UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:	)	
	)	**Chapter 11**
Montreal Maine & Atlantic Railway Ltd.,	)	**Case No. 13-10670**
	)	
Debtor.	)	**Related to D.E. 473 & 550**
	)	

WHEELING & LAKE ERIE RAILWAY COMPANY'S MEMORANDUM OF LAW IN SUPPORT OF ENFORCEMENT OF ITS INTEREST IN ALL PROCEEDS OF THE INSURANCE POLICY ISSUED BY TRAVELERS CASUALTY COMPANY OF AMERICA, FILED PURSUANT TO THE COURT'S ORDER DATED DECEMBER 24, 2013

Following a hearing before the Court held on December 18, 2013, with respect to the Chapter 11 Trustee's Motion for Order Approving Compromise and Settlement with Travelers Property Casualty company of America [D.E. 473] (the "Motion") and Wheeling & Lake Erie Railway Company's ("Wheeling") Objection thereto [D.E. 514] (the "Objection"), the Court entered its order granting the Motion [D.E. 550] (the "Order"), subject to further proceedings to determine the validity, nature and extent of Wheeling's interest in and to the "Settlement Payment," as such term is defined in the Order.

The Settlement Payment is the aggregate sum of $3,800,000 and represents the proceeds payable to the Debtor and its affiliates by the Travelers Property Casualty Company of America ("Travelers"), with respect to a claim for business interruption coverage under a policy of insurance issued by Travelers with a policy number of 630-6357L188 (the "Policy"). Contemporaneously with the entry of the Order, the Superior Court of Quebec (the "Canadian Court"), presiding over insolvency proceedings (the "Canadian Proceedings") under the Companies Creditors' Arrangement Act (R.S.C., 1985, c. C-36) (the "CCAA") for the Debtor's subsidiary, Montreal, Maine & Atlantic Canada Corp. ("MMA Canada"), entered a similar order.

The orders of this Court and the Canadian Court have established joint proceedings, to be conducted under the Cross-Border Insolvency Protocol, approved by this Court's Order dated September 4, 2013 [D.E. 168], for the purpose of determining the right and entitlement of Wheeling, and others, to payment of the Settlement Payment. This Memorandum is submitted in support of the enforcement of Wheeling's valid, perfected, and enforceable interest in the entirety of the Settlement Payment.

INTRODUCTION

1. The dispute presently before this Court (and the Canadian Court) raises many of the same issues now pending before the Court in the contested matter (the "45G Matter") related to proceeds of that certain Track Maintenance Agreement that the Debtor entered into before commencing these bankruptcy proceedings on August 7, 2013 (the "Petition Date"). Similar to the 45G Matter, prior to the Petition Date, the Debtor and its Affiliates (which term "Affiliates" shall be defined herein as including collectively Montreal, Maine & Atlantic Corp. ("MMA Corp."); LMS Acquisition Corp. ("LMS"); and Montreal, Maine & Atlantic Canada Corp. ("MMA Canada")) entered into contracts for insurance coverage with Travelers. The contracts were renewed and/or extended from time to time, including on or about April 19, 2013, when the current version of the Policy was issued by Travelers. Subsequent to issuance of the Policy, and as a result of a tragic derailment that occurred prior to the Petition Date in Lac Megantic, Province of Quebec (the "Derailment"), the Debtor and its Affiliates became entitled to payment of money by Travelers for insured losses that they incurred, including payment pursuant to the business interruption coverage provided under the Policy. Indeed, pursuant to the Motion, Travelers paid the Debtor and MMA Canada the sum of $3,800,000 on account of the Derailment, and the business interruption coverage provided in the Policy. In exchange for this

and prior payments, the Debtor and its Affiliates released Travelers from further liability under the Policy. As in the case of the 45G Matter, Wheeling claims that it has a valid, perfected and enforceable right to all payments that become payable, or have in fact been paid to the Debtor or its Affiliates under any pre-petition contract, including the Policy. Reference is made to Wheeling's Memorandum of Law in Support of Enforcement of its Security Interest in all Proceeds of the Track Maintenance Agreement, Filed Pursuant to the Court's Order Dated December 17, 2013 (the "45G Memorandum"), which is incorporated by reference herein.[1]

