UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

ESTATE REPRESENTATIVE'S OBJECTION TO WHEELING & LAKE ERIE RAILWAY COMPANY'S MOTION TO ENFORCE PAYMENT OF ALLOWED ADMINISTRATIVE CLAIM PURSUANT TO ORDER CONFIRMING TRUSTEE'S REVISED FIRST AMENDED PLAN OF LIQUIDATION DATED JULY 15, 2015 (AS AMENDED ON OCTOBER 8, 2015) AND INCORPORATED MEMORANDUM OF LAW

Robert J. Keach, the estate representative (the "Estate Representative") of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. ("MMA" or the "Debtor"),[1] hereby objects (the "Objection")[2] to *Wheeling & Lake Erie Railway Company's Motion to Enforce Payment of Allowed Administrative Claim Pursuant to Order Confirming Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015 (As Amended on October 8, 2015) and Incorporated Memorandum of Law* [D.E. 1938] (the "Motion") filed by Wheeling & Lake Erie Railway Company ("Wheeling"). In support of this Objection, the Estate Representative states as follows:

[1] In accordance with the *Trustee's Chapter 11 Plan of Liquidation, dated July 15, 2015 (As Amended on October 8, 2015)* [D.E. 1822] (the "Plan"), upon the Effective Date of the Plan (which occurred on December 22, 2015, *see* D.E. 1927), Robert J. Keach is no longer the chapter 11 trustee of the Debtor's estate, but is the Estate Representative of the Post-Effective Date Estate (as defined in the Plan). *See* Plan § 6.1(a).

[2] The Estate Representative requests a waiver of Rule 9013-1(f) of the Local Rules of the Bankruptcy Court for the District of Maine. In light of the compound nature of the allegations and legal conclusions set forth in each paragraph of the Motion, a simple "admit/deny" response is impractical and, in any event, each of the allegations set forth in the Motion is addressed in the body of this Objection.

PRELIMINARY STATEMENT[3]

1. The Motion is simply an attempt by Wheeling to shirk the agreement it struck with the Estate Representative (then, the Trustee), embodied in the Confirmation Order and approved by this Court, which resulted in the cash collateralization of the full asserted amount of Wheeling's secured claim. By approving such protection for Wheeling, the Confirmation Order rendered the protection awarded to Wheeling in the Superpriority Claim Order obsolete. And in any event, the Estate Representative has rights in both the Superpriority Claim Order and the Confirmation Order to set off any claim of the estate against any claim asserted by Wheeling before making any distribution to Wheeling. Wheeling is bound by the agreement that it struck (and that this Court approved), and must await final adjudication of its asserted secured claim (and the Estate Representative's set off of any estate claims against such claim) before receipt of any distribution. The Estate Representative thus submits that the Motion should be denied.

RELEVANT BACKGROUND

2. On August 21, 2013, the Office of the United States Trustee (the "U.S. Trustee") appointed Robert J. Keach as chapter 11 trustee (the "Trustee") in the Debtor's chapter 11 case pursuant to 11 U.S.C. § 1163 [D.E. No. 64].[4]

B. Entry of the Superpriority Claim Order and the Pending Surcharge Motion

3. On January 30, 2014, Wheeling filed the *Motion to Enforce Cash Collateral Orders* [D.E. 603] (the "507(b) Motion"), arguing that the Trustee failed to turn over to Wheeling the proceeds of the Debtor's accounts receivable prior to the closing of certain postpetition financing loans. On March 5, 2014, the Trustee objected [D.E. 707], pointing out

[3] Capitalized terms used but not defined in this Preliminary Statement shall have the meanings ascribed below.

[4] While Mr. Keach became the Estate Representative on December 22, 2015, *see supra* n.1, Mr. Keach will be referred to as the Trustee with respect to actions taken prior to December 22, 2015.

that, at best, Wheeling's motion was seeking entitlement to a superpriority administrative claim under section 507(b) of title 11 of the United States Code (the "Bankruptcy Code") for diminution in the value of its collateral due to failed adequate protection for the use thereof. *See* D.E. 707 at ¶ 5, ¶¶ 21-23.

4. On May 7, 2014, the Trustee filed the *Motion for an Order Pursuant to 11 U.S.C. § 506(c) Authorizing the Recovery of Expenses From Wheeling and Lake Erie Railway Co. or Its Collateral* [D.E. 854] (the "Surcharge Motion"), seeking to surcharge Wheeling and its collateral for certain expenses directly related to the liquidation of Wheeling's collateral pursuant to 11 U.S.C. § 506(c).

