidelines for the orderly submission of Pleadings, Evidentiary Materials and other papers and for the rendering of decisions by the Courts, and to address any related procedural, administrative or preliminary matters.

(vi) The Judge of the U.S. Court and the Justice of the Canadian Court, shall be entitled to communicate with each other during or after any joint hearing, with or without counsel present, for the purposes of determining whether consistent rulings can be made by both Courts, coordinating the terms upon of the Courts' respective rulings, and addressing any other procedural or administrative matters.

12. Notwithstanding the terms of the paragraph 11 above, this Protocol recognizes that the U.S. Court and the Canadian Court are independent courts. Accordingly, although the Courts will seek to cooperate and coordinate with each other in good faith, each of the Courts shall be entitled at all times to exercise its independent jurisdiction and authority with respect to: (a) matters presented to such Court; and (b) the conduct of the parties appearing in such matters.

13. Where one Court has jurisdiction over a matter which requires the application of the law of the jurisdiction of the other Court in order to determine an issue before it, the Court with jurisdiction over such matter may, among other things, hear expert evidence or seek the advice and direction of the other Court in respect of the foreign law to be applied, subject to paragraph 26 herein.

E. Retention and Compensation of Estate Representative and Professionals

14. The Monitor, its officers, directors, employees, counsel and agents, wherever located, (collectively the "Monitor Parties") and any other estate representatives in the Canadian

Proceedings (collectively, the "Canadian Representatives") shall be subject to the sole and exclusive jurisdiction of the Canadian Court with respect to all matters, including: (a) the Canadian Representatives' tenure in office; (b) the retention and compensation of the Canadian Representatives; (c) the Canadian Representatives' liability, if any, to any person or entity, including the Canadian Debtor and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the Canadian Representatives arising in the Canadian Proceedings under the CCAA or other applicable Canadian law. The Canadian Representatives shall not be required to seek approval of their retention in the U.S. Court for services rendered to the Debtors. Additionally, the Canadian Representatives: (a) shall be compensated for their services to the Debtors solely in accordance with the CCAA, the CCAA Order and other applicable Canadian law or orders of the Canadian Court; and (b) shall not be required to seek approval of their compensation in the U.S Court.

15. The Monitor Parties shall be entitled to the same protections and immunities in the United States as those granted to them under the CCAA and the CCAA Order. In particular, except as otherwise provided in any subsequent order entered in the Canadian Proceedings, the Monitor Parties shall incur no liability or obligations as a result of the CCAA Order, the appointment of the Monitor, the carrying out of its duties or the provisions of the CCAA and the CCAA Order by the Monitor Parties, except any such liability arising from actions of the Monitor Parties constituting gross negligence or willful misconduct.

16. Any estate representative appointed in the U.S. Proceedings, including without limitation any examiners or trustees appointed in accordance with section 1163 of the Bankruptcy Code (collectively, the "Chapter 11 Representatives") shall be subject to the sole and exclusive jurisdiction of the U.S. Court with respect to all matters, including: (a) the Chapter 11 Representatives' tenure in office; (b) the retention and compensation of the Chapter 11 Representatives; (c) the Chapter 11 Representatives' liability, if any, to any person or entity, including the U.S. Debtor and any third parties, in connection with the Insolvency Proceedings; and (d) the hearing and determination of any other matters relating to the Chapter 11 Representatives arising in the U.S. Proceedings under the Bankruptcy Code or other applicable laws of the United States. The Chapter 11 Representatives and their counsel and other professionals retained therefor shall not be required to seek approval of their retention in the Canadian Court. Additionally, the Chapter 11 Representatives and their counsel and such other professionals: (a) shall be compensated for their services to the Debtors solely in accordance with the Bankruptcy Code and other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their compensation for services performed for the Debtors in the Canadian Court.

17. Any professionals retained by or with the approval of the Canadian Debtor (collectively, the "Canadian Professionals"), shall be subject to the sole and exclusive jurisdiction of the Canadian Court. Accordingly, the Canadian Professionals: (a) shall be subject to the procedures and standards for retention and compensation applicable in Canada with respect to services performed on behalf of the Canadian Debtor; and (b) shall not be required to seek approval of their retention or compensation in the U.S. Court with respect to services performed on behalf of the Canadian Debtor.

