

**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>	)	
	)	
<b>v.</b>	)	
	)	
<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>	)	

**THIRD AMENDED JOINT PRETRIAL ORDER AND STIPULATIONS**

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 Third Amended Joint Pretrial Order and Stipulations (“Third Amended JPO”) and agree that, upon the Court’s endorsement, its terms shall become effective and:

A. Shall amend the terms of the Joint Pretrial Order [Main Case D.E. # 1337] entered by the Court on January 12, 2015, the Amended Joint Pretrial Order [D.E. # 48] entered by the Court on March 18, 2015, and the Second Amended Joint Pretrial Order [D.E. # 53];

B. Provide the Court with certain stipulations for use in resolving Wheeling's Motion to Enforce Cash Collateral Orders dated January 30, 2014 (the "Cash Collateral Motion") [D.E. # 603].

C. Set a schedule for briefing the Cash Collateral Motion legal issues unresolved by the stipulations.

D. Reschedule the hearing on 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 (the "Surcharge Motion") [D.E. # 854].

### **Cash Collateral Motion**

1. The parties have consulted and reached agreement on certain factual issues as set forth in the Stipulations infra.

2. As a result, the parties agree that the sole remaining legal issue to be determined by this Court as to the Cash Collateral Motion is as follows:

Whether the Bankruptcy Court, Judge Kornreich presiding, ruled at the conclusion of the March 13, 2014 hearing and/or the May 8, 2014 hearing that the so-called Canadian Receivables constituted Wheeling's collateral (the "Ruling") and, if so, whether any such Ruling is binding upon the Trustee and Wheeling for the purposes of the Cash Collateral Motion and the Surcharge Motion.

3. In order to resolve the Cash Collateral Motion, the parties stipulate as follows:

A. If the Court determines as matter of law and fact that the Ruling is binding on the Trustee for the purpose of the Cash Collateral Motion, then Wheeling shall be deemed to have a superpriority, administrative expense claim in this case, as provided for by the terms of the applicable cash collateral orders, in the amount of \$695,640.93.

B. If the Court determines that the Ruling is not binding on the Trustee for the purpose of the Cash Collateral Motion, an evidentiary hearing shall be scheduled in accordance with the Cross-Border Protocol (to the extent applicable) to determine whether some or all of the Canadian Receivables or the proceeds thereof, are or were

Wheeling's collateral as matter of law and fact for purposes of the Cash Collateral Motion.

C. If, after the evidentiary hearing referenced supra in ¶ 3.B, it is determined as a matter of law and fact that none, all, or a portion of the Canadian Receivables or proceeds thereof are or were Wheeling's collateral, then Wheeling shall be deemed to have a superpriority, administrative expense claim in the amount of \$161,246.78, plus the face amount of any Canadian Receivables, or he proceeds thereof, deemed to be Wheeling's collateral.

4. The parties shall submit simultaneous initial briefs on the legal issues raised in ¶ 2 within twenty (20) days after the date the Court enters this Third Amended JPO (the "Initial Briefs").

5. Any reply briefs shall be filed within ten (10) business days after the due date of the Initial Briefs.

6. The Court shall hold oral argument on the legal issues raised in ¶ 2 on June 25 \_\_\_\_\_, 2015 at 9 a.m (the "Oral Argument Date")

#### **The Surcharge Motion**

7. The Court shall hold a status conference on the Surcharge Motion (the "Status Conference") on the Oral Argument Date.

8. The Court shall reset all applicable deadlines for stipulations, witnesses, exhibits, etc. at the Status Conference.

Dated: May 1, 2015

/s/ David C. Johnson

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

Counsel for Wheeling &  
Lake Erie Railway Company

MARCUS, CLEGG & MISTRETTA, P.A.  
One Canal Plaza, Suite 600  
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207.828.8000

Dated: May 1, 2015

/s/ Sam Anderson

Sam Anderson  
Timothy McKeon

Counsel for Robert J. Keach, Trustee

BERNSTEIN SHUR  
One Hundred Middle Street, West Tower  
P.O. Box 9729  
Portland, ME 04104-5029  
207.774.1200

ENDORSED AND ENTERED as an ORDER of the COURT

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

May 5, 2015  
Date

Certificate of Notice Page 5 of 5  
United States Bankruptcy Court  
District of Maine

Wheeling & Lake Erie Railway Company,  
Plaintiff

Adv. Proc. No. 13-01033-PGC

Robert J. Keach, in his capacity as Chap,  
Defendant

**CERTIFICATE OF NOTICE**

District/off: 0100-1

User: kford  
Form ID: pdf900

Page 1 of 1  
Total Noticed: 4

Date Rcvd: May 05, 2015

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on May 07, 2015.

smg +State of Maine, Bureau of Revenue Services, Compliance Division Bankruptcy Unit,  
P.O. Box 1060, Augusta, ME 04332-1060  
dft +Montreal Maine & Atlantic Railway Ltd., 15 Iron Road, Hermon, ME 04401-1136

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.  
ust +E-mail/Text: USTPREGION01.PO.ECF@USDOJ.GOV May 05 2015 20:33:15 Office of U.S. Trustee,  
537 Congress Street, Suite 300, Portland, ME 04101-3490

ust +E-mail/Text: USTPREGION01.PO.ECF@USDOJ.GOV May 05 2015 20:33:15 Office of the U.S. Trustee,  
537 Congress Street, Portland, ME 04101-3490

TOTAL: 2

\*\*\*\*\* BYPASSED RECIPIENTS \*\*\*\*\*

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.  
USPS regulations require that automation-compatible mail display the correct ZIP.

**I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.**

**Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.**

Date: May 07, 2015

Signature: /s/Joseph Speetjens

**CM/ECF NOTICE OF ELECTRONIC FILING**

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on May 5, 2015 at the address(es) listed below:

Andrew Helman, Esq. on behalf of Plaintiff Wheeling & Lake Erie Railway Company  
ahelman@mcm-law.com, bankruptcy@mcm-law.com  
D. Sam Anderson, Esq. on behalf of Defendant Robert J. Keach, in his capacity as Chapter 11  
Trustee of Maine Montreal and Atlantic Railway, Ltd. sanderson@bernsteinshur.com,  
acummings@bernsteinshur.com;astewart@bernsteinshur.com;kquirk@bernsteinshur.com;kbigelow@bernstei  
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David C. Johnson on behalf of Plaintiff Wheeling & Lake Erie Railway Company  
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George J. Marcus, Esq. on behalf of Plaintiff Wheeling & Lake Erie Railway Company  
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Maire Bridin Corcoran Ragozzine, Esq. on behalf of Defendant Robert J. Keach, in his capacity  
as Chapter 11 Trustee of Maine Montreal and Atlantic Railway, Ltd. acumings@bernsteinshur.com  
Patrick C. Maxcy, Esq. on behalf of Defendant LMS Acquisition Corp. patrick.maxcy@dentons.com  
Patrick C. Maxcy, Esq. on behalf of Defendant Montreal Maine & Atlantic Corporation  
patrick.maxcy@dentons.com  
Timothy J. McKeon, Esq. on behalf of Defendant Robert J. Keach, in his capacity as Chapter 11  
Trustee of Maine Montreal and Atlantic Railway, Ltd. tmckeon@bernsteinshur.com,  
kquirk@bernsteinshur.com;astewart@bernsteinshur.com

TOTAL: 8