5. On January 9, 2015, the parties agreed to consolidate the disposition of the Surcharge Motion with, *inter alia*, the 507(b) Motion into a single adversary proceeding.

6. On June 25, 2015, the United States Bankruptcy Court for the District of Maine (the "Bankruptcy Court") held a hearing on the 507(b) Motion and granted Wheeling a superpriority administrative expense claim pursuant to 11 U.S.C. § 507(b) in the amount of $695,640.93 (the "Superpriority Claim") for the diminution in the value of its collateral, with any payment subject to adjudicating the Surcharge Motion.

7. On July 14, 2015, the Court entered an order memorializing its June 25, 2015 ruling and setting a hearing on the Surcharge Motion for September 22, 2015 [No. 13-01033, D.E. 76] (the "Superpriority Claim Order"). In particular, the Superpriority Claim Order provides: "The Parties reserve all rights regarding the Surcharge Motion." *Id.* at ¶ 7. The hearing on the Surcharge Motion was subsequently continued and consolidated with, and is proceeding on the same schedule as, other Wheeling matters, as described below.

C. Wheeling's Proof of Claim and the Trustee's Objection Thereto

8. On June 12, 2014 (prior to entry of the Superpriority Claim Order), Wheeling filed a proof of claim pursuant to Bankruptcy Code section 502(a) (the "Wheeling PoC"). The Claim asserts a secured claim against the Debtor in the amount of $6,000,000.00 for "Money Loaned/Security Agreement."

9. On August 14, 2015, the Trustee objected to the Wheeling PoC [D.E. 1598] (the "Claim Objection"), in part on the ground that the Wheeling PoC had not been amended to reflect amounts collected by Wheeling in (at least partial) satisfaction of the Wheeling PoC.[5]

D. Approval of the Disclosure Statement

10. On March 31, 2015 (prior to entry of the Superpriority Claim Order), the Trustee filed the *Trustee's Plan of Liquidation Dated March 31, 2015* [D.E. 1384] (as subsequently amended, the "Plan") and the *Disclosure Statement for the Trustee's Plan of Liquidation Dated March 31, 2015* [D.E. No. 1385] (as subsequently amended, the "Disclosure Statement"). The initial version of the Plan provided, in pertinent part:

> ***7.16. Setoff and Recoupment.*** The Disbursing Agent may, but shall not be required to, setoff against or recoup from any Claim and from any payments to be made pursuant to the Plan in respect of such Claim any claims of any nature whatsoever that the Trustee may have against the Claimant, but neither the failure to do so nor the allowance of any Claim hereunder shall constitute a waiver or release by the Trustee or the Disbursing Agent of any such claim it may have against such claimant.

Plan § 7.16 (the "Setoff Provision"). The Plan appointed the Estate Representative as the "Disbursing Agent." *See* Plan § 7.7.

11. On June 16, 2015, Wheeling filed an objection to the Disclosure Statement [D.E. 1464] (the "Wheeling DS Obj."). In the Wheeling DS Obj., Wheeling raised several issues,

[5] The Trustee objected to the Wheeling PoC on several other grounds not directly relevant to the Motion. Wheeling filed a reply on September 29, 2015 [D.E. 1751], and a hearing on the Claim Objection was continued generally on December 8, 2015 [D.E. 1902].

including: (a) that the Disclosure Statement did not contain adequate information with respect to Wheeling and the treatment of its secured claims, *see id.* at ¶ 3; (b) that the Plan and Disclosure Statement must "provide for payment to be made to Wheeling from its collateral," *see id.* at ¶ 4; and (c) without disclosure of the content of the Settlement Agreements (as defined in the Plan), it was impossible to determine whether the Plan would impair Wheeling's secured Claim, which in turn would render the Plan unconfirmable, *see id.* at ¶ 5.