2. Notwithstanding the similarities between this matter and the 45G Matter, there are important differences. A number of these differences make Wheeling's rights even more compelling in this case than in the 45G Matter. In the instant case, and unlike the 45G Matter, all events and circumstances that gave rise to the rights to payment under the Policy—a pre-petition contract—occurred, and the obligation to make the payment became fixed, pre-petition, even if the amount of the proper amount of the payment was disputed and unliquidated until entry of the Order approving the Motion. Second, unlike the situation in the 45G Matter, no property or assets of the Debtor's estate were used or transferred post-petition in order to create or perfect that right or to liquidate the amount of the final Settlement Payment. These two differentiating factors remove entirely the defenses raised by the Debtor to Wheeling's claims in the 45G Matter. While the defenses are unavailing in either matter, the Court need not address them at all in this case.

3. Another difference that the Court will likely need to consider in these proceedings concerns the applicability of the Maine Uniform Commercial Code (11 M.R.S.A. §§ 1-1101

[1] In an effort to eliminate duplicative briefing, Wheeling has focused its arguments on matters distinct from those raised in the 45G Memorandum. Wheeling respectfully directs the Court's attention to the 45G Memorandum for further argument with respect to Wheeling's interests under the Maine UCC and their effectiveness in these proceedings as a supplement to the arguments set forth herein.

et seq.) (the "Maine UCC") to Wheeling's claim of entitlement to the Settlement Payment. In the 45G Matter, the Maine UCC indisputably applied to Wheeling's rights to receive payments made under the Track Maintenance Agreement (the "45G Agreement"), because those rights to payment were clearly "accounts" or "payment intangibles" as defined in the Maine UCC. In Wheeling's view, the Settlement Payment is also payment of an "account" or "payment intangible" as defined in the Maine UCC; however, Wheeling expects the Debtor and its Affiliates to take the position that the Maine UCC does not apply with respect to the Settlement Payment because it arises under an insurance policy. Thus, Wheeling anticipates that the Debtor and its affiliates will make reference to the following provision of Article 9 of the Maine UCC:

> [a] transfer of an interest in or an assignment of a claim under a policy of insurance, other than assignment by or to a health-care provider of a health-care-insurance receivable, and any subsequent assignment of the right to payment, but sections 9-1315 and 9-1322 apply with respect to proceeds and priorities in proceeds.

11 M.R.S.A. § 9-1109(4)(h). As will be discussed in more detail below, Wheeling believes that this exclusion does not prevent the grant of an Article 9 security interest in a right to payment that arises under an insurance policy because such rights to payment are legally distinct from the policy itself and claims that can be made under the policy. Courts and scholars agree upon this point. Further, this view gained prevalence even before recent amendments to Article 9 expanded the definition of "account" to include rights to payment for a policy of insurance, 11 M.R.S.A. § 9-1109(2)(c), and added the term "payment intangible," 11 M.R.S.A. § 9-1109(61), which is, with certain limitations not here relevant, simply an unpaid monetary obligation of any nature and from any source that is not an account. Moreover, following the 2000 revisions to Article 9, leading authorities have made it clear that Article 9 applies to rights to payment arising out of transactions that are plainly excluded from the scope of Article 9—for

example, payment rights on account of real estate sales contracts. Thus, the prevailing view at this time is that even if secured transactions related to certain types of assets, such as insurance policies or parcels of real estate, fall outside the scope of Article 9 of the UCC, a secured transaction with respect to a right to payment of money that arises out of such assets is not excluded. Rights to payment arising from transactions involving otherwise excluded collateral types are "accounts" or "payment intangibles", and this is so regardless of whether they arise from insurance or real estate or some other excluded asset category. Once such a right to payment comes into existence, it falls squarely within the purview of Article 9. Such is the case here with the Policy and the Settlement Payment.

