UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

CANADIAN PACIFIC RAILWAY COMPANY'S MOTION FOR ESTIMATION AND TEMPORARY ALLOWANCE OF ITS CLAIM PURSUANT TO RULE 3018(A) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE FOR PURPOSES OF ACCEPTING OR REJECTING THE DEBTOR'S PLAN OF REORGANIZATION

NOW COMES creditor Canadian Pacific Railway Company (CP), by and through its undersigned counsel, and moves, pursuant to Fed. R. Bankr. P. 3018(a) for the estimation and temporary allowance of its claim against the Debtor for purposes of voting to accept or reject the Trustee's Amended Plan of Liquidation Dated March 31, 2015 [ECF No. 1495]. In support of this motion, CP states as follows:

Relief Requested

1. CP moves for estimation and temporary allowance of liquidated claims, Proof of Claim 92-2, for purposes of voting on the debtor's amended plan of reorganization [ECF No. 1495]. Absent this relief, the debtor would deny CP a plan vote by waiting until after the voting deadline to resolve claims objections.[1]

[1] This motion is made without prejudice to CP's right to argue at confirmation that its section 1171(b) claim is entitled to treatment as an administrative expense under controlling First Circuit precedent. *See In re Boston & Maine Corp.*, 634 F.2d 1359, 1378-79 (1st Cir. 1980), *cert. denied*, 450 U.S. 982 (1981).

Jurisdiction

2. 28 U.S.C. §§ 157 and 1334 afford the Court with jurisdiction over this core proceeding. 28 U.S.C. §§ 1408 and 1409 make venue proper.

Background

3. On June 13, 2014, CP filed a proof of claim amending the previously filed June 6, 2014 claim, number 92-2. CP seeks both liquidated and unliquidated amounts from the debtor. The unliquidated claims, which arise out of the derailment, are not the subject of this motion. Rather, CP seeks to vote the liquidated claims only.

4. The liquidated claims relate to (1) amounts owed under the Locomotive Lease, (2) rent payments due under the 2003 Lease, (3) prepetition car repair costs, (4) Lease required real estate property taxes, (5) engineering signals and communications costs under the Interchange Trackage Rights Agreement, and (6) track evaluation car charges called for by the Test Car Agreement. *See, e.g.*, CP Claim at 15. This motion seeks temporary allowance of the liquidated portion of CP's claim, in the stated amount of $924,583.29, to permit CP to vote on the plan.

5. **Locomotive lease claim.** As the CP claim supplement explains, on June 21, 2012, CP and the debtor entered into a Lease of Railroad Equipment by which the debtor leased designated diesel electric locomotives. Locomotive lease amounts due total $837,979.75 USD. The debtor did not assume and assigned the Locomotive lease in connection with its all asset sale; therefore, it was rejected by operation of the sale order. The rejection of the Locomotive lease constituted a prepetition breach thereof under sections 365 and 502, entitling CP to damages.

6. **CP agreements claim.** On October 16, 2003, CP and the debtor entered into a Railcar Lease Agreement for bulkhead flat cars. On March 1, 2010, CP and the debtor entered into a Track Evaluation Test Car Agreement that afforded the debtor use of a CP test car. CP

and the debtor, along with MMA Canada, entered into the December 23, 2006 Master Agreement, as amended, which incorporates schedules, including Schedule I (the TTX Interchange Agreement), Schedule K (the Lease Agreement), and Schedule F (the Interchange Trackage Rights Agreement).

7. The debtor originally sought to assume and assign the CP agreements. After CP and others objected, on January 22, 2014, the debtor filed a Supplemental Notice Pursuant to Assumption and Assignment Procedures of Removal of Contracts from the Contract and Cure Schedule [ECF No. 585], which notified about the removal of the CP agreements from the Contract and Cure Schedule and Schedules 2.1(a)(v), 2.1(a)(vi), 2.1(b)(v) and 2.1(b)(vi) of the Asset Purchase Agreement. Thus the debtor first attempted to assume, but ultimately rejected, the CP agreements. The rejection of the CP agreements constituted a prepetition breach thereof under sections 365 and 502, entitling CP to damages.