12. On July 7, 2015, in attempt to resolve certain of the objections raised to the Disclosure Statement (and in light of entry of the Superpriority Claim Order), the Trustee filed the *Trustee's First Amended Plan of Liquidation Dated July 7, 2015* [D.E. 1495] and the *First Amended Disclosure Statement with Respect to Trustee's Plan of Liquidation Dated July 7, 2015* [D.E. 1497]. The amendments to the Plan did not alter the Setoff Provision. *See* D.E. 1496 (redlined Plan). The redlined version of the amended Disclosure Statement [D.E. 1498] highlighted the following addition to the description of the Superpriority Claim Order:

> On July 25, 2014, the Court entered the Wheeling Compromise Order, as discussed below, whereby the parties agreed to a six (6) month stay of the 506(c) Surcharge Motion proceedings. On January 9, 2015, the parties entered a Joint Pretrial Order [D.E. 1334] (the "Wheeling Joint Order"), agreeing to consolidate the disposition of the 506(c) Surcharge Motion with the Wheeling Adversary Proceeding (defined below) and the Cash Collateral Motion (defined below) into a single, consolidated adversary proceeding, with a hearing on all issues originally scheduled for February 26, 2015. ~~That hearing has now been continued, and is scheduled to go forward on April 13~~Briefing was completed, and a status conference was held on June 25, 2015. The Bankruptcy Court entered an order allowing Wheeling a superpriority administrative expense claim in an agreed amount (the "Wheeling Superpriority Claim"), ***with any payment subject to adjudicating the 506(c) Surcharge Motion***. A hearing on the 506(c) Surcharge Motion is currently scheduled for September 22, 2015.

See D.E. 1498, at 39 (emphasis added) (the "Superpriority Claim Order Description").[6]

[6] On July 15, 2015, the Trustee filed the *Trustee's Revised First Amended Plan of Liquidation Dated July 15, 2015* [D.E. 1534] and *the Revised First Amended Disclosure Statement with Respect to Trustee's Plan of Liquidation*

13. On July 15, 2015, the Court held a hearing on the adequacy of the Disclosure Statement. Wheeling appeared, but took no issue with the Superpriority Claim Order Description or indeed with anything else in the Disclosure Statement. *See* Audio of Hr'g., July 15, 2015 (Bankr. D. Me.), at 22:40-22:51 (agreeing that Wheeling "no longer wishe[d] to pursue [its] Disclosure Statement Objection").

14. On July 17, 2015, the Court entered an order that, *inter alia*, approved the Disclosure Statement (which included the Superpriority Claim Order Description) as containing adequate information in compliance with Bankruptcy Code section 1125 [D.E. 1544] (the "Disclosure Statement Order"). That order was not appealed and became a final order on July 29, 2015. *See* Fed. R. Bankr. P. 8001.

E. Confirmation of the Plan

15. On September 10, 2015, Wheeling filed an objection to confirmation of the Plan [D.E. 1659] (the "Wheeling Conf. Obj."), arguing that: (a) the Plan actually impaired Wheeling's secured claim, despite classifying such claim as unimpaired; and (b) Wheeling was unable to evaluate the reasonableness of the Settlement Agreements. Wheeling did not take issue with the Setoff Provision.

16. On September 17, 2015, the Trustee filed the first version of a proposed order confirming the Plan [D.E. 1685] (as subsequently amended, the "Proposed Confirmation Order").

17. Leading up to the initial hearing on confirmation of the Plan (held on September 24, 2015), the Trustee and Wheeling resolved the Wheeling Conf. Obj. *See Minute Entry re: Confirmation of Debtor's Amended Chapter 11 Plan*, D.E. 1752 ("On the representation that the confirmation order will be amended to address [its] [] concerns, the objection[] of Wheeling

Dated July 15, 2015 [D.E. 1535], which each reflected ministerial modifications not relevant to the Motion and not altering the Setoff Provision or the Superpriority Claim Order Description. *See* D.E. 1534, 1535.

[is] withdrawn."). The Trustee filed a revised version of the Proposed Confirmation Order on October 7, 2015 [D.E. 1781], including language agreed upon with Wheeling in resolution of the Wheeling Conf. Obj.:

> [I]n the event the Bankruptcy Court has not determined, prior to the Initial Distribution Date,[7] the amount of the Allowed Secured Claim of Wheeling as of such date, and including, without limitation, whether any portion of the Settlement Payments constitutes collateral of Wheeling as of such date, the Trustee shall set aside, and not distribute pending further order of the Bankruptcy Court, $5,032,134.12 to secure any payment, to the extent required, with respect to such Allowed Secured Claim, when and if determined; . . . .