18. Any professionals retained by the U.S. Debtor (the "Chapter 11 Professionals") shall be subject to the sole and exclusive jurisdiction of the U.S. Court. Accordingly, the Chapter 11 Professionals: (a) shall be subject to the procedures and standard for retention and compensation applicable in the U.S. Court under the Bankruptcy Code with respect to services performed on behalf of the U.S. Debtor and any other applicable laws of the United States or orders of the U.S. Court; and (b) shall not be required to seek approval of their retention or compensation in the Canadian Court with respect to services performed on behalf of the U.S. Debtor.

F. Appearances

19. Upon any appearance or filing, as may be permitted or provided for by the rules of the applicable Court, the Debtors, their creditors and other interested parties in the Insolvency Proceedings, including the Estate Representatives and the U.S. Trustee, shall be subject to the personal jurisdiction of the Canadian Court or the U.S. Court, as applicable, with respect to the particular matters as to which they appear before that Court.

G. Notices

20. Notice of any motion, application or other pleading or paper filed in one or both of the Insolvency Proceedings involving or relating to matters addressed by this Protocol and notice of any related hearings or other proceedings shall be given by appropriate means (including, where circumstances warrant, by courier, telecopier or other electronic forms of communication) to the following: (a) all creditors and interested parties, in accordance with the practice of the jurisdiction where the papers are filed or the proceedings are to occur; and (b) to the extent not otherwise entitled to receive notice under clause (a) of this sentence, counsel to the Debtors; the U.S. Trustee; the Monitor and any other statutory committees appointed in these cases and such other parties as may be designated by either of the Courts from time to time. Notice in accordance with this paragraph shall be given by the party otherwise responsible for effecting notice in the jurisdiction where the underlying papers are filed or the proceedings are to occur. In addition to the foregoing, upon request, the U.S. Debtor or the Canadian Debtor shall provide the U.S. Court or the Canadian Court, as the case may be, with copies of any orders, decisions, opinions or similar papers issued by the other Court in the Insolvency Proceedings.

21. When any cross-border issues or matters addressed by this Protocol are to be addressed before a Court, notices shall be provided in the manner and to the parties referred to in paragraph 20 above.

H. Effectiveness; Modification

22. This Protocol shall become effective only upon its approval by both the U.S. Court and the Canadian Court.

23. The Guidelines attached hereto as Schedule A are subject to the following modifications:

a. the words 'in which case Guideline 7 should apply" are deleted from Guideline 6(c) and are replaced with the words "in which case Guideline 7(d) should apply";

b. Guidelines 7(a), (b) and (c) are deleted;

c. Guidelines 8(b) and (c) are deleted;

d. the words "Subject to Guideline 7(b)" from Guidelines 9(d) and (e) are deleted; and

e. Guideline 9(e) is further amended as follows:

The Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural, substantive or nonsubstantive matters relating to the joint hearing.

24. This Protocol may not be supplemented, modified, terminated, or replaced in any manner except upon the approval of both the U.S. Court and the Canadian Court after notice and a hearing. Notice of any legal proceeding to supplement, modify, terminate or replace this Protocol shall be given accordance with the notice provisions set forth in paragraph 20 above.

I. Procedure for Resolving Disputes Under this Protocol

25. Disputes relating to the terms, intent or application of this Protocol may be addressed by interested parties to the U.S. Court, the Canadian Court or both Courts upon notice in accordance with the notice provisions outlined in paragraph 20 above. In rendering a determination in any such dispute, the Court to which the issue is addressed: (a) shall consult with the other Court; and (b) may, in its sole and exclusive discretion, either: (i) render a binding decision after such consultation; (ii) defer to the determination of the other Court by transferring the matter, in whole or in part, to such other Court; or (iii) seek a joint hearing of both Courts in accordance with paragraph 11 above. Notwithstanding the foregoing, in making a determination under this paragraph, each Court shall give due consideration to the independence, comity and inherent jurisdiction of the other Court established under existing law.