4. Finally, Wheeling will also point out herein that if, as the Trustee is expected to argue, the Maine UCC does not govern the rights of Wheeling and the Debtor and its Affiliates in and to the Settlement Payment, then other Maine law would govern by virtue of the express choice of law provisions of Wheeling's loan documents, as described herein. Under Maine law, and the common law generally, Wheeling holds a valid and enforceable common law assignment for security of the Debtor's and its Affiliates' rights to the Settlement Payment.

5. Accordingly, by virtue of both the Maine UCC and Maine common law, Wheeling claims a valid, enforceable and perfected interest in the entirety of the Settlement Payment, notwithstanding the Debtor's purported allocation of that payment, 65%-to-35% between MMA Canada and the Debtor. The Court need not reach the allocation issue, however, because Wheeling's rights attach fully to the entire amount of the Settlement Payment without any need to distinguish between that portion allocable to the Debtor and that portion allocable to any other affiliate of the Debtor.[2]

[2] If it were necessary to make an allocation, the evidence would show that the allocation method adopted by the Debtor is entirely arbitrary, capricious and without foundation in the Policy—the contract which gave rise to the

FACTUAL BACKGROUND

I. The Lac Megantic Derailment And Available Insurance Coverage For Business Interruption.

6. On July 6, 2013, the Debtor suffered a tragic accident in the Canadian town of Lac Megantic, Province of Quebec. Among the resulting harms, damages, and adverse effects was the suspension of a significant portion of the Debtor's railroad operations, with the resultant loss of business and income. The Debtor had insurance for some of these adverse effects, including business interruption insurance under the Policy.

7. The Policy includes a Railroad Rolling Stock "Business Income" and "Extra Expense" Coverage endorsement, a copy of which is attached hereto as **Exhibit A** (the "BI Endorsement"). Under the BI Endorsement, Travelers agreed to pay:[3]

> (a) The amount by which your "Business Income" is actually reduced during the "period of restoration" due to loss or damage to Covered Property from a Covered Cause of Loss; and
>
> (b) Your necessary "Extra Expense" to continue normal operations following loss of or damage to Covered Property from a Covered Cause of Loss.

See **Exhibit A**. The BI Endorsement defines "Business Income" as "your net income that would have been earned had no loss or damage occurred, plus normal payroll and expenses which are reasonable and necessary for you to operate your business after loss or damage." "Extra Expense" is defined as "reasonable and necessary expense you incur in order to continue your

---

payment. Moreover, the Trustee's preferred method of allocation is undermined by the inherent conflict arising by virtue of the Debtor's negotiation and determination of the allocation of the Settlement Payment with its own, wholly owned subsidiary, MMA Canada. A proper analysis of the Policy, undertaken at arms-length, uninfluenced by whatever extraneous considerations the Debtor and its subsidiary may have, as well as the evidence, would show that the vast bulk of the Settlement Payment is properly allocated to the Debtor and to Wheeling, if there were any need to make an allocation.

[3] As set forth on the Railroad Rolling Stock Coverage Form, which is modified by the BI Endorsement, attached hereto with the BI Endorsement in **Exhibit A**, "the words 'you' and 'your' refer to the Named Insured shown in the Declarations." Here, that means: (1) MMA Corp.; (2) LMS; (3) the Debtor; (4) MMA Canada; (5) MMA Railway, Ltd; and (6) Rail World "as managers and/or owners, investors as their interest may appear, and any subsidiary, associated or financially controlled company that was, may now, or thereafter be constituted, or acquired including any other entity under the insured's control of which it assumes active management." *See* **Exhibit A**.

business operations after loss or damage that you would not have incurred had there been no loss or damage." (Wheeling will refer to the total right to payment on account of Business Income and Extra Expense as "BI Losses".) BI Losses are calculated for the period of time that the Debtor was required to suspend operations by reason of the covered loss. The Policy defines this as the Period of Restoration, which means the period of time that:

> (a) Begins with the date of loss of or damage to Covered Property caused by or resulting from any Covered Cause of Loss; and
>
> (b) Ends on the date when the property should be repaired, rebuilt or replaced with reasonable speed and similar quality.
>
> "Period of Restoration" does not include any increased period required due to the enforcement of any ordinance or law that:
>
> (a) Regulates the construction, use or repair, or requires the tearing down of any property; or
>
> (b) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effects of "pollutants".