Prop. Conf. Order [D.E. 1781], ¶ 84 (the "Wheeling Resolution Provision").[8]

18. On October 9, 2015, the Bankruptcy Court confirmed the Plan by entering the most recent version of the Proposed Confirmation Order [D.E. 1801] (the "Confirmation Order").[9] The Confirmation Order contained the Wheeling Resolution Provision. *See* Conf. Order ¶ 84. Wheeling consented to entry of the Confirmation Order in its entirety. *See* Conf. Order., at 8 (finding that "all parties in interest . . . have consented to entry of this Confirmation Order as a Final Order").

19. On October 24, 2015, the Confirmation Order became a final, non-appealable order. *See* Fed. R. Bankr. P. 8001.

F. Consummation of the Plan

20. The Effective Date of the Plan occurred on December 22, 2015. *See* D.E. 1927.

[7] The Plan defines the "Initial Distribution Date" as the date on which the Disbursing Agent "makes the Initial Distribution to the Holders of Allowed Claims or the WD Trust." *See* Plan, ¶ 1.85 (undefined terms as defined in the Plan). As set forth above, *see supra* paragraphD.109, the Plan appointed the Trustee as the Disbursing Agent.

[8] The Trustee filed further revised versions of the Proposed Confirmation Order on October 8, 2015 [D.E. 1791] and October 9, 2015 [D.E. 1795]. Neither altered the Wheeling Resolution Provision.

[9] A standalone version of the confirmation version of the Plan was filed at D.E. 1822.

21. That same day, the Trustee disbursed the Initial Distribution to the WD Trust (each as defined in the Plan). December 22, 2015 was thus the Initial Distribution Date under the Plan.

22. As of the Initial Distribution Date, the Court had "not determined . . . the amount of the Allowed Secured Claim of Wheeling as of such date, [ ] including, without limitation, whether any portion of the Settlement Payments constitutes collateral of Wheeling as of such date." *See* Conf. Order ¶ 84. In accordance with the Confirmation Order (and the Trustee's agreement with Wheeling), the Trustee thus "set aside, and [did] not distribute pending further order of the Bankruptcy Court, $5,032,134.12 to secure any payment, to the extent required, with respect to [any] Allowed Secured Claim [of Wheeling], when and if determined" (the "Set Aside"). *See* Conf. Order ¶ 84.

OBJECTION

A. Wheeling Bargained for Rights in the Confirmation Order Which Supplanted its Rights in the Superpriority Claim Order

23. In a chapter 11 case, a secured creditor ordinarily has a right to "adequate protection" to guard against the potential diminution in the value of its collateral caused by imposition of the automatic stay. *See* Contrarian Funds LLC v. Aretex LLC (In re WestPoint Stevens, Inc.), 600 F.3d 231, 260 (2d Cir. 2010) (citations omitted). 11 U.S.C. § 507(b) provides additional protection against the diminution in the value of collateral; namely, if a debtor grants adequate protection to a secured creditor and if, notwithstanding that adequate protection, the creditor has a claim allowable under section 507(a)(2) of the Bankruptcy Code arising from (i) the stay of action against its collateral under section 362, (ii) the use, sale or lease of its collateral under section 363, or (iii) the granting of a lien against its collateral under section 364(d), then the creditor's claim will have priority over every other claim allowable under section 507(a)(2) of the Bankruptcy Code. *See* 11 U.S.C. § 507(b).

24. In short then, the purpose of a 507(b) "superpriority" claim is to compensate the holder of a secured claim when a prior award of adequate protection fails: it provides a replacement for dissipated collateral in the form of guaranteed payment as an administrative expense senior in priority to all other administrative expenses. The amount of this claim equals the shortfall in the creditor's prepetition secured claim not covered by previously provided adequate protection, which shortfall was caused by one of the 507(b) triggers. *See* Harvis Trien & Beck, P.C. v. Fed. Home Loan Mortg. Corp. (In re Blackwood Assocs., L.P.), 153 F.3d 61, 68 (2d Cir. 1998) ("[Section] 507(b) means that a secured creditor has superpriority for a claim in the amount that the debtor's use of the collateral . . . diminished the value of the collateral, but only to the extent such diminution is in excess of the adequate protection received"); Bonapfel v. Nally Motor Trucks (In re Carpet Ctr. Leasing Co.), 4 F.3d 940, 941 (11th Cir. 1993) (section 507(b) "is an attempt to codify a statutory fail-safe system in recognition of the ultimate reality that protection previously determined the 'indubitable equivalent' . . . may later prove inadequate").

