

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

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

RESPONSE OF NEW BRUNSWICK SOUTHERN RAILWAY COMPANY LIMITED AND MAINE NORTHERN RAILWAY COMPANY TO THE AMENDED OBJECTION OF THE ESTATE REPRESENTATIVE TO PROOFS OF CLAIM FILED BY NEW BRUNSWICK SOUTHERN RAILWAY COMPANY LIMITED AND MAINE NORTHERN RAILWAY COMPANY ON THE BASIS THAT CERTAIN OF SUCH CLAIMS ARE DUPLICATIVE OF OTHERS, AND SUCH OTHERS ARE IMPROPERLY ASSERTED AS ADMINISTRATIVE AND/OR PRIORITY CLAIMS, IN AN INACCURATE AMOUNT, AND SUBJECT TO DISALLOWANCE UNDER BANKRUPTCY CODE SECTION 502(d)

New Brunswick Southern Railway Company Limited (“NBSR”) and Maine Northern Railway Company (“MNR” and together with NBSR, the “MN/NB Railways”) hereby submit this response (the “**Response**”) to the *Amended Objection to Proofs of Claim Filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company on the Basis that Certain of Such Claims are Duplicative of Others, and Such Others are Improperly Asserted as Administrative and/or Priority Claims, in an Inaccurate Amount, and Subject to Disallowance Under Bankruptcy Code Section 502(d)* [D.E. 2313] (the “**Amended Objection**”) of, Robert J. Keach, the estate representative for the post effective date estate of Montreal Maine & Atlantic Railway, Ltd., (the “**Estate Representative**”).

The Estate Representative previously filed an objection to the Proofs of Claim (the “**Original Objection**”) [D.E. 1826]. The MN/NB Railroads previously responded to the Original Objection (the “**Original Response**”) [D.E. 1855]. Additionally, the Court has already ruled on certain parts of the Estate Representative’s Amended Objection. Accordingly, for

purposes of efficiency, the MN/NB Railroads will only respond to those portions of the Amended Objection that were not included in the Original Objection. The MN/NB Railroads fully incorporates the Original Response as part of this Response.

SPECIFIC ADMISSIONS AND DENIALS OF NEW BRUNSWICK SOUTHERN RAILWAY COMPANY LIMITED AND MAINE NORTHERN RAILWAY COMPANY AS REQUIRED BY D. ME. LBR 9013-I(f)

1. In response to the Estate Representative's allegations in paragraph 18 of the Amended Objection, the MN/NB Railways admit that the Estate Representative filed an adversary proceeding against NBSR (the "**NBSR Preference Action**") that is currently pending in the United States Bankruptcy Court for the District of Maine (the "**Bankruptcy Court**"). The MN/NB Railways deny the Estate Representative's assertion that the payments made by Montreal Maine & Atlantic Railway, Ltd. ("**MMA**" or the "**Debtor**") to NBSR that are at issue in the NBSR Preference Action may be avoided under 11 U.S.C. § 547. Except as otherwise admitted herein, the MN/NB Railways deny the allegations in paragraph 18 of the Amended Objection.

2. In response to the allegations in paragraph 19 of the Amended Objection, the MN/NB Railways admit that the Estate Representative filed an adversary proceeding against MNR (the "**MNR Preference Action**" and together with the NBSR Preference Action the "**Preference Actions**") that is currently pending in the Bankruptcy Court. The MN/NB Railways deny the Estate Representative's assertion that the payments made by MMA to MNR that are at issue in the MNR Preference Action may be avoided under 11 U.S.C. § 547. Except as otherwise admitted herein, the MN/NB Railways deny the allegations in paragraph 19 of the Amended Objection.

3. The MN/NB Railways admit the allegations in paragraph 20 of the Amended Objection.

4. In response to the allegations in paragraph 22 of the Amended Objection, the MN/NB Railways refer to their Original Response, in which they responded to this allegation, but state further that they are without knowledge or information sufficient to form a belief as to whether the Initial Distribution Date has occurred.

5. The MN/NB Railways admit the allegations in paragraph 23 of the Amended Objection, but deny that the rights asserted by Wheeling & Lake Erie Railway Company (“**Wheeling**”) are superior to the MN/NB Railways’ rights of setoff with respect to amounts owed by them to MMA.

6. The MN/NB Railways admit the allegations in paragraph 24 of the Amended Objection, but deny that Wheeling is entitled to recover the amounts that it seeks in the Complaint it filed against the MN/NB Railways.

7. The MN/NB Railways admit the allegations in paragraph 25 of the Amended Objection.

8. The MN/NB Railways admit the allegations in paragraph 26 of the Amended Objection.

9. The MN/NB Railways admit the allegations in paragraph 27 of the Amended Objection.

10. In response to the allegations in paragraph 28 of the Amended Objection, the MN/NB Railways state that the Motion to Stay and the orders of the District Court for the District of Maine (the “**District Court**”) speak for themselves.

