

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

Case No. 13-10670-PGC

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Chapter 11

Debtor.

**MOTION FOR EXPEDITED HEARING, SHORTENED OBJECTION PERIOD AND
LIMITED NOTICE WITH RESPECT TO CANADIAN PACIFIC RAILWAY
COMPANY'S MOTION FOR ESTIMATION AND TEMPORARY ALLOWANCE OF
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**

Canadian Pacific Railway Company ("CP") hereby moves this Court for an expedited hearing, shortened objection period and approval of limited notice (the "Motion to Expedite") with respect to CP's motion for estimation and temporary allowance of claim pursuant to Federal Rule of Bankruptcy Procedure 3018(a) (the "3018 Motion") and requests that the Court set a hearing on the 3018 Motion on **September 9, 2015 at 11:30 a.m.** In support of the Motion to Expedite, CP states as follows:

JURISDICTION

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 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 applicable rules relating to the relief sought in the Motion to Expedite and the 3018 Motion are Rules 9013 and 3018 of the Federal Rules of Bankruptcy Procedure (hereinafter “Fed. R. Bankr. P.”) and Rule 9013-1(d)(1), (5) and (i) of this Court’s local rules (the “Local Rules”).

RELIEF REQUESTED

5. By this Motion to Expedite, CP requests that the Court: (a) schedule a hearing on the 3018 Motion on **September 9, 2015 at 11:30 a.m.**; (b) set a shortened objection deadline of **September 8, 2015 at 4:30 p.m.**; and (c) approve service of the Motion to Expedite and the 3018 Motion in the manner set forth herein.¹

BASIS FOR RELIEF

6. Absent a request for an expedited hearing, a movant seeking the type of relief set forth in the 3018 Motion must provide 21 days’ notice and a response date must be set at least 14 days prior to a hearing date. *See* D. Me. L.B.R. 9013-1(d)(5).

7. CP requires approval of the 3018 Motion prior to September 10, 2015 in order to ensure that it may vote on the Debtor’s plan. The process proposed by the Trustee and then adopted by the Court in its July 19, 2015 order establishing deadlines and procedures related to plan solicitation and voting states that “[i]f any creditor seeks to challenge the allowance or disallowance of its Claim for voting purposes, the creditor must file with the Bankruptcy Court a Rule 3018(a) Motion no later than **August 31, 2015—the tenth (10th) calendar day** before the

¹ CP has contacted the calendar clerk, who indicated that September 9, 2015 at 11:30 a.m. is available as a hearing date and time for the 3018 Motion, assuming the Court grants this Motion to Expedite.

Voting Deadline. Upon the filing of any such motion, the creditor's Ballot shall not be counted unless temporarily allowed by an order of the Bankruptcy Court." (ECF No. 1547 ¶ 10.) The Voting Deadline set by the order is September 10, 2015 at 5:00 p.m. (prevailing Eastern Time). (*Id.* ¶ 23.)

8. Recently, on August 7, 2015, the Trustee objected to the entirety of the claims in CP's filed proof of claim, including the liquidated portion of CP's claim which is based on the rejection of certain contracts and other amounts owed under certain leases. (ECF No. 1581.) The Trustee's objection focuses primarily on the contingent and unliquidated portion of CP's claim that relates to its rights of indemnification, contribution, and subrogation against the Debtor arising from the Lac-Mégantic, Québec derailment. However, the Trustee also objects to the liquidated portion of CP's claim in the amount of \$924,583.29 that is based on a deemed breach of contract stemming from the rejection of certain agreements by the Debtor. This eleventh-hour objection to the liquidated rejection damages portion of CP's claim—damages that the Trustee previously acknowledged at least in part in its contract and cure schedule filed in connection with the Debtor's notice of sale, assumption and assignment, and procedure for determining cure amounts (*See* ECF No. 538)—is a transparent and audacious effort to prevent CP from voting on the plan.

9. Despite CP's effort to confer with the Trustee and attempt to stipulate to temporary allowance of a claim, the Trustee has indicated that he will not count CP's vote or allow CP's liquidated claim for voting purposes even though he has failed to articulate any factual or legal basis to disallow CP's liquidated claim and despite the Trustee's previous assertion that CP did incur damages by virtue of the Debtor's cure amount valuation in its notice regarding the assumption and assignment and cure procedures for certain CP agreements later

eventually rejected (and therefore breached as a matter of law). CP seeks expedited relief for temporary allowance of the liquidated portion of its claim pursuant to Fed. R. Bankr. P. 3018(a) in order to ensure that it may vote on the plan, and does so in accordance with the timeframe initially suggested by the Trustee and then established by this Court's order.

10. Accordingly, CP requests that a hearing on the 3018 Motion be scheduled on September 9, 2015 at 11:30 a.m. immediately following the hearing on this Motion to Expedite to allow expedited consideration of the relief sought by CP.

NOTICE

11. Notice of this Motion to Expedite and the Motion to Compromise 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 Trustee, or if applicable, the lawyers representing the Trustee; and (4) others who have, as of the date of the Motion to Expedite and the 3018 Motion, entered an appearance and requested service of papers in the Case. In light of the nature of the relief requested in the 3018 Motion to Compromise and the Motion to Expedite, CP submits that such notice is adequate and appropriate.

