UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

TRUSTEE'S (A) PROPOSED AGENDA FOR STATUS CONFERENCE AND (B) IN THE ALTERNATIVE, MOTION PURSUANT TO 11 U.S.C. § 105(d) AND THE CROSS-BORDER INSOLVENCY PROTOCOL TO ESTABLISH (I) A MORATORIUM ON PLAN PROCEEDINGS; (II) A SETTLEMENT PROCESS; AND (III) A PLAN PROCESS IN THE EVENT OF MULTIPLE PLANS

Robert J. Keach, the chapter 11 trustee (the "Trustee"), by and through his undersigned counsel, submits the following agenda for the joint status conference scheduled for February 26, 2014, including as such conference may be continued to subsequent dates (the "Conference") and, in the alternative, submits this motion (the "Motion") pursuant to 11 U.S.C. § 105(d) and the *Cross-Border Insolvency Protocol* approved by this Court (the "Protocol") requesting that, to the extent not established by mutual consent at the Conference, the Court enter an order establishing: (a) certain procedures and deadlines with respect to a plan and confirmation process, including, but not limited to, a 120-day moratorium on the filing of or prosecution of any plans or disclosure statements; and (b) a settlement process to negotiate, *inter alia*, resolution of claims to and distribution of the proceeds of the insurance policy issued by XL Insurance Company Limited (the "XL Policy"), and the potential global resolution of all claims asserted against Montreal Maine & Atlantic Railway, Ltd. ("MMA" or the "Debtor") and Montreal Maine & Atlantic Canada Co. ("MMA Canada"), as well as by or against third parties having potential

indemnity, contribution, and/or subrogation claims against MMA and MMA Canada, all as detailed below. In support of this Motion, the Trustee states as follows:

I. JURISDICTION, VENUE AND STATUTORY BASIS FOR RELIEF

1. The United States District Court for the District of Maine (the "District Court") has original but not exclusive jurisdiction over this chapter 11 case pursuant to 28 U.S.C. § 1334(a) and over this Motion pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(a) and Rule 83.6 of the District Court's local rules, the District Court has authority to refer and has referred this chapter 11 case and this Motion to this Court.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has constitutional authority to enter final orders in this proceeding.

3. Venue over this chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue over this proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

4. The relief sought in this Motion is predicated upon 11 U.S.C. §§ 105(a) and 105(d), as well as the Court's inherent authority to control its docket.

II. BACKGROUND

5. On August 7, 2013 (the "Petition Date"), the Debtor filed a voluntary petition for relief under 11 U.S.C. § 101 et seq. The Debtor's bankruptcy filing was precipitated by the train derailment in Lac-Mégantic, Québec on July 6, 2013 (the "Derailment") and the business interruption and litigation that subsequently ensued. The Derailment set off several massive fires and explosions, which destroyed part of downtown Lac-Mégantic and killed 47 people.

6. The same factors precipitated the filing by MMA Canada (together with MMA, the "Debtors"), MMA's subsidiary, under Canada's *Companies' Creditors Arrangement Act* (the

"Canadian Case") in Québec Superior Court in Canada (the "Canadian Court"). Richter Advisory Group Inc. has been appointed as the monitor (the "Monitor") in the Canadian Case.

7. On August 21, 2013, the U.S. Trustee appointed the Trustee in this chapter 11 case. As a consequence of the Trustee's appointment, mandatory in a railroad reorganization case, the Debtor's exclusive right to file a plan terminated. *See* 11 U.S.C. §§ 1163, 1121(c)(1).[1]

8. On September 4, 2013, the Court entered an order adopting the Protocol [D.E. 168], which governs the conduct of all parties in interest in the Case and the Canadian Case. The Canadian Court also adopted the Protocol. The purpose of the Protocol is to, among other things, (a) harmonize and coordinate the activities before this Court and the Canadian Court, (b) promote the orderly and efficient administration of the chapter 11 case and the Canadian Case to, among other things, maximize the efficiency of both proceedings, reduce the costs associated therewith and avoid duplication of effort, and (c) facilitate the fair, open and efficient administration of the proceedings for the benefit of all of the Debtors' creditors and other interested parties, wherever located. *See* Protocol, ¶ 5.

9. The Protocol also contemplates that this Court and the Canadian Court will, as necessary and when appropriate, conduct joint hearings. Specifically, paragraph 11(d) of the Protocol provides that "[t]he 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." Protocol, ¶ 11(d). The spirit of the Protocol is to promote, where possible, coordination of the cases and to avoid, where possible, conflicting rulings.

