

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE**

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor

Bk. No 13-10670

Chapter 11

LIMITED OBJECTION OF NEW BRUNSWICK SOUTHERN RAILWAY COMPANY LIMITED AND MAINE NORTHERN RAILWAY COMPANY LIMITED TO THE CHAPTER 11 TRUSTEE'S MOTION FOR INTERIM AND FINAL ORDERS (A) AUTHORIZING DEBTOR TO OBTAIN POST-PETITION FINANCING AND (B) GRANTING CAMDEN NATIONAL BANK POST-PETITION PRIORITY LIENS

New Brunswick Southern Railway Company Limited and Maine Northern Railway Company Limited (collectively, the "Irving Railroads") submit this Limited Objection to the Chapter 11 Trustee's Motion for Interim and Final Orders (A) Authorizing Debtor to Obtain Post-Petition Financing and (B) Granting to Camden National Bank Post-Petition Priority Liens (the "Motion") and in support thereof state as follows:

1. The Irving Railroads are substantial creditors of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor") and hold significant claims against the Debtor's estate. As of the petition date, according to the records of the Irving Railroads, the Debtor was indebted to (i) New Brunswick Southern Railway Company Limited in the amount of \$2,314,496.42¹, and (ii) Maine Northern Railway Company Limited in the amount of \$352,074.69. All or most of the foregoing indebtedness represents amounts due for services provided to the Debtor within six months prior to the petition date which were necessary and essential to the on-going operations of the Debtor's railroad. As such, pursuant to 11 U.S.C. §1171(b), the claims of the Irving

¹ A portion of the amount owed to New Brunswick Southern Railway Company Limited ("NBSR") was assigned by NBSR to several of its affiliates and provided the basis for pre-petition setoffs in the approximate amount of \$761,000 against amounts owed by the affiliates to the Debtor.

Railroads arising from the provision of such services are entitled to the same priority in this case as they would have been entitled if a receiver in equity of the property of the Debtor had been appointed by a Federal court on the petition date.

2. Historically, claims that (i) represent current operating expenses deemed indispensable to the on-going operation of a railroad, (ii) were incurred within six months prior to reorganization, and (iii) were for goods or services that were provided in expectation that they would be paid out of current operating revenue and not in reliance on the railroad's general credit, qualified for priority in Federal railroad receivership cases under the so-called Six Month Rule. *See In re Boston and Maine Corporation*, 634 F.2d 1359, 1378 (1st Cir. 1980), *cert. denied*, 450 U.S. 982 (1981). As the First Circuit noted in the *Boston and Maine* case:

... when the time comes to determine membership in the class it will be for the reorganization court to determine what claims belong in the class because they represent indebtedness for ordinary and necessary current operating expenses indispensable to continued rail service of the kinds being paid current as expenses of administration; ...

634 F.2d at 1379-80 (footnote omitted).

3. Interline freight balances owed to connecting railroads, similar to the claims of the Irving Railroads in this case, have been accorded priority under the Six Month Rule. *Southern Railway v. Flournoy*, 301 F.2d 847 (4th Cir. 1962). Moreover, numerous courts applying the Six Month Rule in railroad receivership cases have found that six month claims are entitled to priority over mortgage liens. *Miltenberger v. Logansport*, 106 U.S. 286 (1882); *Kneeland v. Bass Foundry*, 140 U.S. 592, 596-97 (1891) (claim paid from corpus because the supplies in question "had been necessary to the continued operation of the road," and "contributed to the preservation of the property during the receivership"); *Finance Co. v. Charleston*, 62 F. 205 (4th Cir. 1894) (payment of interline freight balances from the proceeds of

foreclosure sale of the railroad); *Southern Railway v. Flourney*, 301 F.2d at 853 (claims for interline freight balances and other interline accounts granted priority in corpus over mortgage bondholders).

4. The Irving Railroads do not object to any of the relief requested by the Trustee in the Motion (Doc. No. 611) filed on February 5, 2014 with respect to the terms of the New Loan to be provided by Camden National Bank ("Camden") or the security interests to be granted to Camden as collateral for the New Loan. The Irving Railroads do, however, object to the provision in the proposed Final Order granting the Federal Railroad Administration ("FRA"), as adequate protection for its interests, "a first priority lien, subject only to the interests, if any, of Wheeling & Lake Erie Railway Company ("Wheeling")," in the Debtor's interest in the proceeds of the settlement reached with Travelers Property Casualty Company of America (the "Travelers Proceeds") and the proceeds of the agreement relating to the assignment of 45G tax credits (the "45G Proceeds"), unless such lien is made subject to those rights as the holders of six month claims are able to establish in this case. To the extent that the Travelers Proceeds and the 45G Proceeds are unencumbered, they represent a potential source of recovery for holders of six month claims. In light of the priority to which holders of six month claims are entitled under section 1171(b) of the Bankruptcy Code, it is not appropriate to grant the FRA liens on the Travelers Proceeds, the 45G Proceeds or any other unencumbered assets that would impair the rights of the holders of six month claims.

5. Moreover, there is, in any event, no need or justification for providing adequate protection to the FRA in connection with the New Loan being provided by Camden. As the Trustee properly noted in his Motion:

These secured parties [FRA and MDOT] understand that in the absence of the New Loan, the Debtor and MMA Canada would not

have the funds necessary to consummate the closing of the Sale and the Sale will maximize the value of the Sale Assets for the benefit of the FRA and MDOT (among others) and will allow for the continued operation of the rail lines, which is in the public interest. In any event, even absent such consent, the interests of both the FRA and MDOT are adequately protected. Accordingly, the requirements of section 364(d)(1)(B) are satisfied.

Motion at ¶22.

6. The New Loan is required to maintain the operation of the railroad so that the sale of the Debtor's assets as an operating railroad can be consummated. The primary beneficiary of the sale is the FRA. Absent a sale, FRA's recovery on its collateral will be substantially diminished. It is beyond dispute, as the Trustee has recognized, that the FRA's interests in this matter are adequately protected without granting the FRA liens against unencumbered assets that represent a potential source of recovery for other creditors.

WHEREFORE, the Irving Railroads request that the Final Order granting the Chapter 11 Trustee's Motion for Interim and Final Orders (A) Authorizing Debtor to Obtain Post-Petition Financing and (B) Granting to Camden National Bank Post-Petition Priority Liens specifically provide that any lien granted to the FRA in the Travelers Proceeds or the 45G Proceeds or any other unencumbered assets shall not impair and be subject to such rights as the holders of six month claims are able to establish in this case.

Dated: March 5, 2014

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