26. In implementing the terms of this Protocol, the U.S. Court and the Canadian Court may, in their sole, respective discretion, provide advice or guidance to each other with respect to legal issues in accordance with the following procedures:

a. the U.S. Court or the Canadian Court, as applicable, may determine that such advice or guidance is appropriate under the circumstances;

b. the Court issuing such advice or guidance shall provide it to the non-issuing Court in writing;

c. copies of such written advice or guidance shall be served by the applicable Court in accordance with paragraph 20 hereof; and

d. the Courts may jointly decide to invite the Debtors, the Estate Representatives, the U.S. Trustee and any other affected or interested party to make submissions to the appropriate Court in response to or in connection with any written advice or guidance received from the other Court.

J. Preservation of Rights

27. Except as specifically provided herein, neither the terms of this Protocol nor any actions taken under the terms of this Protocol shall: (a) prejudice or affect the powers, rights, claims and defenses of the Debtors and their estates, the Estate Representatives, the U.S. Trustee or any of the Debtors' creditors under applicable law, including the Bankruptcy Code and the CCAA, and the orders of the Courts; or (b) preclude or prejudice the rights of any person to assert or pursue such person's substantive rights against any other person under the applicable laws of Canada or the United States.

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Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases

As Adopted and Promulgated in Transnational Insolvency: Principles of Cooperation Among the NAFTA Countries

BY

THE AMERICAN LAW INSTITUTE
At Washington, D.C., May 16, 2000

And as Adopted by

THE INTERNATIONAL INSOLVENCY INSTITUTE
At New York, June 10, 2001

The *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* were developed by The American Law Institute during and as part of its Transnational Insolvency Project and the use of the *Guidelines* in cross-border cases is specifically permitted and encouraged.

The text of the *Guidelines* is available in English and several other languages including Chinese, French, German, Italian, Japanese, Korean, Portuguese, Russian, Swedish, and Spanish on the website of the International Insolvency Institute at http://www.iiiglobal.org/international/guidelines.html.

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Foreword by the Director of The American Law Institute

In May of 2000 The American Law Institute gave its final approval to the work of the ALI's Transnational Insolvency Project. This consisted of the four volumes eventually published, after a period of delay required by the need to take into account a newly enacted Mexican Bankruptcy Code, in 2003 under the title of *Transnational Insolvency: Cooperation Among the NAFTA Countries*. These volumes included both the first phase of the project, separate Statements of the bankruptcy laws of Canada, Mexico, and the United States, and the project's culminating phase, a volume comprising *Principles of Cooperation Among the NAFTA Countries*. All reflected the joint input of teams of Reporters and Advisers from each of the three NAFTA countries and a fully transnational perspective. Published by Juris Publishing, Inc., they can be ordered on the ALI website (www.ali.org).

A byproduct of our work on the Principles volume, these *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases* appeared originally as Appendix B of that volume and were approved by the ALI in 2000 along with the rest of the volume. But the *Guidelines* have played a vital and influential role apart from the *Principles*, having been widely translated and distributed, cited and applied by courts, and independently approved by both the International Insolvency Institute and the Insolvency Institute of Canada. Although they were initially developed in the context of a project arrived at improving cooperation among bankruptcy courts within the NAFTA countries, their acceptance by the III, whose members include leaders

of the insolvency bar from more than 40 countries, suggests a pertinence and applicability that extends far beyond the ambit of NAFTA. Indeed, there appears to be no reason to restrict the *Guidelines* to insolvency cases; they should prove useful whenever sensible and coherent standards for cooperation among courts involved in overlapping litigation are called for. See, e.g., American Law Institute, International Jurisdiction and Judgments Project § 12(e) (Tentative Draft No. 2, 2004).

The American Law Institute expresses its gratitude to the International Insolvency Institute for its continuing efforts to publicize the *Guidelines* and to make them more widely known to judges and lawyers around the world; to III Chair E. Bruce Leonard of Toronto, who as Canadian Co-Reporter for the Transnational Insolvency Project was the principal drafter of the Guidelines in English and has been primarily responsible for arranging and overseeing their translation into the various other languages in which they now appear; and to the translators themselves, whose work will make the *Guidelines* much more universally accessible. We hope that this greater availability, in these new English and bilingual editions, will help to foster better communication, and thus better understanding, among the diverse courts and legal systems throughout our increasingly globalized world.

