

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**CHAPTER 11 TRUSTEE'S MOTION FOR ORDER APPROVING
COMPROMISE AND SETTLEMENTS WITH CERTAIN PREFERENCE RECIPIENTS**

Robert J. Keach, the chapter 11 trustee in the above-captioned chapter 11 case (the "Trustee"), moves this Court for an order, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, approving compromises and settlements with certain alleged recipients of preferential payments. The settlements resolve disputes between the Trustee and certain recipients of payments from the above-captioned debtor (the "Debtor") made within 90 days of the date of the Debtor's bankruptcy petition. The Trustee believes, in the exercise of his sound business judgment, that approval of the settlements is in the best interest of the Debtor's. In support of this motion, the Trustee states as follows:

JURISDICTION, VENUE, AND STATUTORY BASIS

1. The District Court has original, but not exclusive, jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157 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 to the Bankruptcy Court.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Bankruptcy Court has constitutional authority to enter final judgment 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 Rule 9019 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”) and Rules 9013-1 and 9019-1 of the Bankruptcy Court’s local rules.

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.

6. On August 21, 2013, the United States Trustee appointed the Trustee as the chapter 11 trustee pursuant to 11 U.S.C. § 1163.

7. On August 29, 2013, this Court granted the Trustee’s Application to Employ Development Specialists, Inc. (“DSI”) as the Trustee’s financial advisors.

8. Beginning with the approval of its employment, DSI has assisted the Trustee in analyzing the Debtor’s financial condition. To that end, DSI prepared detailed analyses of the Debtor’s financial operations in the months leading up to the Petition Date. Additionally, DSI has assisted the Trustee in evaluating whether any entities received payments within 90-days of the Petition Date that would constitute preferential payments pursuant to § 547(b) of the Bankruptcy Code (collectively, the “Preferences,” and each individually, a “Preference”).

9. Working with DSI, the Trustee identified approximately 15 entities that may have received payments within 90-days of the Petition Date that would constitute Preferences in excess of the statutory minimum (the “Preference Recipients”).

10. On April 27, 2015, the Trustee sent demand letters to the Preference Recipients, including an explanation and accounting of the Preferences.

11. All of the Preference Recipients eventually responded to the Trustee's demands. Two of the Preference Recipients, MSC Industrial Supply Co. ("MSC") and Newgistics Freight Services, n/k/a Re Trans Freight ("Newgistics" and together with MSC, the "Settling Defendants") have offered to settle the Trustee's demand.

12. Regarding MSC, the Trustee alleged that MSC had received a total of \$17,100.69 in Preferences. After accounting for potential "new value," pursuant to § 547(c)(4) of the Bankruptcy Code ("New Value"), the Trustee demanded that MSC pay the Trustee \$11,407.38 on account of Preferences.¹ Following the Trustee's initial demand, MSC and the Trustee exchanged correspondence and analysis. MSC alleged that it had provided additional New Value not accounted for by the Trustee, and offered to settle the matter for \$3,479.94, which represents 50% of the amount (\$6,959.87) MSC alleged might be recoverable by the Trustee as a Preference. The Trustee, in recognition of the costs, uncertainties, and delays inherent in litigating the Preference, and in light of the relatively modest amount at stake, has accepted MSC's offer to settle the matter for \$3,479.94, and seeks Court approval thereof.

13. Regarding Newgistics, the Trustee alleged that Newgistics had received a total of \$15,922.88 in Preferences, and had not provided any New Value. Following the Trustee's initial demand, Newgistics and the Trustee exchanged correspondence and analysis. Newgistics essentially argued that it had been a "mere conduit," and all the Preferences it received from the Debtor were paid out to third parties, with the exception of \$300.00 in retainer payments it received for its services. The Trustee reviewed certain documents provided by Newgistics, but did not believe that they sufficiently established that Newgistics had no dominion or control of the

¹ DSI and the Trustee accounted for New Value in instances where the MMA's records indicated, within a reasonable likelihood, that the Preference Recipient had subsequently provided New Value. In the interests of good faith and avoiding unnecessary litigation, the Trustee accounted for such New Value in his initial demands.

Preferences. The Trustee and Newgistics exchanged correspondence regarding settlement, and Newgistics ultimately offered to settle the matter for \$6,000.00. The Trustee, in recognition of the costs, uncertainties, and delays inherent in litigating the Preference, especially with regard to the fact-intensive defense that Newgistics would be likely to allege, has accepted Newgistics's offer to settle the matter for \$6,000.00, and seeks Court approval thereof.

RELIEF REQUESTED

14. Pursuant to Rule 9019(a), the Trustee requests that the Court: (1) approve the compromises and settlements with the Settling Defendants; and (2) approve service of this motion in the manner set forth herein (all upon ordinary and customary terms as will be set forth in settlement agreements to be entered into by the parties).