11. The MN/NB Railways admit the allegations in paragraph 29 of the Amended Objection.

12. In response to the allegations in paragraph 30 of the Amended Objection, the MN/NB Railways admit that the joint status report, which speaks for itself, was filed in the District Court. Except as otherwise admitted herein, the MN/NB Railways deny the allegations in paragraph 30 of the Amended Objection.

13. The MN/NB Railways admit the allegations in paragraph 31 of the Amended Objection.

14. The MN/NB Railways admit the allegations in paragraph 32 of the Amended Objection.

15. Paragraph 33 is a recitation of the relief sought by the Estate Representative. The MN/NB Railways deny that the Estate Representative is entitled to any of the relief sought in the Amended Objection, other than the withdrawal by the MN/NB Railways of the Duplicate Claims, which the MN/NB Railways agreed to do in the Original Response, and a determination of the amounts owed by MMA to the MN/NB Railways, and the amounts owed by the MN/NB Railways to MMA.

16. Paragraph 34 of the Amended Objection merely recites the provisions of Sections 502(a) and 101(5) of the Bankruptcy Code, and cites case law interpreting those sections, all of which speak for themselves, and as to which no response is required.

17. Paragraph 36 of the Amended Objection merely recites the provisions of Section 502(d) of the Bankruptcy Code, and cites certain legislative history, all of which speak for themselves, and as to which no response is required.

18. Paragraph 37 of the Amended Objection merely cites to a section of *Collier on Bankruptcy* and certain case law interpreting Section 502(d), all of which speak for themselves, and as to which no response is required.

19. In response to the allegations in paragraph 46 of the Amended Objection, the MN/NB Railways state that they are without knowledge or information sufficient to form a belief as to such allegation, and further state that the amounts listed in the Proofs of Claim accurately reflect the pre-petition amounts owed by MMA to MNR and NBSR.

20. The MN/NB Railways deny the allegations in paragraph 47 of the Amended Objection.

21. The MN/NB Railways deny the allegations in paragraph 48 of the Amended Objection.

22. The MN/NB Railways deny the allegations in paragraph 49 of the Amended Objection. The MN/NB Railways believe that the Preference Actions should be adjudicated through the Preference Actions that are currently pending. The Estate Representative's assertion that the MN/NB Railways claims must be disallowed simply because he has commenced the Preference Actions against the MN/NB Railroads is incorrect. Under 11 U.S.C. § 502(d) a court may disallow a claim if a party refuses to turn over a amounts that have been found to be recoverable under section 547. As the Eighth Circuit noted, "the purpose of section 502(d) is to ensure compliance with judicial orders." See *Holloway v. Internal Revenue Service (In re Odom Antennas, Inc.)*, 340 F.3d 705, 708 (8th Cir. 2003). That court determined that the language of section 502 "indicates section 502(d) should be used to disallow a claim after the entity is first adjudged liable." *Id.*; see also *Damon's Restaurants, Inc. v. U.S. Foods, Inc. (In re Damon's International, Inc.)*, 500 B.R. 729, 738 (Bankr. W.D. Pa. 2013) ("[t]he Court agrees with the

Defendant that the Defendant must first be found liable for section 502(d) to operate”); *Gray v. University of Alaska (In re. Dehon, Inc.)*, 327 B.R. 38 n. 51 (Bankr. D. Mass. 2005) (“disallowance under § 502 first requires a determination that the Debtor did, indeed, make one or more preferential transfers to a defendant”).¹ The Preference Actions are currently stayed, and there has been no determination that the MN/NB Railways are liable to the estate. Consequently, the MN/NB Railways fully deny the Estate Representative’s assertion that their claims should be disallowed under § 502(d).

¹ The cases and Collier section cited by the Estate Representative do not stand for the proposition that a claim must be disallowed simply because a bankruptcy trustee or similar party has asserted that a transfer is avoidable. Rather, the authority cited by the Estate Representative suggests that a court may delay payment of a claim while an adversary proceeding is pending against the claimant. However, as Collier notes to avoid abuse this is not automatic; rather, a court must make a determination that such a remedy is appropriate. See 4-502 COLLIER ON BANKRUPTCY 502.05[2][a] (16th Ed. 2016).

Respectfully submitted,

Dated: March 16, 2017

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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

CERTIFICATE OF SERVICE

I, Michelle S. Pottle, an employee of Pierce Atwood LLP, being over the age of 18, hereby certify that on the date set forth below I caused copies of the Response of New Brunswick Southern Railway Company Limited and Maine Northern Railway Company to the Amended Objection of the Estate Representative to Proofs of Claim filed by New Brunswick Southern Railway Company Limited and Maine Northern Railway Company on the Basis that Certain of Such Claims are Duplicative of Others, and Such Others are Improperly Asserted as Administrative and/or Priority Claims, in an Inaccurate Amount, and Subject to Disallowance Under Bankruptcy Code Section 502(d) to be served upon the parties indicated on the service list attached hereto in the manner described on said service list.

Dated: Portland, Maine
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