25. In awarding Wheeling the Superpriority Claim, the Court thus determined that the amount Wheeling would have realized from its collateral in the absence of the automatic stay exceeded the amount Wheeling would actually realize from its collateral in light of imposition of the stay (and despite the provision of adequate protection). The Superpriority Claim Order further determined the value of that asset dissipation to be $695,640.93. Thus, the Superpriority Claim Order in effect transformed a would-be deficiency claim into a superpriority administrative expense claim, so that Wheeling would not be harmed by the dissipation in value of its collateral:

	Absent Superpriority Claim Order	**By Virtue of Superpriority Claim Order**
Aggregate claim asserted	$6,000,000	$6,000,000
Value of collateral	$5,304,359.07	$5,304,359.07
Value of secured claim	$5,304,359.07	$5,304,359.07
Amt. of unsecured deficiency claim	**$695,640.93**	**$0**
Amount of superpriority administrative claim	**$0**	**$695,640.93**

26. By the relief requested in the Motion, Wheeling would have this court find that the Superpriority Claim was awarded in addition to its asserted secured claim—that is, Wheeling would be entitled to receive a $695,640.93 distribution by virtue of the Superpriority Claim *and* a $6,000,000 distribution on account of its asserted secured claim (if allowed). But as explained above, the Superpriority Claim compensates Wheeling for the decrease in value of the collateral securing its claim, which decrease would otherwise leave Wheeling with an unsecured deficiency claim—in this way, the Superpriority Claim is encompassed in the amount of the secured claim asserted.[10] Awarding recovery on both claims independently would result in double-counting the amount of the Superpriority Claim.

27. In negotiating with the Trustee to resolve the Wheeling Conf. Obj., Wheeling received the Trustee's agreement to "cash collateralize" the full value of Wheeling's asserted secured claim. That is, Wheeling succeeded in getting the Trustee to agree that the full face amount of Wheeling's claim would be collateralized by cash escrowed pending an order determining the amount of Wheeling's allowed secured claim, if any. Given that Wheeling bargained for and obtained a *cash substitute* for its collateral—saving itself any further risk on the value of its collateral and increasing the ease of converting that collateral to consideration for distribution—Wheeling bargained away the Superpriority Claim that was awarded to protect

[10] In addition, and as set forth above, the Trustee has already objected to the amount of Wheeling's asserted secured claim on the basis that, among other things, the asserted amount should be reduced to reflect post-petition payments received in satisfaction of that claim. Thus, the asserted $6,000,000 secured claim not only encompasses the Superpriority Claim, but is too high an asserted amount in the first instance.

it in the event there was *insufficient* collateral to fully secure its claim. Wheeling should not be permitted to walk away from this Court-ordered agreement; the Motion should thus be denied.

B. Both the Confirmation Order and the Superpriority Claim Order Provide for Setoff Rights Against the Estate's Claims

28. Putting aside the fact that Wheeling bargained for treatment different from what it seeks in the Motion—treatment, the Estate Representative submits, which is actually more favorable to it than what was awarded in the Superpriority Claim Order—the Estate Representative has the right under both the Superpriority Claim Order and the Confirmation Order to setoff claims (with respect to the Superpriority Claim Order, under Bankruptcy Code section 506(c)) against Wheeling before making distributions on account of Wheeling's claim.

i. The Superpriority Claim Order Reserved Rights on Surcharge Motion

29. The Superpriority Claim Order explicitly reserved the Estate Representative's rights to prosecute the Surcharge Motion. *See* Superpriority Claim Order at ¶ 7 ("The parties reserve all rights regarding the Surcharge Motion.").

30. Moreover, the Disclosure Statement memorializes the parties' understanding of how the Superpriority Claim Order would function: "The Bankruptcy Court entered an order allowing Wheeling a superpriority administrative expense claim in an agreed upon amount . . . , ***with any payment subject to adjudicating the 506(c) Surcharge Motion***." *See* Discl. Stmt. at § IV(C)(viii) (emphasis added). Wheeling never took issue with the description of the parties' understanding of the Superpriority Claim Order in the Disclosure Statement; indeed, Wheeling confirmed that it no longer wished to pursue any objection to approval of the Disclosure Statement. *See* Tr. Hr'g., July 15, 2015 (Bankr. D. Me.), at 22:40-22:51.

