

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC  
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670  
Chapter 11

**AMENDED JOINT PRETRIAL STATEMENT AND ORDER BETWEEN THE  
ESTATE REPRESENTATIVE AND NEW BRUNSWICK SOUTHERN RAILWAY  
COMPANY LIMITED AND MAINE NORTHERN RAILWAY COMPANY**

Robert J. Keach, the estate representative (the “Estate Representative”) for the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (“MMA”), and New Brunswick Southern Railway Company Limited (“NBSR”) and Maine Northern Railway Company (“MNR,” and together with NBSR, the “Irving Railroads”), hereby submit the following Joint Pretrial Statement/Pretrial Order (“JPS”) in connection with the *Trustee’s Objection to Proofs of Claim Filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company Limited on the Basis that Certain of such Claims are Duplicative of Others, and Such Others are Improperly Asserted as Administrative and/or Priority Claims* [D.E. 1826] (the “Objection”) and agree that, upon the Court’s endorsement, its terms shall govern pretrial proceedings.

As an initial matter, the Estate Representative and the Irving Railroads (together, the “Parties”) have conferred as previously directed by the Court.

**PLEADINGS**

1. The Estate Representative shall file an amendment to the Objection on or before February 28, 2017 (the “Amended Objection”).

2. The Irving Railroads shall file a response, if any, to the Amended Objection on or before March 14, 2017.

3. Any other party in interest, including but not limited to the Wheeling and Lake Erie Railway Company, may file any appropriate pleading in response to the Amended Objection or to the Irving Railroads' response thereto on or before March 21, 2017.

4. The Estate Representative and the Irving Railroads shall file any reply to the pleadings contemplated in paragraphs 2-3 above on or before March 28, 2017.

5. Otherwise, the pleadings are complete, provided, however, that all parties reserve the right to amend pleadings to conform to the evidence at trial.

#### **STATEMENT OF LEGAL ISSUES**

6. The Parties do not anticipate the presentment of any legal issues to the Court for determination.

#### **STATEMENT OF ANTICIPATED FACTUAL ISSUES**

7. The following factual issues will be presented to the Court for determination:

- (a) Based upon this Court's oral ruling entered on February 5, 2016 [D.E. 1955], the Court's order overruling in part the Estate Representative's objection to the Irving Railroads' proofs of claim [D.E. 2034], and the Opinion and Judgment entered by the United States Bankruptcy Appellate Panel for the First Circuit on October 21, 2016 [D.E. 2250 and 2251] (the "BAP Decision"), what amount of the Irving Railroads' claims is entitled to priority under 11 U.S.C. § 1171(b)?
- (b) To the extent any of the Irving Railroads' claims are not entitled to priority under 11 U.S.C. § 1171(b), what is the amount of the Irving Railroads' non-priority general unsecured claims?

#### **JURISDICTION**

8. The Parties agree that this is a core matter, in its entirety, on which the Bankruptcy Court can enter final judgment.

**JURY TRIAL**

9. Neither party seeks a jury trial.

**DISCLOSURES**

10. The Parties do not expect to disclose any expert witnesses.

**DISCOVERY**

11. Discovery shall be limited to the factual issues identified in paragraph 3 above. No discovery shall be permitted with respect to issues previously determined by this Court in its oral ruling on February 5, 2016 [D.E. 1955], this Court's order overruling in part the Estate Representative's objection to the Irving Railroads' proofs of claim [D.E. 2034], or the BAP Decision.

12. The Estate Representative shall serve his responses to Interrogatories propounded by the Irving Railroads on or before March 10, 2017.

13. The Parties agree that all responses to Requests for Production of Documents propounded by the Estate Representative and the Irving Railroads shall be served on or before March 17, 2017.

14. The Parties agree that all depositions will occur between March 21, 2017 and March 23, 2017, at times and locations mutually agreeable as between the Parties.

15. The Parties agree that discovery will be completed on or before March 24, 2017.

16. To the extent electronic information is required to establish the amount of the Irving Railroads' claims as set forth in paragraph 3 above, the Parties agree to proceed with the discovery of electronic information as follows: the Parties will confer and cooperate with each other to set reasonable limits on the amount of ESI to be produced, including limits on collection of emails and the possible use of reasonable search terms on limited numbers of custodians. In

the event of a dispute, the Parties will seek a telephonic conference with the Court to resolve the matter.

### **STIPULATION**

17. The Parties, through counsel, shall engage in a good faith effort to stipulate to all fact 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.

18. All stipulations shall be filed with the Court no later than thirty (30) days after the close of discovery.

### **EXHIBITS/WITNESSES**

#### **A. Exhibits**

19. No later than fourteen (14) days after the close of discovery, the Parties shall pre-mark and exchange copies of the exhibits they reasonably anticipate offering at trial. In the absence of objection served and filed within fourteen (14) days of service, such exhibits will be received in evidence without further authentication; provided, however, that exhibits admitted into evidence at the hearing on November 20, 2015 shall be received in evidence and included in the record for all purposes in this proceeding.

20. Pre-marking shall consist of clearly designating each proposed exhibit in the order of its probable presentation at trial. The Estate Representative's proposed exhibits shall be designated by number preceded by "ER"; the Irving Railroads' proposed exhibits shall be designated by number preceded by "I". Copies of proposed exhibits shall be accompanied by a list of the exhibits with a brief identification of each.

**B. Witnesses**

21. No later than fourteen (14) days after the close of discovery, the Parties are to exchange the names of all witnesses they intend to present at trial, together with a brief summary of the area of testimony each witness will address. 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 fourteen (14) days after service of the witness list required by this paragraph.

22. **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.

**PRETRIAL MOTIONS**

23. All pretrial motions and motions for summary judgment may be filed at any time before or after the discovery period, but no later than fourteen (14) days prior to the date set for trial.

**INITIAL PRETRIAL CONFERENCE**

24. Unless the Parties specifically request an initial pretrial conference or the Court, an initial pretrial conference will not convene.

**FINAL PRETRIAL CONFERENCE**

25. Within fourteen (14) days after the close of discovery, the Estate Representative's counsel shall schedule and send notice of a final, telephonic pretrial conference. The Parties shall be prepared to discuss all matters relating to trial at the final conference.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

Dated: February 21, 2017

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Dated: February 21, 2017

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**ENDORSED AND ENTERED as an ORDER of the COURT**

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

February 22, 2017  
**Date**

District/Off: 0100-1  
Case: 13-10670

User: kford  
Form ID: pdf900

Date Created: 2/22/2017  
Total: 172

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cr DPTS Marketing, LLC  
cr Dakota Petroleum Transport Solutions, LLC

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