CONCLUSION

WHEREFORE, CP respectfully requests that this Court enter an Order: (a) granting the Motion to Expedite; (b) finding that service of the Motion to Expedite and the 3018 Motion in the manner described herein was sufficient under the circumstances of the relief sought; (c) setting a hearing on the Motion to Expedite on September 9, 2015; (d) setting a shortened objection deadline with respect to the 3018 Motion; and (e) granting such other and further relief as the Court deems just and equitable under the circumstances.

Dated: August 27, 2015

BRIGGS AND MORGAN, P.A.

By: /s/ John R. McDonald

Timothy R. Thornton (pro hac vice)

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And

PEARCE & DOW, LLC

By: /s/ Joshua R. Dow

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**ATTORNEYS FOR CANADIAN PACIFIC
RAILWAY COMPANY**

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

Case No. 13-10670-PGC

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.,

Chapter 11

Debtor.

**ORDER GRANTING MOTION FOR EXPEDITED HEARING, SHORTENED
OBJECTION PERIOD AND LIMITED NOTICE WITH RESPECT TO CANADIAN
PACIFIC RAILWAY COMPANY'S MOTION FOR ESTIMATION AND TEMPORARY
ALLOWANCE OF 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**

This matter having come before the Court on the Motion for Expedited Hearing, Shortened Objection Period and Limited Notice (the "Motion to Expedite") with respect to Canadian Pacific Railway Company's Motion for Estimation and Temporary Allowance of 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 (the "3018 Motion"), and upon consideration of all responses to the Motion to Expedite, if any, it is hereby **ORDERED**, **ADJUDGED** and **DECREEED** as follows:

1. Notice and service of the Motion to Expedite and the 3018 Motion were sufficient in light of the nature of the relief requested.
2. The Motion to Expedite is granted.
3. An expedited hearing on the 3018 Motion shall be held on September 9, 2015 at 11:30 a.m. at the United States Bankruptcy Court, 537 Congress Street, 2nd Floor, Portland, Maine.

4. The deadline to object to the 3018 Motion is set for September 8, 2015 at 4:30 p.m.

Dated:

Hon. Peter G. Cary
Chief United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

IN RE:)	
)	Chapter 11
MONTREAL, MAINE & ATLANTIC)	Case No.: 13-10670-PGC
RAILWAY, LTD.)	
Debtor.)	

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on, **September 9, 2015 at 11:30 a.m.** a hearing will be held at the United States Bankruptcy Court, 537 Congress St., 2nd Floor, Portland, Maine on *Canadian Pacific Railway Company's Motion for Expedited Hearing, Shortened Objection Period, And Limited Notice With Respect To Its Motion for Estimation and Temporary Allowance of 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* ("Motion for Expedited Hearing").

Your rights may be affected. If any party in interest shall have an objection to the Motion for Expedited Hearing, such party shall assert an objection at the hearing. Such objecting party shall also file with the Court a written statement setting forth the basis for such objection **on or before September 8, 2015 at 4:30 PM** at the following address:

United States Bankruptcy Court
District of Maine
537 Congress St., 2nd Floor
Portland, ME 04101

and concurrently serve (by first class U.S. mail, postage prepaid) a copy of such written statement upon counsel for Canadian Pacific Railway Company, Joshua R. Dow, Esq, Pearce & Dow, LLC, Two Monument Square, Ste. 901, P.O. Box 108, Portland, ME 04112 so that it is received by counsel on or before **September 8, 2015 at 4:30 PM**.

Unless an objecting party files a timely written objection and appears at the hearing to assert the basis for such objection before the Bankruptcy Court, such objection shall be deemed to have been waived and abandoned.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE RELIEF REQUESTED IN THE MOTION FOR EXPEDITED HEARING MAY BE GRANTED BY DEFAULT WITHOUT FURTHER NOTICE OR HEARING.

If the Motion for Expedited Hearing is granted, **the Court will immediately thereafter conduct a hearing to consider, and may grant at that time *Canadian Pacific Railway Company's Motion For Estimation and Temporary Allowance of Claim Pursuant Rule***

3018(a) of the Federal Rules of Bankruptcy Procedure For Purposes of Accepting or Rejecting the Debtor's Plan of Reorganization (the "3018 Motion").

Your rights may be affected. If any party in interest shall have an objection to the 3018 Motion such party shall assert an objection at the hearing. Such objecting party shall also file with the Court a written statement setting forth the basis for such objection **on or before September 8, 2015 at 4:30 PM** at the following address:

United States Bankruptcy Court
District of Maine
537 Congress St., 2nd Floor
Portland, ME 04101

and concurrently serve (by first class U.S. mail, postage prepaid) a copy of such written statement upon counsel for Canadian Pacific Railway Company, Joshua R. Dow, Esq, Pearce & Dow, LLC, Two Monument Square, Ste. 901, P.O. Box 108, Portland, ME 04112 so that it is received by counsel on or before **September 8, 2015 at 4:30 PM**.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE RELIEF REQUESTED IN THE 3018 MOTION MAY BE GRANTED BY DEFAULT WITHOUT FURTHER NOTICE OR HEARING.

Dated at Portland, Maine this 27th day of August 2015.

/s/ Joshua R. Dow
Joshua R. Dow
Pearce & Dow, LLC
Two Monument Sq. Ste 901, P.O. Box 108
Portland, ME 04112-0108
(207) 822-9900
Counsel for Canadian Pacific Railway Company