

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**OBJECTION OF ESTATE REPRESENTATIVE TO MARKED EXHIBITS
SUBMITTED BY NEW BRUNSWICK SOUTHERN RAILWAY COMPANY LIMITED
AND MAINE NORTHERN RAILWAY COMPANY PURSUANT TO
AMENDED JOINT PRETRIAL STATEMENT AND ORDER**

Robert J. Keach, the estate representative (the “Estate Representative”) of the post-effective date estate of Montreal Maine & Atlantic Railway, Ltd. (“MMA”), in accordance with the *Amended Joint Pretrial Statement and Order Between the Estate Representative and New Brunswick Southern Railway Company Limited and Maine Northern Railway Company* [D.E. 2311] (as modified by D.E. 2335, the “Amended JPO”),¹ hereby submits this objection (the “Objection”) to the exhibits marked by the Irving Railroads (collectively, the “Irving Exhibits”). In support of this Objection, the Estate Representative states as follows:

RELEVANT BACKGROUND

1. On May 11, 2017, in accordance with the Amended JPO, the Estate Representative served upon the Irving Railroads marked copies of the exhibits that he reasonably anticipates offering at trial. *See* Amended JPO ¶ 19.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed in the Amended JPO or the Reply (as defined below), as applicable.

2. On May 12, 2017, the Irving Railroads served upon the Estate Representative marked copies of the exhibits that they reasonably anticipate offering at trial.² See Amended JPO ¶ 19. An annotated index of the Irving Exhibits is set forth below.

Ex.	Description	Estate Rep Position
I.1	Analysis of Swap Transactions Among MMA, Irving Paper Companies and Irving Railroads	Admitted at November 2015 Hearing (I11)
I.2	Invoices in Support of NBSR's Proof of Claim	Admitted at November 2015 Hearing (I12)
I.3	Waybills Related to Invoices in Support of NBSR's Proof of Claim	Produced by Irving Railroads; do not concede authenticity
I.4	Invoices in Support of MNR's Proof of Claim	Admitted at November 2015 Hearing (I13)
I.5	Waybills Related to Invoices in Support of MNR's Proof of Claim	Produced by Irving Railroads; do not concede authenticity
I.6	Commercial Agreement, dated January 9, 2003	Admitted at November 2015 Hearing (I1)
I.7	E-mail from Robert C. Grindrod to Ian Simpson, dated June 4, 2012 regarding Revision of Settlement Terms Between NBSR and MMA, with attachment	Admitted at November 2015 Hearing (I5)
I.8	E-mail from Ryan Ellis to Joanne Kelter, dated July 26, 2012 forwarding an e-mail from Don Gardner to Ryan Ellis, dated July 26, 2012	Admitted at November 2015 Hearing (I6)
I.9	E-mail from Joanne Kelter to Don Gardner, dated July 26, 2012, responding to an e-mail from Don Gardner to Ryan Ellis, dated July 26, 2012	Admitted at November 2015 Hearing (I7)
I.10	E-mail from Ryan Ellis to Don Gardner, dated August 30, 2012, responding to an e-mail from Don Gardner to Joanne Kelter, dated August 30, 2012	Admitted at November 2015 Hearing (I8)
I.11	E-mail from Don Gardner to Ian Simpson, dated January 3, 2013 responding to e-mail from Ian Simpson to Don Gardner, dated January 3, 2013	Admitted at November 2015 Hearing (I9)

² The index of marked exhibits provided by the Irving Railroads includes (a) certain documents not marked and transmitted by email and (b) only the first page of certain other exhibits. The Irving Railroads have informed the Estate Representative that they no longer intend to mark those exhibits not transmitted. In the event that were to change, the Estate Representative reserves the right to object to admission of such indexed but not marked and transmitted exhibits on any appropriate basis.

Ex.	Description	Estate Rep Position
I.12	E-mail from Don Gardner to Ian Simpson, dated January 7, 2013 referencing e-mail exchanges between Messrs. Gardner and Simpson on January 4 and 7, 2013	Admitted at November 2015 Hearing (I10)
I.13	Revised First Amended Disclosure Statement for the Trustee's Plan of Liquidation dated July 15, 2015	Concede authenticity; preserve other objections to admissibility
I.14	Proof of Claim No. 257-1 filed by Maine Northern Railway Company	Concede authenticity; preserve other objections to admissibility
I.15	Proof of Claim No. 259-1 filed by New Brunswick Southern Railway Company Limited	Concede authenticity; preserve other objections to admissibility
I.16	Declaration of Fred C. Caruso in Support of Confirmation of Trustee's Revised First Amended Plan of Liquidation, dated July 15, 2015, filed on September 17, 2015	Concede authenticity; preserve other objections to admissibility
I.17	Bankruptcy Schedules filed by Montreal Maine & Atlantic Railway Ltd. in Case No. 13-10670	Concede authenticity; preserve other objections to admissibility
I.18	Statement of Financial Affairs, and Attached Exhibits, filed by Montreal Maine & Atlantic Railway Ltd. in Case No., 13-10670	Concede authenticity; preserve other objections to admissibility
I.19	Montreal Maine & Atlantic Corporation Audited Consolidated Financial Statements for the years ended December 31, 2012 and 2011	Concede authenticity; preserve other objections to admissibility
I.20	Montreal Maine & Atlantic Corporation Consolidated and Consolidating Income Statement for June 2013 Final	Do not concede authenticity; preserve other objections to admissibility
I.21	Montreal Maine & Atlantic Corporation Consolidated and Consolidating Income Statement for July 2013 Final	Do not concede authenticity; preserve other objections to admissibility
I.22	2010 Montreal Maine & Atlantic Canada Co. ("MCC") Tax Returns and related work papers	Irving Railroads indicated they will not mark
I.23	2011 MCC Tax Returns and related work papers	Irving Railroads indicated they will not mark
I.24	2012 MCC Tax Returns and related work papers	Irving Railroads indicated they will not mark
I.25	2013 MCC Tax Returns and related work papers	Irving Railroads indicated they will not mark