See **Exhibit A**.

8. What this means is that each of the Debtor's and its Affiliates' rights to payment on account of BI Losses can be described in a formula, applicable to the period of time in which the operations of the Debtor and Affiliates were impaired by virtue of the Derailment: BI Covered Losses = Lost Net Income + Ordinary Expenses To Operate During Restoration + Extraordinary Expenses.

9. As set forth in the Motion, the aggregate of the business interruption coverage on account of BI Losses that Travelers agreed to pay was $3,800,000. While Travelers agreed to pay this sum, it did not impose any allocation requirements, presumably because it was indifferent to the same. The Trustee and MMA Canada took it upon themselves to allocate this

sum between the Debtor and MMA Canada. Specifically, as set forth in the Motion, the Trustee's financial advisor "analyzed the projected loss of business suffered by both of the Debtor and MMAC [referred to herein as MMA Canada] as a result of the Derailment by looking at the tonnage that would have been carried across Canadian and U.S. rail lines but for the Derailment and based the allocation on this projected tonnage analysis." Motion, ¶ 24. This methodology is nowhere to be found in the Policy or anywhere else. The Traveler's Policy does not cover "projected loss of business". It covers: Business Income, as that term is defined in the Policy (essentially lost net income, plus ordinary expenses to operate during restoration, plus Extraordinary Expenses, *i.e.* those expenses necessarily incurred due to the Derailment. The Motion made no effort to reconcile the definition of BI Losses under the Policy with the allocation formula adopted by the Trustee and MMA Canada. While Wheeling contends that it is entitled to the entirety of the Settlement Payment, if allocation were necessary, the evidence at trial would demonstrate that the formula prescribed by the Traveler' Policy results in a vastly different allocation of loss than the formula adopted by the Debtor and MMA Canada. Indeed, rather than a split of 65%-to-35% in favor of MMA Canada, the split would likely be the exact reverse.

II. Facts Related To Wheeling's Valid, Perfected And First Priority Interest In All Rights To Payment Of The Debtor And Its Affiliates Under The Policy And Proceeds Thereof.

10. Wheeling claims a valid, perfected and first-priority interest in and to all of the Debtor's and its Affiliates' accounts, payment intangibles, and other rights to payment, as well as proceeds thereof, pursuant to that certain Security Agreement dated June 15, 2009, by and between the Debtor and its Affiliates and Wheeling. The Security Agreement, a copy of which is attached hereto as **Exhibit B**, defines Wheeling's collateral (the "Collateral") as:

> the following personal property of Debtor [*i.e.*, defined as the Debtor and of its Affiliates collectively], wherever located, and inuring to the benefit of or owned by the Debtor now, or arising at any time in the future and wherever located as follows: A. All Accounts and other rights to payment (including Payment Intangibles), whether or not earned by performance, including but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. *This includes any rights and interests (including all liens) that Debtor may have by law or agreement against any account debtor or obligor of Debtor*. . . . C. All additions, accessions, substitutions, replacements, products to or for, and all cash or non-cash proceeds of any of the foregoing, *including insurance proceeds*.

See **Exhibit B**, § II (emphasis added). The Security Agreement is, by its terms, governed by Maine law. *See* **Exhibit B**, § XII.E. Terms used in the Security Agreement but not defined therein have the meanings of such term as used in the Maine Uniform Commercial Code (the "Maine UCC"), as amended from time to time, and codified in Title 11 of the Maine Revised Statutes Annotated. *See* **Exhibit B**, § I.C. This includes, in relevant part, terms such as "account" and "payment intangible." These terms plainly encompass payments that arise under contracts of the Debtor and its Affiliates, including the Policy.