[1] The effect of these provisions is to, apparently, eliminate exclusivity altogether in railroad cases, perhaps on the assumption that regulatory involvement would eliminate any chaos over competing plans.

10. Pursuant to an order entered by this Court on October 18, 2013 [D.E. 391], this Court authorized and directed the U.S. Trustee to appoint a victims' committee in this chapter 11 case. On November 27, 2013 and December 10, 2013, the U.S. Trustee appointed the members of the Official Committee of Victims (the "Official Committee"). In addition to the members of the Official Committee, the government of the Province of Québec and the City of Lac-Mégantic, Québec apparently served as *ex officio* members of the Official Committee.

A. The Section 157(b)(5) Proceedings in the United States District Court for the District of Maine and Claims of Non-Debtor Co-Defendants Against XL Policy and Proceeds.

11. Between July 22, 2013 and August 14, 2013, the representatives and administrators of the estates of some of the deceased victims of the Derailment commenced civil actions against MMA and various other defendants (the "Non-Debtor Defendants") in the Circuit Court of Cook County, Illinois (the "Circuit Court").

12. On August 29, 2013, all twenty of these civil actions were removed to the United States District Court for the Northern District of Illinois (the "Illinois District Court"). The removal of these cases was effectuated pursuant to 28 U.S.C. §§ 1331, 1332, 1334(b), 1441, 1446, and 1452.

13. On September 8, 2013, one of the civil actions was voluntary dismissed by the plaintiff. On September 9, 2013, each of the plaintiffs in the remaining cases voluntarily dismissed, without prejudice, MMA as a defendant.

14. As of September 10, 2013, nineteen of the twenty cases originally commenced in the Circuit Court and later removed to the Illinois District Court (the "PITWD Cases") remained pending in that court.

15. On September 11, 2013, the Trustee filed a motion pursuant to 28 U.S.C. § 157(b)(5) (the "Section 157(b)(5) Motion") requesting that the United States District Court for the District of Maine (the "Maine District Court") transfer the PITWD Cases to Maine, the district in which this case is pending. Western Petroleum Corporation and Petroleum Transport Services, Inc., two Non-Debtor Defendants, also filed a transfer motion under 28 U.S.C. § 157(b)(5). The plaintiffs in the PITWD Cases filed a response objecting to the Section 157(b)(5) motion. Other Non-Debtor Defendants filed pleadings in support of the Section 157(b)(5) Motion.

16. On September 12, 2013, one of the PITWD Cases was remanded back to the Circuit Court. Accordingly, eighteen PITWD Cases remained pending in the Illinois District Court.

17. On September 18, 2013, a plaintiff in one the PITWD Cases pending in the Illinois District Court moved for an order remanding his action back to the Circuit Court. Accordingly, on September 23, 2013, the Trustee filed a *Motion for Order (I) Staying Ruling on Abstention or Remand and (II) Granting Leave to Intervene for a Limited Purpose* (the "Trustee's Stay Motion") in this civil action requesting the Illinois District Court to defer any ruling on remand or abstention until the Maine District Court ruled on the Section 157(b)(5) Motion. The plaintiff objected to the Trustee's Stay Motion. Similar remand motions were filed in the other PITWD Cases. Also on September 18, 2013, the Illinois District Court reassigned all of the PITWD Cases pending before various judges to one judge, United States District Judge Bucklo.

18. The Illinois District Court took the various motions for remand and the Trustee's Stay Motion under advisement.

19. On October 18, 2013, the plaintiffs in the PITWD Cases filed a motion to stay the Section 157(b)(5) Motion (the "Wrongful Death Claimants' Stay Motion") requesting that the Maine District Court stay further action on the Section 157(b)(5) Motion until the Illinois District Court ruled on the pending motions before that court. The Trustee opposed this motion. The Maine District Court reserved ruling on the Wrongful Death Claimants' Stay Motion on November 4, 2013.

20. On November 20, 2013, the Illinois District Court stayed the rulings on the remand motions in the PITWD Cases until after the Maine District Court decided the Section 157(b)(5) Motion.

21. On January 31, 2014, the Maine District Court held oral arguments regarding the Section 157(b)(5) Motion and response thereto, and the Wrongful Death Claimants' Stay Motion and response thereto, ultimately taking the matters under advisement. As of the date hereof, the Maine District Court has not rendered a decision.