LANCE LIEBMAN
Director
The American Law Institute

January 2004

Foreword by the Chair of the International Insolvency Institute

The International Insolvency Institute, a world-wide association of leading insolvency professionals, judges, academics, and regulators, is pleased to recommend the adoption and the application in cross-border and multinational cases of The American Law Institute's *Guidelines Applicable to Court-to-Court Communications in Cross-Border Cases.* The *Guidelines* were reviewed and studied by a Committee of the III and were unanimously approved by its membership at the III's Annual General Meeting and Conference in New York in June 2001.

Since their approval by the III, the *Guidelines* have been applied in several cross-border cases with considerable success in achieving the coordination that is so necessary to preserve values for all of the creditors that are involved in international cases. The III recommends without qualification that insolvency professionals and judges adopt the *Guidelines* at the earliest possible stage of a cross-border case so that they will be in place whenever there is a need for the courts involved to communicate with each other, e.g., whenever the actions of one court could impact on issues that are before the other court.

Although the *Guidelines* were developed in an insolvency context, it has been noted by litigation professionals and judges that the *Guidelines* would be equally valuable and constructive in any international case where two or more courts are involved. In fact, in multijurisdictional litigation, the positive effect of the *Guidelines* would be even greater in cases where several courts are involved. It

is important to appreciate that the *Guidelines* require that all domestic practices and procedures be complied with and that the *Guidelines* do not alter or affect the substantive rights of the parties or give any advantage to any party over any other party.

The International Insolvency Institute expresses appreciation to its members who have arranged for the translation of the *Guidelines* into French, German, Italian, Korean, Japanese, Chinese, Portuguese, Russian, and Swedish and extends its appreciation to The American Law Institute for the translation into Spanish. The III also expresses its appreciation to The American Law Institute, the American College of Bankruptcy, and the Ontario Superior Court of Justice Commercial List Committee for their kind and generous financial support in enabling the publication and dissemination of the *Guidelines* in bilingual versions in major countries around the world.

Readers who become aware of cases in which the *Guidelines* have been applied are highly encouraged to provide the details of those cases to the III (fax: 416-360-8877; e-mail: *info@iiiglobal.org*) so that everyone can benefit from the experience and positive results that flow from the adoption and application of the *Guidelines*. The continuing progress of the *Guidelines* and the cases in which the *Guidelines* have been applied will be maintained on the III's website at *www.iiiglobal.org*.

The III and all of its members are very pleased to have been a part of the development and success of the *Guidelines* and commend The American Law Institute for its vision in developing the *Guidelines* and in supporting

their worldwide circulation to insolvency professionals, judges, academics, and regulators. The use of the *Guidelines* in international cases will change international insolvencies and reorganizations for the better forever, and the insolvency community owes a considerable debt to The American Law Institute for the inspiration and vision that has made this possible.

E. BRUCE LEONARD
Chairman
The International Insolvency Institute

Toronto, Ontario
March 2004

Judicial Preface

We believe that the advantages of co-operation and co-ordination between Courts is clearly advantageous to all of the stakeholders who are involved in insolvency and reorganization cases that extend beyond the boundaries of one country. The benefit of communications between Courts in international proceedings has been recognized by the United Nations through the *Model Law on Cross-Border Insolvency* developed by the United Nations Commission on International Trade Law and approved by the General Assembly of the United Nations in 1997. The advantages of communications have also been recognized in the European Union Regulation on Insolvency Proceedings which became effective for the Member States of the European Union in 2002.

The *Guidelines for Court-to-Court Communications in Cross-Border Cases* were developed in the American Law Institute's Transnational Insolvency Project involving the NAFTA countries of Mexico, the United States and Canada. The *Guidelines* have been approved by the membership of the ALI and by the International Insolvency Institute whose membership covers over 40 countries from around the world. We appreciate that every country is unique and distinctive and that every country has its own proud legal traditions and concepts. The *Guidelines* are not intended to alter or change the domestic rules or procedures that are applicable in any country and are not intended to affect or curtail the substantive rights of any party in proceedings before the Courts. The *Guidelines* are intended to encourage and facilitate co-operation in international cases while observing all applicable rules and procedures of the Courts that are respectively involved.