11. Wheeling's Article 9 security interest was perfected by the filing of a UCC-1 Financing Statement with the Delaware Secretary of State on August 29, 2009. As to all Collateral described in the Security Agreement, Wheeling's UCC-1 filing makes it the first priority secured party. Wheeling made a similar filing with the Secretary of State's Office in Maine.

III. The Current Proceedings.

12. While Wheeling initially objected to the Motion, it agreed to entry of the Order, which directed that the "Settlement Payment, and each portion thereof, shall be held in escrow pending further Order of this Court or pending an agreement reached between the Trustee, MMAC, Wheeling and the FRA." Order, ¶ 2. Moreover, pursuant to the Order, this Court and the Canadian Court (which approved the compromise with Travelers, subject to consistency with

this Court's Order, and ordered that the Settlement Payment be held in trust pending further orders of the two Courts) are to hold a final hearing to determine the following:

> (a) the respective rights of MMA, MMAC, the FRA and Wheeling, if any, in and to the Settlement Payment in its entirety and/or any portion thereof, including the priority of each party's rights in the same; and (b) the appropriate allocation of the Settlement Payment as between MMA and MMAC. All of the parties' claims, rights and defenses in relation to these issues are hereby expressly preserved.

Order, ¶ 8.

13. The Trustee, the Debtor's Affiliates, and Travelers subsequently executed that certain Release of Claims (the "Release"), a copy of which is attached hereto as **Exhibit C**, and pursuant to which the Trustee (on behalf of the Debtor), the Affiliates, and Travelers released any and all claims against each other arising out of the Policy. Upon information and belief, Travelers has paid the Trustee and MMA Canada the Settlement Payment and such funds are held in trust pending a resolution of this contested matter.

ARGUMENT

I. Wheeling Holds A Valid And Enforceable First Priority Interest In And To The Settlement Payment Under Maine's Common Law.

14. As noted above, Wheeling expects the Trustee to claim that the Maine UCC does not apply to the creation and enforcement of a security interest in proceeds payable pursuant to an insurance policy. By this contention, the Trustee attempts to defeat Wheeling's interest in the Settlement Payment. The effort is unavailing. While Wheeling contends that the Maine UCC applies, even if the Court determined that it did not, Wheeling would nevertheless hold a valid and enforceable first priority interest in and to the entirety of the Settlement Payment under Maine common law

15. If the Maine UCC were determined not to apply to Wheeling's contractual claims to rights to payment, then it would not follow that the claims are invalid. The claims arise by

virtue of a contract, the Security Agreement, which grants a security interest in payment rights to secure payment of an obligation. The Agreement is governed by and entirely valid under Maine law. Further, Maine common law recognizes the validity and enforceability of assignments of contract rights for collateral security. Under the assignment doctrine, Wheeling's interest in and to the Settlement Payment is binding on the Debtor and all of its Affiliates (they are all signatories to the Security Agreement); it is senior in priority to all other interests therein, it is not avoidable, and the Trustee and MMA Canada must turn over to Wheeling the Settlement Payment.

A. Wheeling's Interest In The Settlement Payment As Assignee For Collateral Security Is Superior To All Other Interests Therein.

16. As memorialized in the Security Agreement, the Debtor and its Affiliates assigned to Wheeling all rights to payment arising under any contract as collateral security for the obligations due and owing to Wheeling. This assignment includes the Debtor's and its Affiliates rights to payment under the Policy and the proceeds thereof. The Security Agreement, and therefore the assignment, was executed by the Debtor and each of its Affiliates and is expressly governed by Maine law; as such, this Court must look to Maine law as to all debtors under the Security Agreement, including the Debtor and MMA Canada. If the Maine UCC is inapplicable, then the Court must look to other provisions of Maine law. Under these other provisions, and as a result of the Security Agreement and the assignment contained therein, Wheeling holds a first priority interest in and to the Settlement Payment that is fully enforceable by this Court.

