

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

RESPONSE AND RESERVATION OF RIGHTS OF WHEELING AND LAKE ERIE RAILWAY COMPANY WITH RESPECT TO THE AMENDED OBJECTION OF ESTATE REPRESENTATIVE TO PROOFS OF CLAIM FILED BY NEW BRUNSWICK SOUTHERN RAILWAY LIMITED AND MAINE NORTHERN RAILWAY COMPANY

Wheeling & Lake Erie Railway Company (“Wheeling”) respectfully submits this response and reservation of rights (this “Response”) with respect to to the *Amended Objection Of 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)* [D.E. 2313] (the “Objection”), filed by Robert J. Keach in his capacity as estate representative (the “Estate Representative”) of Montreal, Maine & Atlantic Railway, Ltd. (“MMA”).

WHEELING’S RESPONSE AND RESERVATION OF RIGHTS

1. The Estate Representative’s Objection seeks entry of a final order determining the amount of the mutual claims between MMA, on one hand, and New Brunswick Southern Railway Company Limited and Maine Northern Railway Company (the “Irving Railroads”), on the other hand.

2. The accounts receivable owed by the Irving Railroads to MMA are already the subject of litigation between Wheeling and the Irving Railroads, now pending in the United States

District Court. *See Wheeling & Lake Erie Railway Co. v. Maine Northern Railway and New Brunswick Southern Railway Company*, Civil Action No. 1:14-cv-00325-NT (D. Me.) (the “District Court Action”).

3. Wheeling initiated the District Court Action following this Court’s approval of an agreement with the MMA Trustee, now the Estate Representative, pursuant to which Wheeling was given relief from stay to pursue accounts receivable that constituted its collateral, which include the accounts owed by the Irving Railroads.

4. As such, Wheeling subsequently filed the District Court Action against the Irving Railroads seeking to collect the Irving accounts in full. District Court Action at Document 1.

5. In response, the Irving Railroads filed a joint answer asserting, among other things, a right of setoff against Wheeling for amounts they claimed to be owed to them by MMA. *See* District Court Action at Document 7. Wheeling disputes the Irving Railroad’s claims of setoff.

6. Wheeling has been granted by this Court the right to collect accounts receivable owed by the Irving Railroads and to seek a judicial determination of those amounts owed, as well a judicial determination as to the validity of any claimed rights of setoff. The District Court, in the District Court Action, has properly taken jurisdiction over these matters.

7. There is a possibility of inconsistent rulings by this Court and the District Court with respect to the matters pending in both courts. In light of this, Wheeling requests that this Court enter an order declaring that nothing in this proceeding, by way of adjudication or settlement, is binding on Wheeling with respect to (A) the amounts owed by the Irving Railroads or either of them to MMA, and in turn payable to Wheeling by virtue of Wheeling’s security interest; and (B) any right of the Irving Railroads to avoid payment of such amounts to Wheeling by virtue of any claimed right of setoff.

8. Entry of such an order is necessary in order to prevent Wheeling from being prejudiced by the proceeding pending in this Court, as to which Wheeling has not been afforded full, or indeed any, rights as a litigant. This contested matter has proceeded with discovery without affording Wheeling an opportunity to participate therein, and further, the current scheduling order, entered into without Wheeling participation, provides that further depositions are to take place between March 21, 2017, and March 23, 2017, with all discovery to be concluded by March 24, 2017.

9. Simply put, Wheeling has not been provided adequate due process so as to permit any order entered in this proceeding with respect to the amounts owed by the Irving Railroads to MMA, or any rights of the Irving Railroad to exercise setoff rights as against Wheeling, to be binding on Wheeling.

CONCLUSION

For the foregoing reasons, Wheeling respectfully requests that the Court enter an order determining that nothing in this proceeding, by way of adjudication or settlement, is binding on Wheeling with respect to (A) the amounts owed by the Irving Railroads or either of them to MMA, and in turn payable to Wheeling by virtue of Wheeling's security interest; and (B) any right of the Irving Railroads to avoid payment of such amounts to Wheeling by virtue of any claimed right of setoff., and granting such further relief as the Court deems proper.

Dated: March 22, 2017

/s/ George J. Marcus

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Company

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Certificate of Service

I, Andrew C. Helman, being over the age of eighteen, hereby certify that on March 22, 2017, I filed the foregoing document on the Court's CM/ECF electronic filing system, thereby sending notice to all parties receiving service in this case through the Court's CM/ECF system.

Dated: March 22, 2017

/s/ Andrew C. Helman