The *Guidelines* may be modified to meet either the procedural law of the jurisdiction in question or the particular circumstances in individual cases so as to achieve the greatest level of co-operation possible between the Courts in dealing with a multinational insolvency or liquidation. The *Guidelines*, however, are not restricted to insolvency cases and may be of assistance in dealing with non-insolvency cases that involve more than one country. Several of us have already used the *Guidelines* in cross-border cases and would encourage stakeholders and counsel in international cases to consider the advantages that could be achieved in their cases from the application and implementation of the *Guidelines*.

Mr. Justice David Baragwanath
High Court of New Zealand
Auckland, New Zealand

Chief Justice Donald I. Brenner
Supreme Court of British Columbia
Vancouver

Hon. Sidney B. Brooks
United States Bankruptcy Court
District of Colorado
Denver

Hon. Charles G. Case, II
United States Bankruptcy Court
District of Arizona
Phoenix

Mr. Justice Miodrag Dordević
Supreme Court of Slovenia
Ljubljana

Hon. James L. Garrity, Jr.
United States Bankruptcy Court
Southern District of New York (Ret'd)
Shearman & Sterling
New York

Mr. Justice Paul R. Heath
High Court of New Zealand
Auckland, New Zealand

Chief Judge Burton R. Lifland
United States Bankruptcy Appellate
Panel for the Second Circuit
New York

Hon. George Paine II
United States Bankruptcy Court
District of Tennessee
Nashville

Mr. Justice Adolfo A.N. Rouillon
Court of Appeal
Rosario, Argentina

Mr. Justice Wisit Wisitsora – At
Business Reorganization Office
Government of Thailand
Bangkok

Mr. Justice J.M. Farley
Ontario Superior Court of Justice
Toronto

Hon. Allan L. Gropper
Southern District of New York
United States Bankruptcy Court
New York

Hon. Hyungdu Kim
Supreme Court of Korea
Seoul

Mr. Justice Gavin Lightman
Royal Courts of Justice
London

Hon. Chiyong Rim
District Court
Western District of Seoul
Seoul, Korea

Hon. Shinjiro Takagi
Supreme Court of Japan (Ret'd)
Industrial Revitalization Corporation of Japan
Tokyo

Mr. Justice R.H. Zulman
Supreme Court of Appeal of South Africa
Parklands

Guidelines
Applicable to Court-to-Court Communications in Cross-Border Cases

Introduction:

One of the most essential elements of cooperation in cross-border cases is communication among the administrating authorities of the countries involved. Because of the importance of the courts in insolvency and reorganization proceedings, it is even more essential that the supervising courts be able to coordinate their activities to assure the maximum available benefit for the stakeholders of financially troubled enterprises.

These Guidelines are intended to enhance coordination and harmonization of insolvency proceedings that involve more than one country through communications among the jurisdictions involved. Communications by judges directly with judges or administrators in a foreign country, however, raise issues of credibility and proper procedures. The context alone is likely to create concern in litigants unless the process is transparent and clearly fair. Thus, communication among courts in cross-border cases is both more important and more sensitive than in domestic cases. These Guidelines encourage such communications while channeling them through transparent procedures. The Guidelines are meant to permit rapid cooperation in a developing insolvency case while ensuring due process to all concerned.

A Court intending to employ the Guidelines — in whole or part, with or without modifications — should adopt them formally before applying them. A Court may wish to make its adoption of the Guidelines contingent upon, or temporary until, their adoption by other courts concerned in the matter. The adopting

Court may want to make adoption or continuance conditional upon adoption of the Guidelines by the other Court in a substantially similar form, to ensure that judges, counsel, and parties are not subject to different standards of conduct.

The Guidelines should be adopted following such notice to the parties and counsel as would be given under local procedures with regard to any important procedural decision under similar circumstances. If communication with other courts is urgently needed, the local procedures, including notice requirements, that are used in urgent or emergency situations should be employed, including, if appropriate, an initial period of effectiveness, followed by further consideration of the Guidelines at a later time. Questions about the parties entitled to such notice (for example, all parties or representative parties or representative counsel) and the nature of the court's consideration of any objections (for example, with or without a hearing) are governed by the Rules of Procedure in each jurisdiction and are not addressed in the Guidelines.