BASIS FOR RELIEF

15. Rule 9019(a) provides that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). This Court has sound discretion to determine whether the proposed compromise is fair and equitable and in the best interest of the bankruptcy estate. See Jeffrey v. Desmond, 70 F.3d 183, 185 (1st Cir. 1995). In making this determination, the Court should consider: (i) the probability of success in the litigation of the claim being compromised; (ii) the difficulties, if any, to be encountered in the matter of collection; (iii) the complexity of the litigation involved, and the expense, inconvenience and delay attending it; and (iv) the paramount interest of creditors and a proper deference to their reasonable views. See id., at 184; In re High Voltage Eng'g Corp., 397 B.R. 579, 601 (Bankr. D. Mass. 2008). The Jeffrey factors are not, however, exclusive. See In re Healthco, Int'l, Inc., 136 F.3d 45, 50 (1st Cir. 1998). Deference should be given to the trustee's business judgment if the trustee can demonstrate that the settlement falls within a “range of reasonableness.” In re Fibercore, Inc., 391 B.R. 647, 655 (Bankr D. Mass. 2008).

16. The Trustee believes that the terms of the settlements set forth above are fair and equitable, and that such settlements are in the best interest of the Debtor's estate. The factors articulated in Jeffrey warrant approval of the compromises and settlements. With regard to the first factor, the Trustee believes he has a reasonable probability of successfully litigating the Preferences, although the Settling Defendants have each raised recognized defenses. As is the case with all litigation, there is a risk that the Trustee might not prevail.

17. With regard to the second factor, the amounts at stake are relatively modest, and the Trustee does not foresee that collection would be an issue. However, with regard to the third factor, given the amounts at stake, the costs of litigation could easily outstrip the expected recoveries. Finally, with regard to the fourth factor, the Trustee believes that resolving the issues with the Settling Defendants on the terms outlined above is in the best interests of creditors, as it provides a certain recovery now, as opposed to an uncertain recovery on an uncertain timeline.

18. Accordingly, the Trustee believes the motion should be granted because the settlements are in the best interest of the Debtor's estate.

NOTICE

19. Notice of this motion was served on the following parties on the date and in the manner set forth in the certificate of service: (1) the United States Trustee; (2) the Debtor's counsel; (3) the non-insider holders of the twenty (20) largest unsecured claims against MMA or, if applicable, the lawyers representing such holders; (4) applicable federal and state taxing authorities; (5) the holders of secured claims against MMA, or if applicable, the lawyers representing such holders; (6) counsel for (or representatives of) MSC and Newgistics; and (7) others who have, as of the date of the motion, entered an appearance and requested service of papers in the chapter 11 case. In light of the nature of the relief requested in the motion, the Trustee requests that the Court approve service of the motion on the parties set forth above.

WHEREFORE, the Trustee requests that the Court enter an Order: (1) granting this motion; (2) approving, pursuant to Bankruptcy Rule 9019, the settlements described herein (all upon ordinary and customary terms as will be set forth in settlement agreements to be entered into by the parties); (3) finding that service to the parties and in the manner set forth is appropriate; and (4) granting such other further relief as may be appropriate.

Dated: July 30, 2015

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

By his attorneys:

/s/ D. Sam Anderson

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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 APPROVING COMPROMISE AND SETTLEMENT AGREEMENTS
WITH CERTAIN PREFERENCE RECIPIENTS**

This matter came before this Court on the *Chapter 11 Trustee's Motion for Order Approving Compromise and Settlements with Certain Preference Recipients* (the "Motion").¹ This Court held a hearing on the Motion on August 4, 2015 (the "Hearing"). No parties objected to the Motion at or prior to the Hearing. Based on the foregoing and based on the Court's independent review of the allegations in the Motion, it is hereby **ORDERED, ADJUDGED** and **DECREEED** that:

1. Service of the Motion was proper, and all parties in interest were given adequate notice and opportunity for hearing with respect to the Motion and the relief sought thereby;
2. The Motion is granted upon the terms and conditions set forth herein. Pursuant to Fed. R. Bankr. P. 9019, the terms of the compromise and settlement are approved;
3. To the extent they have not already done so, MSC and Newgistics will pay the Trustee \$3,479.94 and \$6,000.000, respectively, to the Debtor's estate within 7 business days after the entry of this Order on the docket;

4. The Trustee is authorized to enter into settlement agreements with MSC and Newgistics, upon ordinary and customary terms, as may be set forth in written settlement agreements;

5. The payments of MSC and Newgistics provided for in paragraph 3 of this Order, will be in full and final satisfaction of any and all claims and causes of action arising out of or related to the Preferences alleged by the Trustee against MSC and Newgistics.

Dated:

The Honorable Peter G. Cary
Chief United States Bankruptcy Judge

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