22. Among the reasons why the PITWD Cases are claimed to be related to the this case and therefore within the Maine District Court's and bankruptcy court's jurisdiction, and therefore should be transferred to Maine under § 157(b)(5), is that some of the Non-Debtor Defendants are also named insureds under the XL Policy. Specifically, Edward Burkhardt, certain Rail World entities and CIT Group, Inc. ("CIT"), all Non-Debtor Defendants, are, or claim to be, named insureds under the XL Policy.

23. Rail World, Inc. is affiliated with MMA, and Edward Burkhardt is a former member of MMA's board of directors and a shareholder of the holding company that is the ultimate corporate parent of MMA. Rail World and Mr. Burkhardt are Non-Debtor Defendants, and the plaintiffs in the PITWD cases have argued that they are central defendants in the cases.

Rail World asserts that it has rights against MMA under indemnification provisions in a management agreement, and a Rail World affiliate asserts that it has indemnification rights under a locomotive lease. Mr. Burkhardt also asserts that he has automatic indemnity rights under the MMA governance documents.

24. Another Non-Debtor Defendant, CIT, has stated that it will seek to satisfy any judgment against it from the proceeds of the XL Policy. If CIT is liable to the plaintiffs in the PITWD Cases, and if CIT is entitled to indemnification from MMA's estate, CIT contends that it has a lien upon or property rights in the XL Policy and its proceeds.

B. Adversary Proceeding Against World Fuel Services Corporation and Affiliates

25. On January 30, 2014, the Trustee commenced an adversary proceeding in this Court against World Fuel Services Corporation, World Fuel Services, Inc., Western Petroleum Company, World Fuel Services, Canada, Inc., and Petroleum Transport Solutions, LLC (collectively, the "World Fuel Affiliates"). *See* Adv. Pro. No. 14-01001-LHK. Some or all of the World Fuel Affiliates are also Non-Debtor Defendants.

26. The complaint filed by the Trustee (the "Complaint") alleges that some of the World Fuel Affiliates acted negligently in relation to the Derailment, including by failing to properly label the crude oil being transported in the train that ultimately derailed, and that such negligence directly and proximately caused injuries to MMA. *See* D.E. 1, Adv. Pro. No. 14-01001-LHK.

27. The current deadline by which the World Fuel Affiliates must answer the Complaint is March 3, 2014.

C. The Unofficial Committee's "Plan"

28. As noted by the Official Committee in the *Motion of Official Committee of Victims Pursuant to Cross-Border Insolvency Protocol Requesting Joint Status Conference Before U.S. and Canadian Court* [D.E. 620], certain cross-border issues exist that affect both this case and the Canadian Case. Significantly, there already appear to be two competing plans in existence that are directly at odds with each other, as described below, although the Trustee contends that both plans are facially nonconfirmable as a matter of law. However, a review of the competing plan provisions underscores the need for an order establishing a moratorium and a settlement and plan process to prevent this case and its Canadian counterpart from devolving into a war between or among competing creditor factions.

29. Specifically, the so-called Unofficial Committee of Wrongful Death Victims (the "Unofficial Committee"), allegedly comprised of the families of the 47 individuals killed in the Derailment (the "WD/PI Claimants"),[2] filed the *Chapter 11 Plan Dated January 29, 2014 Proposed by the Unofficial Committee of Wrongful Death Claimants* [D.E. 600] (the "WDC Plan") and the *Disclosure State for Chapter 11 Plan Dated January 29, 2014 Proposed by the Unofficial Committee of Wrongful Death Claimants* [D.E. 601] (the "WDC Disclosure Statement") on January 29, 2014. A hearing on approval of the WDC Disclosure Statement is currently scheduled for March 12, 2014. As noted above, and detailed below, the Trustee contends that the WDC Disclosure Statement cannot be approved because it describes a plan that, on its face, cannot be confirmed.

30. The WDC Plan's premise is that "the only material asset available to satisfy victims' claims appears to be the insurance policies of the U.S. and Canadian bankruptcy

[2] The Trustee intends to file a motion under Rule 2019(e) of the Federal Rules of Bankruptcy Procedure, *inter alia*, compelling the provision of additional information regarding the Unofficial Committee and its counsel.

estates." WDC Plan, p. 1. While this factual premise is simply inaccurate, these policies include the XL Policy. Accordingly, distributions to the WD/PI Claimants are contingent on the fiduciary appointed under the Plan (the "Plan Fiduciary") reaching a settlement regarding the Canadian and U.S. insurance policies. The WDC Plan acknowledges that "a maximum of $25 million in indemnity is available under the policies collectively." Plan, p. 2. (In fact, only one of the policies, the XL Policy, is applicable, and it has MMA and MMA Canada, as well as numerous other parties, as named insureds.)