The Guidelines are not meant to be static, but are meant to be adapted and modified to fit the circumstances of individual cases and to change and evolve as the international insolvency community gains experience from working with them. They are to apply only in a manner that is consistent with local procedures and local ethical requirements. They do not address the details of notice and procedure that depend upon the law and practice in each jurisdiction. However, the Guidelines represent approaches that are likely to be highly useful in achieving efficient and just resolutions of cross-border insolvency issues. Their use, with such modifications and under such circumstances as may be appropriate in a particular case, is therefore recommended.

Guideline 1

Except in circumstances of urgency, prior to a communication with another Court, the Court should be satisfied that such a communication is consistent with all applicable Rules of Procedure in its country. Where a Court intends to apply these Guidelines (in whole or in part and with or without modifications), the Guidelines to be employed should, wherever possible, be formally adopted before they are applied. Coordination of Guidelines between courts is desirable and officials of both courts may communicate in accordance with Guideline 8(d) with regard to the application and implementation of the Guidelines.

Guideline 2

A Court may communicate with another Court in connection with matters relating to proceedings before it for the purposes of coordinating and harmonizing proceedings before it with those in the other jurisdiction.

Guideline 3

A Court may communicate with an Insolvency Administrator in another jurisdiction or an authorized Representative of the Court in that jurisdiction in connection with the coordination and harmonization of the proceedings before it with the proceedings in the other jurisdiction.

Guideline 4

A Court may permit a duly authorized Insolvency Administrator to communicate with a foreign Court directly, subject to the approval of the foreign Court, or through an Insolvency Administrator in the other jurisdiction or through an autho-

rized Representative of the foreign Court on such terms as the Court considers appropriate.

Guideline 5

A Court may receive communications from a foreign Court or from an authorized Representative of the foreign Court or from a foreign Insolvency Administrator and should respond directly if the communication is from a foreign Court (subject to Guideline 7 in the case of two-way communications) and may respond directly or through an authorized Representative of the Court or through a duly authorized Insolvency Administrator if the communication is from a foreign Insolvency Administrator, subject to local rules concerning ex parte communications.

Guideline 6

Communications from a Court to another Court may take place by or through the Court:

(a) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings, or other documents directly to the other Court and providing advance notice to counsel for affected parties in such manner as the Court considers appropriate;

(b) Directing counsel or a foreign or domestic Insolvency Administrator to transmit or deliver copies of documents, pleadings, affidavits, factums, briefs, or other documents that are filed or to be filed with the Court to the other Court in such fashion as may be appropriate and providing advance notice to counsel for affect-

ed parties in such manner as the Court considers appropriate;

(c) Participating in two-way communications with the other Court by telephone or video conference call or other electronic means, in which case Guideline 7 should apply.

Guideline 7

In the event of communications between the Courts in accordance with Guidelines 2 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by either of the two Courts:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication between the Courts should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of both Courts, should be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of either Court, and of any official transcript prepared from a recording should be filed as part of the record in the proceedings and made available to counsel for all parties in both

Courts subject to such Directions as to confidentiality as the Courts may consider appropriate; and

(d) The time and place for communications between the Courts should be to the satisfaction of both Courts. Personnel other than Judges in each Court may communicate fully with each other to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by either of the Courts.

Guideline 8

In the event of communications between the Court and an authorized Representative of the foreign Court or a foreign Insolvency Administrator in accordance with Guidelines 3 and 5 by means of telephone or video conference call or other electronic means, unless otherwise directed by the Court:

(a) Counsel for all affected parties should be entitled to participate in person during the communication and advance notice of the communication should be given to all parties in accordance with the Rules of Procedure applicable in each Court;

(b) The communication should be recorded and may be transcribed. A written transcript may be prepared from a recording of the communication which, with the approval of the Court, can be treated as an official transcript of the communication;

(c) Copies of any recording of the communication, of any transcript of the communication prepared pursuant to any Direction of the Court, and of any official tran-

script prepared from a recording should be filed as part of the record in the proceedings and made available to the other Court and to counsel for all parties in both Courts subject to such Directions as to confidentiality as the Court may consider appropriate; and

(d) The time and place for the communication should be to the satisfaction of the Court. Personnel of the Court other than Judges may communicate fully with the authorized Representative of the foreign Court or the foreign Insolvency Administrator to establish appropriate arrangements for the communication without the necessity for participation by counsel unless otherwise ordered by the Court.

