

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**TRUSTEE'S OBJECTION TO MOTION OF TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA TO EXPEDITE HEARING ON TRAVELERS'
MOTION FOR RELIEF FROM THE AUTOMATIC STAY
PURSUANT TO 11 U.S.C. § 362(d)(1)**

Robert J. Keach, the trustee (the "Trustee") of Montreal Maine & Atlantic Railway, Ltd. ("MMA" or the "Debtor"), appointed pursuant to 11 U.S.C. § 1163, by and through his undersigned counsel, hereby objects to the *Motion of Travelers Property Casualty Company of America to Expedite Hearing on Travelers' Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1)* [D.E. 106] (the "Motion for Expedited Hearing"), filed by Travelers Property Casualty Company of America ("Travelers"), seeking an expedited hearing on the *Motion of Travelers Property Casualty Company of America for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1)* [D.E. 105] (the "Motion for Relief from Stay"). In support of this objection, the Trustee states as follows:¹

1. The Motion for Expedited Hearing requests that the Court set a hearing on the Motion for Relief from Stay on September 13, 2013. September 13 is seventeen days from the date that the Motion for Relief from Stay was filed. As Travelers concedes, this is not sufficient

¹ In light of the fact that this Objection pertains only to Travelers' request for an expedited hearing on the Motion for Relief from Stay, and does not address the relief requested or the issues addressed in the underlying Motion for Relief from Stay, the Trustee respectfully requests that the Court waive the requirements of D. Me. LBR 9013-1(f), which requires that "[e]very response to a motion shall admit or deny each allegation of the motion and, in addition, shall assert affirmatively . . . such defenses or other matters as may be required fully to inform the Court of the scope of issues raised by the motion." D. Me. LBR 9013-1(f).

under the Court's local rules. *See* D. Me. LBR 9013-1(d)(1) and D. Me. LBR 4001-1(c)(1) (requiring that a hearing on a motion for relief from stay must be at least 21 days from the date such motion is filed).

2. The sole apparent basis for the request for expedited treatment is Travelers' desire to avoid waiving "any of its rights under U.S.C. § 362(e)." Motion for Expedited Hearing, ¶ 5.

3. Section 362(e) contemplates that a hearing will be conducted within 30 days after a motion for relief from stay is filed. *See* 11 U.S.C. § 362(e). In this case, that 30-day period would end on September 26, 2013. The Motion for Relief should be heard—at least on a preliminary basis—at a hearing held between September 17 and September 26, 2013. Doing so would assure Travelers of a prompt hearing on its motion.²

4. Moreover, Travelers fails to allege how any possible waiver of rights of a movant under section 362(e) could possibly result from normal scheduling of the Motion for Relief from Stay, and no such waiver—or prejudice of any kind—is evident from the language of that section (or any available precedent known to the Trustee).

5. Even under the strained reading of section 362(e) asserted by Travelers, Travelers will not be prejudiced or otherwise harmed if a hearing on the Motion for Relief from Stay is set in accordance with this Court's local rules and before September 26, 2013. The Motion for Relief from Stay seeks relief from the automatic stay under section 362(d)(1) so that Travelers may file a declaratory judgment action (the "Action") in the United States District Court for the District of Maine with respect to MMA, among a variety of other related, non-debtor entities. The Action would seek a declaratory judgment that the insurance policy issued by Travelers to

² Whether Travelers has any "rights" under section 362(e) is open to debate. Given the operation of section 362(e), the Trustee, as the party opposing the relief sought, should be concerned with the need for a prompt hearing on the motion. Travelers, as the party that would benefit in the event that a hearing is not conducted within 30 days after the motion for relief from stay was filed, should be less concerned about the timing of a hearing.

MMA does not provide coverage for certain losses incurred by MMA in relation to the July 6, 2013 train derailment in Lac-Megantic, Quebec. Travelers requests stay relief so that it may seek a declaratory judgment against the Debtor simultaneously with the other, non-debtor defendants, and thus does not have to litigate the same issues multiple times.

6. Neither the Motion for Expedited Hearing nor the Motion for Relief from Stay allege that Travelers needs to commence the Action within an expedited timeframe, and there is no suggestion that scheduling a hearing in accordance with D. Me. LBR 9013-1(d)(1) would unfairly prejudice Travelers in any way.

7. In light of the fact that Travelers has not asserted a basis for expedited relief, and any rights under section 362(e), to the extent they exist and/or are at risk, may effectively be preserved by scheduling a hearing on the Motion for Relief from Stay after the required 21 days' notice period, the Trustee requests that this Court: (i) deny the Motion for Expedited Hearing; and (ii) set the hearing on the Motion for Relief from Stay in accordance with D. Me. LBR 9013-1(d)(1) and D. Me. LBR 4001-1(c)(1), on a date between September 17 and September 26, 2013.

Dated: September 3, 2013

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

By his attorneys:

/s/ Michael A. Fagone

Michael A. Fagone, Esq.

D. Sam Anderson, Esq.

BERNSTEIN, SHUR, SAWYER & NELSON, P.A.

100 Middle Street

P.O. Box 9729

Portland, ME 04104

Telephone: (207) 774-1200

Facsimile: (207) 774-1127

E-mail: mfagone@bernsteinshur.com