31. Wheeling's acquiescence makes sense not only because Wheeling *agreed* that the Superpriority Claim Order would work as described in the Disclosure Statement, but also because the Superpriority Claim served as a replacement for Wheeling's dissipated collateral.

As Wheeling has no collateral left (apart from the cash that became its collateral by virtue of the Confirmation Order, to the Trustee's first point), if the Estate Representative's reservation of rights in the Superpriority Claim Order regarding the Surcharge Motion were to mean anything, they must mean that the Estate Representative could, in effect, surcharge the Superpriority Claim for the cost of having liquidated Wheeling's collateral for Wheeling's sole benefit earlier in the chapter 11 case. Absent the ability to surcharge the Superpriority Claim, there would be nothing for the Estate Representative to surcharge and the reservation of rights would be meaningless.

32. The Superpriority Claim Order and the Disclosure Statement Order have both become final orders. Wheeling is thus estopped from now objecting to the reservation of rights contained in the Superpriority Claim Order and to the description in the Disclosure Statement of how the Superpriority Claim would be paid, and must await adjudication of the Surcharge Motion and the setoff of any claim under Bankruptcy Code section 506(c) against the Superpriority Claim before receiving a distribution on that claim. The relief sought in the Motion would upset the chronology of claim reconciliation that Wheeling agreed to and that this Court ordered, and should thus be denied.

ii. The Confirmation Order Empowers the Estate Representative to Set Off Against Claims Prior to Making Distributions

33. In addition to the Estate Representative's rights reserved in the Superpriority Claim Order, the Plan expressly permits the Disbursing Agent[11] to "setoff against or recoup ***from any Claim*** and from any payments to be made pursuant to the Plan in respect of such Claim a***ny claims of any nature whatsoever that the Trustee may have against the Claimant*** . . . ." *See* Plan § 7.16 [the Setoff Provision] (emphasis added).

[11] As set forth above, *see supra* paragraph 9, the Plan appointed the Trustee as the Disbursing Agent.

34. Though Wheeling filed an objection to the Plan, *see* D.E. 1659, Wheeling did not object to the Setoff Provision, and consented to entry of the Confirmation Order confirming the Plan in its entirety. *See generally* D.E. 1659 (no objection to Setoff Provision), Conf. Order, at 8 (finding that "all parties in interest . . . have consented to entry of this Confirmation Order as a Final Order"), ¶ 49 ("The Plan, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference, shall be and hereby is confirmed.").

35. Thus, even putting aside the fact that Wheeling bargained for and obtained in the Confirmation Order a fully cash collateralized claim (and thus has no need for the protection of a section 507(b) superpriority claim), and putting aside the Estate Representative's ordered ability to adjudicate the Surcharge Motion before making any distribution on the Superpriority Claim (to which Wheeling is no longer equitably entitled), the Plan confers upon the Estate Representative the ability to set off any claims of the estate—including ones for the surcharge of collateral liquidated for the benefit of a lienholder or the value of other pending claims against the lienholder, such as avoidance actions—against claims held by the entity against which the estate has a claim before making a distribution to such claim holder.

36. The Confirmation Order has become a final order, and both it and the Plan it confirms are *res judicata* upon all parties, including Wheeling. *See* Pawtucket Credit Union v. Boyajian (In re Diruzzo), 527 B.R. 800, 805 (B.A.P. 1st Cir. 2015) ("Absent timely appeal, [a] confirmed plan is *res judicata* and its terms are not subject to collateral attack. The *res judicata* effect of confirmation may be eliminated only if confirmation is revoked or if the case is later dismissed or converted to another chapter.") (internal quotations and citations omitted). Wheeling had the opportunity to take issue with the Setoff Provision and opted not to do so; it is thus estopped from cherry-picking Plan provisions it now dislikes and must stick to the

bargain it struck (and that this Court ordered). As the relief sought in the Motion would contravene this Court's Confirmation Order, the Motion should be denied.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Estate Representative requests that the Court: (i) sustain this Objection; (ii) deny the Motion in its entirety with prejudice; and (iii) grant such other and further relief as may be just.

Dated: March 1, 2016

ROBERT J. KEACH,
ESTATE REPRESENTATIVE OF POST-EFFECTIVE DATE ESTATE OF MONTREAL MAINE & ATLANTIC RAILWAY, LTD.

By his attorneys:

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