

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

<b>In re:</b>	)	
	)	
<b>Montreal Maine &amp; Atlantic Railway Ltd.,</b>	)	<b>Case No. 13-10670</b>
	)	
<b>Debtor.</b>	)	
_____	)	
	)	
<b>Wheeling &amp; Lake Erie Railway Co.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
v.	)	
	)	
<b>Robert J. Keach, in his capacity as Chapter 11</b>	)	<b>Adv. No. 13-01033</b>
<b>Trustee of Montreal Maine &amp; Atlantic</b>	)	
<b>Railway Ltd.; Montreal Maine &amp; Atlantic</b>	)	
<b>Railway Ltd; LMS Acquisition Corp.;</b>	)	
<b>Montreal Maine &amp; Atlantic Corp.; Travelers</b>	)	
<b>Property Casualty Company of America a/k/a</b>	)	
<b>Travelers Insurance Company,</b>	)	
	)	
<b>Defendants.</b>	)	

**SECOND AMENDED JOINT PRETRIAL ORDER**

Wheeling & Lake Erie Railway Company (“Wheeling”) and Robert J. Keach, Trustee of the Montreal, Maine & Atlantic Railway, Ltd. (the “Trustee”) by and through their undersigned counsel, submit the following Second Amended Joint Pretrial Order (“Second Amended JPO”) and agree that, upon the Court’s endorsement, its terms (a) shall amend the terms of the Joint Pretrial Order (the “JPO”) [D.E. # 1337] entered by the Court on January 12, 2015 and the Amended Joint Pretrial Order (the “Amended JPO”) [D.E. # 48] entered by the Court on March 18, 2015; and (b) will govern pretrial proceedings.

### **Introduction**

This Second Amended JPO shall apply with respect to (1) the contested matters initiated by Wheeling's Motion to Enforce Cash Collateral Orders, dated January 30, 2014 [D.E. # 603] (the "Cash Collateral Motion"), and the Trustee's Motion for An Order Pursuant to 11 U.S.C. § 506(c) Authorizing the Recovery of Expenses from Wheeling and Lake Erie Railway Co. Or It's Collateral [D.E. # 854] (the "Surcharge Motion") and (2) the Adversary Proceeding initiated by Wheeling, and filed in this case, entitled *Wheeling & Lake Erie Railway Company v. Robert J. Keach, et. al.*, Adv. No. 13-01033. Each of these contested matters and adversary proceeding shall henceforth be consolidated for all purposes, and shall proceed henceforth in said adversary proceeding, (the "Consolidated Adversary Proceeding"); provided, however, that a final hearing with respect to the legal and factual issues raised in the Cash Collateral Motion and the Surcharge Motion shall be held on May 6, 2015 at 9:00 a.m. in Portland. Any findings of fact and conclusions of law made by the Court in such hearing shall be binding on the parties for all purposes in the Consolidated Adversary Proceeding.

I. Pleadings:

The pleadings are complete.

II. Statement of Legal Issues:

The legal issues are as set forth in the pleadings.

The Parties agree that additional legal issues may be identified as discovery progresses.

III. Statement of Anticipated Factual Issues:

The factual issues are as set forth in the pleadings.

The Parties agree that additional factual issues may be identified as discovery progresses.

IV. Jurisdiction.

This is a core matter, in its entirety, on which the bankruptcy court will enter final judgment.

V. Jury Trial.

Neither party seeks a jury trial.

VI. Discovery.

Any remaining discovery with respect to the matters to be heard on May 6, 2015, will be completed by Wednesday, April 29, 2015.

VII. Stipulation.

The parties, through counsel, shall engage in a good faith effort to stipulate to all facts and legal issues as to which there is no actual dispute. Counsel shall prepare a written stipulation, signed by all counsel, in a form satisfactory to permit the document to be marked as an exhibit and offered in evidence at trial. The stipulation shall include legal and factual issues remaining in dispute.

All stipulations with respect to the matters to be heard on May 6, 2015, shall be filed with the court no later than Friday, May 1, 2015

VIII. Witnesses/Experts For May 6 Hearing.

(a) Exhibits. All parties are to pre-mark and exchange copies of the exhibits they reasonably anticipate offering at the hearing to be held on May 6, 2015 on or before Wednesday, April 29, 2015. In the absence of objection served and filed within 2 days of service, such exhibits will be received in evidence without further authentication.

Pre-marking shall consist of clearly designating each proposed exhibit in the order of its probable presentation at trial. Wheeling's proposed exhibits shall be designated by number; the Trustee's proposed exhibits shall be designated by letter. Copies of

proposed exhibits shall be accompanied by a list of the exhibits with a brief identification of each.

(b) Witnesses. The parties are to exchange the names of all witnesses they intend to present at the hearing to be held on May 6, 2015, together with a brief summary of the area of testimony each witness will address on or before Wednesday, April 29, 2015. The filing(s) may incorporate previously-made disclosures. All reasonably anticipated objections to the testimony and all motions to limit testimony of a witness identified by an opposing party shall be filed with the court and served on the opposing parties within 2 days after service of the witness list required by this paragraph.

**NOTE:** Designation of a non-party witness on an opponent's list of witnesses does not relieve a party of assuring the presence of that witness at trial if his or her testimony is desired.

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Dated: April 7, 2015

/s/ David C. Johnson

George J. Marcus  
David C. Johnson  
Andrew C. Helman

Counsel for Wheeling &  
Lake Erie Railway Company

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Dated: April 7, 2015

/s/ Timothy McKeon

D. Sam Anderson  
Timothy McKeon

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ENDORSED AND ENTERED as an ORDER of the COURT

/s/ Peter G. Cary  
U.S. Bankruptcy Judge

April 8, 2015  
Date