8. On May 18, 2015, the trustee initiated an adversary proceeding, seeking a declaration disallowing the CP claim due to CP's alleged negligence. *See Keach v. World Fuel Services Corp., et. al. (In re Montreal, Maine & Atlantic Ry., Ltd.)*, Case No. 14-01001 (Bankr. D. Maine) [ECF No. 134] (Second amended complaint). The second amended complaint does not plead specific facts that would warrant a disallowance.

9. During the June 1, 2015 oral argument on CP's motion to withdraw the bankruptcy court reference heard by the United States District Court for the District of Maine, the trustee acknowledged to the district court that the second amendment complaint's broad claims should more appropriately have been directed at defendants other than CP. The court's order accordingly characterized the trustee's claim against CP as being exclusively based upon Canadian transportation of dangerous goods regulations. *Keach v. World Fuel Services Corp.,*

et. al. (In re Montreal, Maine & Atlantic Ry., Ltd.), Case No. 14-01001 (Bankr. D. Maine June 9, 2015) [ECF No. 138 at 5, 9-11].

10. On August 7, 2015, the trustee objected to CP's claim in the bankruptcy proceedings. Objection To Proof Of Claim Filed By Canadian Pacific Railway Company On The Basis That Such Claim Is Unenforceable Against The Debtor, ECF No. 1581. The trustee maintained that he "has already objected to CP's Claim by virtue of the Amended Complaint …. For clarity of record, however, the Trustee submits this claim objection on the docket of this Case." Id. at 1 n.1. The trustee has now objected to the derailment claims, to the breach of contract claims, and to the assertion of a section 1171(b) claim. The objection to the liquidated CP claims comes without any factual or legal support and contravenes the Trustee's prior position admitting damages with respect to at least some of the liquidated claims. See ECF No. 538.

Argument

I. Rule 3018 allows creditors to vote despite claim objections.

11. Rule 3018(a) enables the Court "after notice and hearing," to "temporarily allow [a claim] in an amount which the court deems proper for the purpose of accepting or rejecting a [Chapter 11] plan." Fed. R. Bankr. P. 3018(a). "[T]he determination of whether and how to determine the temporary allowance of a claim is left to the sound discretion" of the bankruptcy court. *In re Frascella Enterprises, Inc.*, 360 B.R. 435, 458 (Bankr. E.D. Pa. 2007). Notwithstanding a claim objection, the bankruptcy court assesses evidence appropriate to whether claim amounts should be temporarily allowed for voting purposes. *See In re Ralph Lauren Womenswear, Inc.*, 197 B.R. 771, 775 (Bankr. S.D.N.Y. 1996) ("Neither the Code nor the Rules prescribe any method for estimating a claim, and it is therefore committed to the

reasonable discretion of the court, which should employ whatever method is best suited to the circumstances of the case.").

12. Claim litigation can be lengthy; therefore, courts often temporarily allow a claim so as to enable a creditor to vote. *See Kane v. Johns-Manville Corp.*, 843 F.2d 636, 646 (2d Cir. 1988) ("objections to claims need not be finally resolved before voting on a plan may occur"); *In re Stone Hedge Props.*, 191 B.R. 59, 63 (Bankr. M.D. Pa. 1995) ("Since claims litigation is often drawn out, thereby defeating one of the essential purposes of the Code . . . for voting purposes only, the court can temporarily allow a claim in such an amount" deemed to be proper).