31. Specifically, the WDC Plan contemplates that 75% of the proceeds from both the Canadian and U.S. insurance policies shall be paid to MMA's estate for distribution to the WD/PI Claimants, with the remaining 25% of the proceeds to remain with the Canadian estate for distribution to all other holders of Derailment-related claims, including holders of property damage and environmental claims. WDC Plan, § 5.4(b)(i). Alternatively, if the Plan Fiduciary only reaches a settlement regarding the U.S. insurance policy, 100% of the proceeds of the U.S. insurance policy will be retained by MMA's estate. Id. at § 5.4(d). Should the Plan Fiduciary be unable to reach a settlement with respect to both the Canadian and U.S. insurance policies, or the U.S. insurance policy only, prior to the WDC Plan's effective date, the "Insurer" is required to pay $18,750,000 to MMA's estate. Id. at § 5.4(f).[3]

32. The WDC Plan further provides that the WD/PI Claimants "waive the right to file, otherwise assert, or recover on account of such claims in the Canadian Case." WDC Plan, § 5.3(a). Claims arising from or related to the Derailment that are not wrongful death or personal injury claims may only be asserted in, and recover pursuant to, the Canadian Case. Id. at

[3] Apparently, the sole purpose of these provisions is to ensure that the administrative expense priority of 11 U.S.C. § 1171(a) applies to the claims of the WD/PI Claimants even if the assets available to pay such claims belong to MMA Canada's estate. The 1171(a) priority has no duplicate in the CCAA and if the WD/PI Claims were filed in the Canadian Case, and satisfied thereunder, no such priority would apply.

§ 5.3(b). The WDC Plan provides that holders of Derailment claims may prosecute claims against third parties in any forum, notwithstanding the pendency of the Canadian Case or this case. Id. at § 5.6(a).

33. The Trustee contends that the Plan is nonconfirmable under the Bankruptcy Code for a number of reasons, including, without limitation, the following: (a) the Plan ignores the fact that only the XL Policy is active, and that the two policies referred to in the Plan cannot, by their terms, apply to the same incident; thus, there is no set of facts where both policies would provide payments; (b) the Plan ignores and/or violates the contractual and/or property rights of various named insureds to the XL Policy; (c) by allowing pursuit of claims against Non-Debtor Defendants, while at the same time providing for distribution of the proceeds of the XL Policy, the Plan simply implodes; since Non-Debtor Defendants are named insureds and have claims under the policy, none of the proceeds can be distributed while such lawsuits are pending against the named insureds; (d) the Plan violates that absolute priority rule and the rules against unfair discrimination among like claims, *see* 11 U.S.C. § 1123(a)(4) and 1129(b), by distributing substantial sums to some claimants while distributing nothing to claims of equal or superior legal priority; and (e) the Plan violates 11 U.S.C. § 1174. Moreover, the Plan simply ignores potentially applicable Canadian law and the law of the Province of Québec.

D. The Class Action Plaintiffs' Plan

34. Additionally, the WDC Plan is directly at odds with a plan proposed in a letter to the Canadian Court dated January 30, 2014 by Daniel E. Larochelle (the "Larochelle Letter").

35. The plan described in the Larochelle Letter (the "Class Action Plaintiffs' Plan"), proposed on behalf of certain putative Canadian class action plaintiffs asserting claims arising

out of the Derailment (the "Class Action Plaintiffs"),[4] appears to ignore the existence of this case, and disregards the fact that the XL Policy and its proceeds are claimed as property of MMA's chapter 11 estate, and are such property under controlling First Circuit authority. Specifically, the Class Action Plaintiffs' Plan contemplates that the proceeds of the XL Policy "will be paid into [the Canadian Court], for distribution in accordance with a plan of distribution to be formulated by the Class Action Plaintiffs . . . ." Larochelle Letter, ¶ 2(a). Any other funds, including "the proceeds of the sale of the Debtor's business [and] the Travellers' [sic] insurance funds . . . will be distributed in accordance with the scheme of priorities established by the Initial Order and applicable federal and provincial laws." Id. at ¶ 2(d). The scope of the class sought to be certified by the Class Action Plaintiffs would also encompass the WD/PI Claimants.