1. The Security Agreement Created A Common Law Assignment For Security.

17. Under Maine common law, there are no special requirements that must be met in order for a contract to create an assignment of a right to payment as security for payment of a

debt. There are, however, many reported decisions, old and new, from the Maine Law Court enforcing such assignments, including assignments of payment rights as security, and these cases make it clear that the Security Agreement in this case establishes a valid, contractual, enforceable, first priority security interest in the payment rights arising under the Policy. *E.g.*, *Sturtevant v. Town of Winthrop*, 1999 ME 84, 732 A.2d 264; *Herzog v. Irace*, 594 A.2d 1106 (Me. 1991); *White v. Kilgore*, 77 Me. 571, 1 A. 739 (Me. 1885) (recognizing the validity of an oral assignment of an account for collateral security). Many of the newer decisions from the Law Court cite approvingly, and in some instances expressly follow, provisions of the *Restatement (Second) of Contracts* (the "***Restatement***") and its formulation of rules governing effective assignments for security. *E.g.*, *Sturtevant*, 1999 ME 84, ¶ 11 (citing *Restatement* § 324);[4] *Herzog*, 594 A.2d at 1108-09 (discussing common law rules governing assignments, including by citing *Restatement* § 317(a)(2)).

18. The general common law rules of security assignment approved and followed by the Law Court in the cases cited above, as well as others, and as promulgated by the American Law Institute in the *Restatement*, have been summarized as follows by E. Allan Farnsworth, the reporter for the *Restatement* in his recently revised treatise:

> To make an effective assignment of a contract right, the owner of that right must manifest an intention to make a present transfer of that right without further action by the owner or by the obligor. The owner may manifest this intention directly to the assignee or to a third person. No words of art are required; the assignor need not even use the word *assign*. Whether the owner of a right has manifested an intention to transfer it is a question of interpretation to be answered from all the circumstances, including words and conduct. To transfer a contract right is, in essence, to take from the assignor (B) and to give to the assignee (C) the right to performance by the obligor (A). Put another way, the transfer of a contract right extinguishes the assignor's right to performance by the obligor and gives the

[4] Section 324 of the *Restatement* states as follows: "It is essential to an assignment of a right that the obligee manifest an intention to transfer the right to another person without further action or manifestation of intention by the obligees. The manifestation may be made to the other or to a third person on his behalf and, except as provided by statute or by contract, may be made either orally or by a writing."

> assignee a right to that performance. . . . ***An assignment can be made a security for the payment of money or for the performance of some other obligation. Just as in the case of the transfer of other kinds of property as security, the transferee thereby acquires a limited interest, called a "security interest," rather than outright ownership of the right.***

E. ALLAN FARNSWORTH, CONTRACTS § 11.3 (4th ed. 2004) (emphasis added).

19. Moreover, like the rules in Article 9, assignments of conditional and future rights, including as security, are also effective at common law. For example, *Restatement* § 320 provides the following rule with respect to assignments of conditional rights, such as a right to payment on an insurance contract: "The fact that a right . . . is conditional on the performance of a return promise or is otherwise conditional does not prevent its assignment before the condition occurs." By way of illustration, the *Restatement* provides as follows: "A holds an insurance policy in which the insurer promises to pay him $1000 at the end of twenty years if A makes specified payments of premiums. A can assign his conditional right." *Restatement*, § 320 Illustration 3. Section 321(1) of the *Restatement* provides a rule making assignments of future rights effective: "an assignment of a right to payment expected to arise out of . . . [a] continuing business relationship is effective in the same way as an assignment of an existing right." Commentary to § 321 the *Restatement* makes clear that this provision includes rights arising out of transactions that may not be part of a presently-existing business relationship: "[e]ven where there is no continuing relationship, a purported assignment of a right expected to arise out of a subsequent transaction may sometimes become a part of the subsequent transaction and take effect as such." *Restatement*, § 321 comment c. By way of illustration, commentary states:

> A is negotiating to sell to B property part of which is subject to a mortgage from A to C. In consideration of C's release of the mortgage, A assigns to C a payment to be made by B. Later the same day A and B sign a contract to sell the property which provides for the payment expected. Notwithstanding the lack of a continuing business relationship, the assignment to C is effective when the contract to sell is made.