13. Accordingly, the Court makes a "speedy and rough estimation of claims for purposes of determining [the claimants'] votes in the Chapter 11 proceedings." *In re Chateaugay Corp.*, 944 F.2d 997, 1006 (2d Cir. 1991); *see also In re Quigley Co.*, 346 B.R. 647, 653 (Bankr. S.D.N.Y. 2006) (impaired creditors allowed plan vote). The Bankruptcy Code and the courts favor temporary allowance of disputed claims so as to facilitate voting. *In re Amarex Inc.*, 61 B.R. 301, 303 (Bankr. W.D. Okla. 1985) ("[T]o allow [the disputed claims] to vote on the plans, even though some may be eventually disallowed for purposes of distribution, is more in keeping with the spirit of chapter 11 which encourages creditor vote and participation in the reorganization process.").

14. To make the voting allowance determination, courts look to (1) the debtor's scheduling of the claim, (2) the filed proof of claim, and (3) the objection. *In re Stone Hedge Props.*, 191 B.R. at 65. From this information the court decides the parties' expectations regarding the amount and nature of the claim. *Id*. The court need not conduct a mini-trial, but only weighs "the probabilities of the various contentions made by the parties." *Ralph Lauren*, 197 B.R. at 775.

15. Setting aside the unliquidated portion of CP's claim, the liquidated non-derailment claims are valid and enforceable. Rule 3001(f) specifies that, "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." *See also Sherman v. Novak (In re Reilly)*, 245 B.R. 768, 773 (2d Cir. B.A.P. 2000) ("A properly executed and filed proof of claim constitutes prima facie evidence of the validity of the claim. To overcome this prima facie evidence, the objecting party must come forth with evidence which, if believed, would refute at least one of the allegations essential to the claim.") (citing Fed. R. Bankr. P. 3001(f)).

16. CP's claim is valid and entitles CP to, at least, a temporary voting purposes allowance. The filing constitutes prima facie evidence of claim validity, and the objection does not evidence dispute validity. To be sure, the objection does not provide any factual or legal basis for the Trustee's bald assertion that the CP breach of contract claims or other liquidated claims lack value.

17. Temporary allowance is necessary "to prevent possible abuse by plan proponents who might ensure acceptance of a plan by filing last minute objections to the claims of dissenting creditors," which is "[t]he policy behind temporarily allowing claims." *In re Armstrong*, 292 B.R. 678, 686 (B.A.P. 10th Cir. 2003) (citing 9 *Collier on Bankruptcy* ¶ 2018.01[5]). The MMA trustee has done exactly that: on August 7, he objected to the CP claim and shortly thereafter further objected to CP's administrative claim application. The trustee lodged these objections just before the voting deadline, in a concerted effort to prevent CP from voting.

18. The trustee intends these tactics to circumvent the bankruptcy process, to prejudice CP, and to put the CP claim in limbo until after the voting and objection deadline. CP is an impaired creditor because claims will not be paid in full. The code therefore absolutely

entitles CP to vote in an amount "commensurate with [the railroad's] economic interest in the case." *See In re Quigley Co.*, 346 B.R. at 653-54; *accord In re Stone Hedge Properties*, 191 B.R. 59, 65 (Bankr. M.D. Pa. 1995) (temporary allowance of a claim in an amount that ensures that "both secured and unsecured claims will have a weighted influence" regarding plan approval). Regardless of whether the trustee is ultimately able to refute CP's claim, granting this motion would allow CP to vote the disputed claims in accordance with established bankruptcy practice. *See Kane*, 843 F.2d at 646 ("objections to claims need not be finally resolved before voting on a plan may occur").

19. The mechanism for determining a claimant's economic interest for temporary allowance purposes is a matter of Judicial discretion. *See In re Quigley Co.*, 346 B.R. at 653; *In re Zolner*, 173 B.R. 629, 633 (Bankr. N.D. Ill. 1994). The exercise of that discretion does not resolve claim or cause of action validity. *In re Ralph Lauren Womenswear, Inc.*, 197 B.R. at 774. Instead, the court just makes a "speedy and rough estimation" of claim value for voting purposes. *In re Chateaugay Corp.*, 944 F.2d at 1006. CP asks no more. An estimation of CP's liquidated claim is straightforward; the proof of claim set forth the $924,583.29 amount owed.