36. The WDC Plan and the Class Action Plaintiffs' Plan thereby directly conflict with respect to treatment of any proceeds of the XL Policy, among other things. Further, the existence of two wholly inconsistent and conflicting plans is directly at odds with the terms of the Protocol, which contemplates cooperation, consistency, and coordination between this case and the Canadian Case. Both of the plans are at odds with the contemplated Cross-Border Plan (defined below) to be filed by the Trustee and MMA Canada, with the support of the Monitor.

E. Bar Date Issues

37. In addition to the conflicting proposed plans, the Trustee and the Monitor, on one hand, and the Class Action Plaintiffs on the other hand, have proposed conflicting bar dates and claims processes.

38. On January 27, 2014, the Trustee filed the *Amended Motion of Chapter 11 Trustee for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 502(b)(9), Fed. R. Bankr. P.*

[4] Note that no class action has been certified in the U.S. or Canada; therefore "Class Action Plaintiffs" is, at best, a misnomer.

3002 and 3003(c)(3), and D. Me. LBR 3003-1 Establishing Deadline for Filing Proofs of Claim and Procedures Relating Thereto and Approving Form and Manner of Notice Thereof [D.E. 596] (the "Amended Bar Date Motion"), seeking to establish a claims bar date and claims process. A corresponding motion was filed in the Canadian Case. The claims process proposed by the Trustee and the Monitor was carefully negotiated among the Trustee, the Monitor, MMA Canada, and the Official Committee to ensure that the claims process in both this case and the Canadian Case are consistent, coordinated, and satisfy due process concerns. Additionally, the claims process proposed by the Trustee and the Monitor would require that claimants file individual proofs of claim, rather than a class proof of claim.

39. On February 9, 2014, the Class Action Plaintiffs filed the *Class Action Plaintiffs' Motion to Establish Claims Procedures* [D.E. 625] (the "Class Claims Motion") and the *Objection to Amended Motion of Chapter 11 Trustee for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 502(b)(9), Fed. R. Bankr. P. 3002 and 3003(c)(3), and D. Me. LBR 3003-1 Establishing Deadline for Filing Proofs of Claim and Procedures Relating Thereto and Approving Form and Manner of Notice Thereof* [D.E. 624] (the "Objection"). By the Objection, the Class Action Plaintiffs object to the bar date and claims process proposed by the Trustee and the Monitor. In the Class Claims Motion, the Class Action Claimants propose their own bar date and claims process. The Class Action Plaintiffs filed a motion in the Canadian Case that corresponds to the relief sought in the Class Claims Motion. The claims process proposed by the Class Action Plaintiffs would provide the Class Action Plaintiffs with the ability to file a class proof of claim. While no ruling has been entered, the Canadian Court has indicated that it is unlikely to grant the Class Action Plaintiffs representative status in the Canadian Case or to approve the claims process proposed by them.

40. A hearing on the Amended Bar Date Motion and Class Claims Motion, among other things, is set for March 12, 2014. The bar date and claims process is clearly a crucial component of this case and the Canadian Case, and a speedy resolution of the issues presented by the conflicting bar date and claims process motions is essential to the effective and efficient administration of these cases.

III. RELIEF REQUESTED

41. By this Motion, the Trustee requests that, should agreement on all such issues not be reached at the Conference, this Court enter an order establishing: (a) a bar date and cross-border claims process as set forth in the Trustee's motion regarding same; (b) certain procedures with respect to the plan and confirmation process, including establishment of a 120-day moratorium on further plan activity; and (c) a settlement process and mandatory good faith negotiation of resolution of claims in and to the proceeds of the XL Policy, as well as a global resolution of all claims arising out of or related to the Derailment, including claims by or against third parties asserting contribution and indemnity claims against MMA and MMA Canada.[5]

IV. ARGUMENT

42. Section 105(d) provides that:

> [t]he court, on its own motion or on the request of a party in interest
>
> > (1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and
> >
> > (2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—. . .

[5] The Trustee's and MMA Canada's motions regarding the establishment of bar dates and a claims process are currently before this Court and the Canadian Court and this Motion is not intended to amend, supersede, or affect those motions. To the extent that some or all of the relief requested herein is agreed to at the Conference, some or all of the relief sought may be unnecessary.