Guideline 9

A Court may conduct a joint hearing with another Court. In connection with any such joint hearing, the following should apply, unless otherwise ordered or unless otherwise provided in any previously approved Protocol applicable to such joint hearing:

(a) Each Court should be able to simultaneously hear the proceedings in the other Court.

(b) Evidentiary or written materials filed or to be filed in one Court should, in accordance with the Directions of that Court, be transmitted to the other Court or made available electronically in a publicly accessible system in advance of the hearing. Transmittal of such material to the other Court or its public availability in an electronic system should not subject the party filing the material in one Court to the jurisdiction of the other Court.

(c) Submissions or applications by the representative of any party should be made only to the Court in which the representative making the submissions is appearing unless the representative is specifically given permission by the other Court to make submissions to it.

(d) Subject to Guideline 7(b), the Court should be entitled to communicate with the other Court in advance of a joint hearing, with or without counsel being present, to establish Guidelines for the orderly making of submissions and rendering of decisions by the Courts, and to coordinate and resolve any procedural, administrative, or preliminary matters relating to the joint hearing.

(e) Subject to Guideline 7(b), the Court, subsequent to the joint hearing, should be entitled to communicate with the other Court, with or without counsel present, for the purpose of determining whether coordinated orders could be made by both Courts and to coordinate and resolve any procedural or nonsubstantive matters relating to the joint hearing.

Guideline 10

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, recognize and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in the other jurisdiction without the need for further proof or exemplification thereof.

Guideline 11

The Court should, except upon proper objection on valid grounds and then only to the extent of such objection, accept that Orders made in the proceedings in the other jurisdiction were duly and properly made or entered on or about their respective dates and accept that such Orders require no further proof or exemplification for purposes of the proceedings before it, subject to all such proper reservations as in the opinion of the Court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such Orders.

Guideline 12

The Court may coordinate proceedings before it with proceedings in another jurisdiction by establishing a Service List that may include parties that are entitled to receive notice of proceedings before the Court in the other jurisdiction ("Non-Resident Parties"). All notices, applications, motions, and other materials served for purposes of the proceedings before the Court may be ordered to also be provided to or served on the Non-Resident Parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the Court in accordance with the procedures applicable in the Court.

Guideline 13

The Court may issue an Order or issue Directions permitting the foreign Insolvency Administrator or a representative of creditors in the proceedings in the other jurisdiction or an authorized

Representative of the Court in the other jurisdiction to appear and be heard by the Court without thereby becoming subject to the jurisdiction of the Court.

Guideline 14

The Court may direct that any stay of proceedings affecting the parties before it shall, subject to further order of the Court, not apply to applications or motions brought by such parties before the other Court or that relief be granted to permit such parties to bring such applications or motions before the other Court on such terms and conditions as it considers appropriate. Court-to-Court communications in accordance with Guidelines 6 and 7 hereof may take place if an application or motion brought before the Court affects or might affect issues or proceedings in the Court in the other jurisdiction.

Guideline 15

A Court may communicate with a Court in another jurisdiction or with an authorized Representative of such Court in the manner prescribed by these Guidelines for purposes of coordinating and harmonizing proceedings before it with proceedings in the other jurisdiction regardless of the form of the proceedings before it or before the other Court wherever there is commonality among the issues and/or the parties in the proceedings. The Court should, absent compelling reasons to the contrary, so communicate with the Court in the other jurisdiction where the interests of justice so require.

Guideline 16

Directions issued by the Court under these Guidelines are subject to such amendments, modifications, and extensions as

may be considered appropriate by the Court for the purposes described above and to reflect the changes and developments from time to time in the proceedings before it and before the other Court. Any Directions may be supplemented, modified, and restated from time to time and such modifications, amendments, and restatements should become effective upon being accepted by both Courts. If either Court intends to supplement, change, or abrogate Directions issued under these Guidelines in the absence of joint approval by both Courts, the Court should give the other Courts involved reasonable notice of its intention to do so.

Guideline 17

Arrangements contemplated under these Guidelines do not constitute a compromise or waiver by the Court of any powers, responsibilities, or authority and do not constitute a substantive determination of any matter in controversy before the Court or before the other Court nor a waiver by any of the parties of any of their substantive rights and claims or a diminution of the effect of any of the Orders made by the Court or the other Court.