II. For voting purposes CP's claim should be divided into Class 7 and Class 13 claims.

20. Of the total liquidated claim, $214,483.39 qualifies for section 1171(b) treatment because MMA incurred those amounts within six months of the bankruptcy filing. Those expenses represent necessary ordinary course of business operating costs that CP expected to be paid from MMA operating revenues. As applicable to railroads, 1171(b) provides:

> Any unsecured claim against the debtor that would have been entitled to priority if a receiver in equity of the property of the debtor had been appointed by a Federal court on the date of the order for relief under this title shall be entitled to such priority in a case under this chapter.

21. This rule, known as the "six months rule," stems from the historical practice of railroad receiverships. Implementing orders typically appoint a receiver who the court authorizes to pay various prepetition debts for labor, equipment, supplies, or improvements from postpetition operating receipts. *See In re Boston and Maine Corp.*, 634 F.2d 1359, 1366 (1st Cir. 1980), *cert. denied*, 450 U.S. 982 (1981); *Matter of B&W Enterprises, Inc.*, 713 F.2d 534, 536 (9th Cir. 1983). The equitable six months rule applies to "expenses necessary for the continued operation of the railroad which were incurred in the period immediately preceding the petition for reorganization." *Matter of B&W Enterprises*, 713 F.2d at 536.

22. Based on the invoices and records attached to CP's claim, $214,483.39 of CP's claim qualifies for section 1171(b) treatment. Because MMA incurred those debts within six months of filing for bankruptcy and the debts represent ordinary course of business expense necessary for operations, the law affords these unsecured amounts priority. The amended plan recognizes section 1171(b) claim priority; Class 7 claims are distinct from general unsecured Class 13 claims. CP should accordingly be permitted to vote liquidated claims in the following respective classes--$214,483.39 Class 7 and $710,099.90 Class 13.

Notice

23. Notice of this motion was served as specified in the certificate of service.

Conclusion

24. CP requests that the Court estimate and temporarily allow claims in the amount of $924,583.29 for the purposes of accepting or rejecting the plan. That amount should be divided as follows: Class 7 $214,483.39 and Class 13 $710,099.90.

Dated: August 27, 2015

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ATTORNEYS FOR CANADIAN PACIFIC RAILWAY COMPANY

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re: Bk. No. 13-10670

MONTREAL MAINE & ATLANTIC RAILWAY, LTD., Chapter 11

Debtor.

ORDER GRANTING CANADIAN PACIFIC RAILWAY COMPANY'S MOTION FOR ESTIMATION AND TEMPORARY ALLOWANCE OF ITS CLAIM PURSUANT TO RULE 3018(a) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE FOR PURPOSES OF ACCEPTING OR REJECTING THE DEBTOR'S PLAN OF REORGANIZATION

Upon the Canadian Pacific Railway Company (CP) Rule 3018 motion for entry of an Order temporarily allowing claims in the amount of $924,583.29, against the Montreal Maine & Atlantic Railway, Ltd. bankruptcy estate, for the purpose of voting on the plan; upon the proper and adequate notice of the motion that appears to have been given; with no other or further notice appearing to be necessary; and after due deliberation, and good and sufficient support for the request.

The Court orders:

1. The motion is GRANTED.

2. Without addressing the validity and enforceability of the unliquidated portion of CP's claim, the liquidated portion is temporarily allowed against the debtor's estate in the aggregate amount of $924,583.29 for the purpose of voting on this plan prior to the confirmation hearing.

3. Of the $924,583.29, CP shall be permitted to vote $214,483.39 in class 7 and $710,099.90 in class 13.

4. The Court retains jurisdiction over matters arising from or related to the implementation of this order.

Dated:

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Hon. Peter G. Cary
Chief United States Bankruptcy Judge