> (B) in a case under chapter 11 of this title—
>
> > (i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;
> >
> > (ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;
> >
> > (iii) sets the date by which a party in interest other than a debtor may file a plan;
> >
> > (iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;
> >
> > (v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or
> >
> > (vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

11 U.S.C. § 105(d).

43. Section 105(d) provides this Court with discretion to hold status conferences in order to "further the expeditious and economical resolution of the case," and also provides the Court with discretion "in managing the confirmation process." 11 U.S.C. § 105(d); In re Aspen Limousine Svc., Inc., 187 B.R. 989, 993 (Bankr. D. Colo. 1995). Specifically, section 105(d)(2) "provides . . . rather substantial flexibility and latitude for the Court to designate, or adjust, the Chapter 11 plan, disclosure statement, and confirmation time lines and procedure." Aspen Limousine, 187 B.R. at 995. Further, section 105(d) permits courts to "look to equitable factors to fix a time schedule as may be necessary to keep the process fair, fast, effective, and efficient." Id.; *see also* Mid-Continent Racing & Gaming Co. I v. Sunflower Racing, Inc. (In re Sunflower

Racing, Inc.), 218 B.R. 972, 977 (Bankr. D. Kan. 1998) (same). Section 105(d) also provides courts with the authority to defer hearings on disclosure statements and plan confirmation, and/or issue a moratorium on plan-related activity. *See* Sunflower Racing, 218 B.R. at 977 ("Several courts have held that a bankruptcy court has the authority pursuant to section 105 to defer hearings on a creditor's disclosure statement or on other important matters."); *see also* In re Fibermark, Inc., No. 04-10463, 2005 WL 1563440, *2 (Bankr. D. Vt. June 29, 2005) (finding that a status conference under section 105(d) was warranted to determine extent to which parties intended to file competing plan and disclosure statement); In re Pub. Svc. Co. of N.H., 160 B.R. 404, 410 (Bankr. D.N.H. 1993) (referring to orders governing the procedures for filing competing plans and order issuing moratorium on plan activity).

44. In Public Service of New Hampshire, having terminated exclusivity, Judge Yacos famously (a) imposed a moratorium on the filing and/or prosecution of plans; (b) instructed the parties to use the moratorium to try to reach a consensus on key issues and/or to coalesce around a particular plan; and (c) failing such an agreement, ordered that future multiple plans would proceed on the same track and timing, such that the plan process could be controlled and orderly, rather than chaotic. *See* Pub. Svc. Co. of N.H., 160 B.R. 404 (Bankr. D.N.H. 1993); Pub. Svc. Co. of N.H., 99 B.R. 155 (Bankr. D.N.H. 1989); Pub. Svc. Co. of N.H., 98 B.R. 120 (Bankr. D.N.H. 1989).

45. The Trustee and MMA Canada anticipate filing a joint, coordinated cross-border plan in these cases (the "Cross-Border Plan"), including a mechanism for settling the distribution of the proceeds of the XL Policy, but also for the settlement of all claims against MMA and MMA Canada, including claims of and against third-parties who may have claims for indemnity, contribution, and/or subrogation claims against MMA and MMA Canada.

46. In this case, given the certainty that the Cross-Border Plan will be filed, given the warring case strategies and plans proposed by the WD/PI Claimants and Class Action Plaintiffs, respectively, in both this case and the Canadian Case, and the need to administer this case expeditiously and efficiently to maximize limited estate resources, the Trustee submits that a joint procedural and scheduling conference is necessary and, indeed, crucial. A status conference is also necessary in light of the conflicting bar dates and claims procedures proposed by the Trustee and the Monitor, on the one hand, and the Class Action Plaintiffs on the other hand. Having a consistent and coordinated bar date and claims process both in this case and in the Canadian Case is indisputably essential to the administration of these cases. The Conference can address these issues.

47. At the Conference, the parties should discuss and agree on a moratorium on all plan-related activity, including, but not limited to, a moratorium on prosecuting any filed plans and/or filing additional or amended plans or disclosure statements and holding or scheduling hearings with respect to any plans or disclosure statements, for a period of at least 120 days (the "Moratorium"). The Moratorium would provide all parties with the opportunity to attempt to reach settlements regarding the substantial cross-border issues in this case and the Canadian Case, in the hopes that ultimately a consensual plan could be formulated and confirmed. Prosecution of multiple, conflicting single-case or single-nation plans at this stage in these cases, prior to a good-faith attempt at resolution of significant issues, would be inefficient, wasteful, and ultimately counter-productive. As a practical matter, the Moratorium will not affect the progress of the WDC Plan; in addition to being facially nonconfirmable, the WDC Plan also cannot be considered until after the Maine District Court rules on the Section 157(b)(5) Motion. Central aspects of the WDC Plan would require the Court to rule on matters before the Maine

District Court as a consequence of the Section 157(b)(5) Motion and over which, accordingly, the Court has neither jurisdiction nor authority to enter judgment. Under the express terms of section 157(b)(5), only the Maine District Court may rule on such issues, and until that court rules, and any such ruling becomes a final order, the WDC Plan cannot move forward in any respect. *See* Calumet Nat'l Bank v. Levine, 179 B.R. 117, 120-21 (N.D. Ind. 1995).