Ex.	Description	Estate Rep Position
I.26	General Ledger Reports for 2013 reflecting allocation of revenue and expense between MMA and MCC	Irving Railroads indicated they will not mark
I.27	Business records reflecting allocation of revenue and expense between MMA and MCC for fiscal years 2010 – 2013	Irving Railroads indicated they will not mark
I.28	Open invoices reflecting amounts owed to MMA by NBSR	Produced by Irving Railroads; do not concede authenticity
I.29	Open invoices reflecting amounts owed to MMA by MNR	Produced by Irving Railroads; do not concede authenticity
I.30	Deposition transcript of Fred Caruso, dated November 19, 2015	Concede authenticity; preserve other objections to admissibility
I.31	Deposition transcript of Fred Caruso, dated March 21, 2017	Concede authenticity; preserve other objections to admissibility
I.32	Deposition transcript of Robert Keach, dated March 21, 2017	Concede authenticity; preserve other objections to admissibility

3. On May 16, 2017, the Estate Representative filed the *Reply in Support of 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. 2351] (the “Reply”).

4. As set forth in the Reply, the Estate Representative has asked the Bankruptcy Court to reconsider its Initial Order based, among other things, on the recantation of testimony given to authenticate certain of the documents admitted into evidence at the November 2015 Hearing. See Reply at ¶¶ 2, 9-10.

OBJECTION

5. The Estate Representative breaks the Irving Exhibits into four categories: (a) exhibits admitted (improperly, as set forth below and in the Reply) at the November 2015 Hearing (indicated in blue above, the “November 2015 Exhibits”); (b) exhibits produced to the Estate Representative by the Irving Railroads, with respect to which the Estate Representative does not concede authenticity or any other grounds for admissibility (indicated in peach above, the “Unauthenticated Exhibits”); (c) exhibits filed on the chapter 11 docket and/or produced to the Irving Railroads by the Estate Representative, with respect to which the Estate Representative concedes authenticity, but preserves all other objections to admissibility (indicated in purple above, the “Other Unadmitted Exhibits”); and (d) exhibits which the Irving Railroads have indicated they no longer wish to mark for consideration, with respect to which the Estate Representative reserves all rights (indicated in green above, the “Unmarked Exhibits”).

B. The Exhibits Ostensibly Authenticated by Mr. Hansen at the November 2015 Hearing Were Improperly Admitted Into Evidence.

6. The Amended JPO was submitted to and endorsed by the Court on the faulty premise that Mr. Hansen had authenticated certain documents at the November 2015 Hearing. As set forth in the Reply, Mr. Hansen recanted his testimony authenticating such documents at his March 2017 Deposition. *See* Reply at ¶¶ 2, 9-10. Therefore, despite the fact that the Amended JPO provides that “exhibits admitted into evidence at the hearing on November 20, 2015 shall be received in evidence and included in the record for all purposes in this proceeding,” *see* Amended JPO at ¶ 19, the Irving Railroads should be required to comply with the Federal Rules of Evidence and other appropriate rules of this Court to admit any such documents into evidence in the proceedings going forward, and such documents should *not* be admitted into evidence without further authentication, as prescribed by the Amended JPO in the

absence of an objection. The Estate Representative reserves all rights to object to the admissibility of the November 2015 Exhibits on authenticity and any other appropriate grounds.

C. The Unauthenticated Exhibits and the Other Unadmitted Exhibits Should Not Be Admitted Into Evidence Automatically.

7. The Estate Representative is not familiar with the Unauthenticated Exhibits, and therefore objects to their authenticity (and reserves all rights to object to the admissibility of the Unauthenticated Exhibits on any other appropriate ground).

8. While the Estate Representative concedes the authenticity of the Other Unadmitted Exhibits, he objects to their admissibility on all other grounds.

9. Such documents should therefore *not* be admitted into evidence without further authentication, as prescribed by the Amended JPO in the absence of an objection.

D. Reservation of Rights.

10. The Estate Representative reserves the right to object to the Unmarked Exhibits and any other exhibits proposed by the Irving Railroads but not marked and transmitted in accordance with the Amended JPO in accordance with the Federal Rules of Evidence and all other applicable rules.

11. The Estate Representative further reserves the right to object to any Irving Exhibit on grounds other than admissibility in accordance with the Federal Rules of Evidence and all other applicable rules.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Estate Representative (a) objects to the automatic admission of the November 2015 Exhibits, the Unauthenticated Exhibits, and the Other Unadmitted Exhibits; (b) reserves the right to object to the admissibility of the Unmarked Exhibits and any other exhibits proposed by the Irving Railroads other the November 2015 Exhibits, the Unauthenticated Exhibits, and the Other Unadmitted Exhibits on any grounds

appropriate under the Federal Rules of Evidence and all other applicable rules; (c) reserves the right to object to any Irving Exhibit on grounds other than admissibility in accordance with the Federal Rules of Evidence and all other applicable rules; and (d) requests that the Court grant such other and further relief as may be just.

Dated: May 26, 2017

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

/s/ Robert J. Keach

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