48. In addition, the Trustee anticipates that at the Conference, the parties would discuss a schedule for mandatory, good faith negotiations regarding distribution of the proceeds of the XL Policy, and related matters (such as releases) as well as a potential global settlement of claims asserted against the estates of MMA and MMA Canada, as well as by or against third parties who have asserted contribution or indemnity claims against MMA or MMA Canada.[6] At the Conference, the parties should also discuss procedures and scheduling related to the plan confirmation process in the event settlement is not reached, including deadlines for filing plans and disclosure statements, coordinated hearings regarding approval of disclosure statements, and coordinated solicitation, voting, and confirmation processes.

49. In the event the matters are not agreed to at the Conference, the Court may, and should, use its powers under 11 U.S.C. §§ 105(a) and 105(d) to order a moratorium, a settlement process and a plan process. The Trustee anticipates that MMA Canada and the Monitor will ask for identical relief in the Canadian Case.[7]

WHEREFORE, the Trustee suggests the agenda for the Conference as detailed above. Failing agreement, the Trustee requests that this Court: (i) issue a moratorium on all plan-related

[6] The mandatory settlement conferences would not, of course, be the exclusive means of discussing settlement and would not limit private negotiations at other times and locations. The scheduled, mandatory sessions would simply ensure that the moratorium is not wasted.

[7] While this Motion has been noticed for hearing on March 12, 2014, under § 105(d), this Court could simply order the relief sought hereunder at the Conference or at the conclusion thereof.

activity for 120 days; (ii) set bar dates and establish a claims process as requested in the Trustee's amended motion regarding same; (iii) order the parties to conduct settlement conferences on designated dates and at designated locations regarding first, resolution of claims to the proceeds of the XL Policy, and second, a global resolution of all claims against the Debtors, as well as by or against third parties who have asserted contribution or indemnity claims against MMA or MMA Canada; and (iv) establish procedures with respect to the plan and confirmation process in the event settlement is not reached, including deadlines for filing plans and disclosure statements, coordinated hearings regarding approval of disclosure statements, and coordinated solicitation, voting, and confirmation processes.

Dated: February 14, 2014

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

By his attorneys:

/s/ *Michael Fagone*

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

NOTICE OF HEARING

Robert J. Keach, the chapter 11 trustee in the above-captioned case (the "Trustee"), has filed the *Trustee's (A) Proposed Agenda for Status Conference and (B) in the Alternative, Motion Pursuant to 11 U.S.C. § 105(d) and the Cross-Border Insolvency Protocol to Establish (I) a Moratorium on Plan Proceedings; (II) a Settlement Process; and (III) a Plan Process in the Event of Multiple Plans* (the "Motion").

If you do not want the Court to approve the Motion, then on or before **March 5, 2014**, you or your attorney must file with the Court a response or objection explaining your position. If you are not able to access the CM/ECF Filing System, then your response should be served upon the Court at:

Alec Leddy, Clerk
United States Bankruptcy Court for the District of Maine
202 Harlow Street
Bangor, Maine 04401

If you do have to mail your response to the Court for filing, then you must mail it early enough so that the Court will receive it **on or before March 5, 2014.**

You may attend the hearing with respect to the Motion scheduled to be held at the Bankruptcy Court, 537 Congress Street, 2nd Floor, Portland, Maine on **March 12, 2014 at 10:00 a.m.**

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion, and may enter an order granting the requested relief without further notice or hearing.

Dated: February 14, 2014

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

By his attorneys:

/s/ *Michael Fagone*

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

ORDER GRANTING TRUSTEE'S MOTION PURSUANT TO 11 U.S.C. § 105(d) AND THE CROSS-BORDER INSOLVENCY PROTOCOL TO ESTABLISH (I) A MORATORIUM ON PLAN PROCEEDINGS; (II) A SETTLEMENT PROCESS; AND (III) A PLAN PROCESS IN THE EVENT OF MULTIPLE PLANS

This matter having come before the Court on the *Trustee's (A) Proposed Agenda for Status Conference and (B) in the Alternative, Motion Pursuant to 11 U.S.C. § 105(d) and the Cross-Border Insolvency Protocol to Establish (I) a Moratorium on Plan Proceedings; (II) a Settlement Process; and (III) a Plan Process in the Event of Multiple Plans* (the "Motion"), filed by Robert J. Keach, the chapter 11 trustee (the "Trustee"), and the Motion requesting that, to the extent not established by mutual consent at the Conference,[1] the Court enter an order establishing: (a) certain procedures and deadlines with respect to a plan and confirmation process, including, but not limited to, a 120-day moratorium on the filing of or prosecution of any plans or disclosure statements; and (b) a settlement process, including, without limitation, to discuss resolution of claims to the XL Policy, and the potential global resolution of all claims asserted against MMA and MMA Canada, as well as by or against third parties having potential indemnity and contribution claims against MMA and MMA Canada, and due and appropriate notice of the Motion having been given, and it appearing that no other or further notice need be provided, and the Court having found and determined that the relief sought in the Motion is in

[1] Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Motion.

the best interest of MMA, its creditors, its estate, and all parties in interest and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** that:

1. The Motion is granted.

2. From and after the date of this Order, and for a period of 120 days thereafter, as such period may be extended by further order of this Court (the "Moratorium Period"), no party shall proceed with respect to any filed plan, file any plan or disclosure statement, file any additional or amended plan or disclosure statement, and/or attempt to schedule hearings with respect to any plan or disclosure statement, and any currently scheduled hearings with respect to any plan or disclosure statement are hereby adjourned and continued without day, pending further order of this Court entered in accordance with this Order.

3. Within fourteen (14) days of entry of this Order, the Trustee, after consultation with counsel to MMA Canada, the Monitor, XL Insurance Company Ltd., the Official Committee of Victims, the Unofficial Committee and the Class Action Plaintiffs, shall file and notice for hearing a proposed scheduling order (the "Settlement Scheduling Order") setting forth dates, times, and locations of settlement conferences at which parties will discuss resolution of claims to the proceeds of the XL Policy and a global resolution of all claims arising out of or related to the Derailment, including, without limitation, claims by or against third parties asserting contribution and indemnity claims against MMA and MMA Canada, including the proposed subject matter of each such settlement conference. The Trustee shall make a good faith effort to coordinate with such counsel with respect to determining mutually convenient dates, times, and locations for such settlement conferences, as well as the agenda for each such conference. Parties in interest shall have not less than fourteen (14) days to object to the

proposed Settlement Scheduling Order, including, without limitation, by proposing alternative scheduling orders. Following the hearing with respect to the proposed Settlement Scheduling Order and/or any alternative scheduling orders, the Court shall enter the Settlement Scheduling Order or otherwise determine the schedule and enter an appropriate order thereon. The parties shall make every effort to conclude such settlement conferences on or before the expiration of the Moratorium Period, provided, however, that any party in interest may move the Court for the extension of the Moratorium Period. Nothing herein shall in any way limit the parties' ability to conduct settlement discussions outside of the framework of the Settlement Scheduling Order.

4. Within twenty-one (21) days after the expiration of the Moratorium Period, the Trustee, after consultation with counsel to the Official Committee of Victims, the Unofficial Committee and the Class Action Plaintiffs, as well as the Court's scheduling clerk, shall file and notice for hearing a proposed scheduling order governing the plan process for all plan proponents (the "Plan Scheduling Order"). Such Plan Scheduling Order shall contain, at a minimum, the proposed deadline by which all plan proponents must file a plan and disclosure statement, the proposed deadline by which parties may object or respond to any disclosure statement, the proposed hearing date with respect to approval of disclosure statements, a proposed process by which disclosure statements may be sent and ballots solicited on a coordinated basis with respect to multiple plans, a proposed schedule with respect to discovery related to any confirmation issues, and a proposed hearing date for coordinated and consolidated confirmation hearings following the completion of any such discovery. Parties in interest shall have not less than fourteen (14) days to object to the proposed Plan Scheduling Order, including, without limitation, by proposing alternative scheduling orders. Following the hearing with respect to the proposed Plan Scheduling Order and/or any alternative scheduling orders, the Court shall enter

the Plan Scheduling Order or otherwise determine the schedule and deadlines applicable to all plan proponents and enter an appropriate order thereon. The parties shall use reasonable efforts, consistent with the Cross-Border Protocol and in consultation with counsel to MMA Canada, the Monitor and the Class Action Plaintiffs, to provide that any plan process in the Canadian Case shall be coordinated with the process provided in the order so entered by this Court.

Dated:

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The Honorable Louis H. Kornreich
United States Bankruptcy Judge