Restatement, § 321 Illustration 6.

20. Importantly, the *Restatement* makes clear that assignments for security, including conditional and future assignments, are "superior to a judicial lien subsequently obtained against the property of the assignor, unless the assignment is ineffective or revocable or is voidable by the assignor or by the person obtaining the lien or is in fraud of creditors." *Restatement*, § 341(1). In fact, the *Restatement* describes the assignee's right as a "superpriority" right. *Restatement*, § 341(2).

21. It is worth noting that federal courts in Maine were at the vanguard in formulating this rule and have long-recognized the priority of such an assignment against other creditors, including in bankruptcy:

> It seems to me a clear result of all the authorities, that wherever the parties, by their contract, intended to create a positive lien or charge, either upon real or upon personal property, whether then owned by the assignor or contractor, or not, or if personal property, whether it is then in esse or not, it attaches in equity as a lien or charge upon the particular property, as soon as the assignor or contractor acquires a title thereto, against the latter, and all persons asserting a claim thereto, under him, either voluntarily, or with notice, or in bankruptcy.

Mitchell v. Winslow, 17 F. Cas. 527, 533 (C.C.D. Me. 1843) (Story, J.). (Under Maine law, "[t]he validity of an assignment is not dependent on notice." *DiPietro v. Boynton*, 628 A.2d 1019, 1023 (Me. 1993).) The Court of Appeals for the Federal Circuit recently affirmed *Mitchell*'s continuing vitality as well as the fact that present assignments of future rights are perfected once the future rights come into existence. *Filmtec Corp. v. Allied-Signal Inc.*, 939 F.2d 1568, 1572 & 1573 (Fed. Cir. 1991) ("In our case, the contract between MRI and the Government did not merely obligate MRI to grant future rights, but expressly granted to the Government MRI's rights in any future invention. Ordinarily, no further act would be required once an invention came into being; the transfer of title would occur by operation of law.").

22. Under Maine common law, and as articulated in the Restatement, the rights of a contract assignee for security are superior to the rights creditors, including a judicial lien creditor. As such, the avoidance powers of the Trustee under § 544 of the Bankruptcy Code (Title 11 of the United States Code) are entirely unavailing. If the grant of security in the Settlement Payment is governed by common law, *i.e.* law outside of the Maine UCC, then Wheeling must be determined to have a valid, enforceable and first priority security interest in the entirety of the Settlement Payment. This is the inevitable result of the assignment for security granted by each of the Debtor and its Affiliates in the Security Agreement.

2. The Debtor And Its Affiliates Made An Effective Assignment For Collateral Security Of Their Rights To Payment Under The Policy.

23. As noted above, there is no special language or formula necessary to create a common law assignment for security; there simply needs to be an agreement evidencing a sufficient manifestation of an intention to do so. The Security Agreement plainly meets this minimum threshold for several reasons. First, it states that the "Debtor [defined as the Debtor and each of its Affiliates] hereby grants to Secured Party [Wheeling] a security interest in the Collateral described in Section II of this Agreement to secure the payment and performance of the Obligations defined in this Agreement." *See* **Exhibit B**, § I.A. This is a sufficient manifestation of an intention to make an assignment. Second, in defining the rights, *i.e.* rights in the Collateral assigned to Wheeling, the Security Agreement includes present rights, conditional or fixed rights, whether then in existence or thereafter acquired, including all of the Debtor's and its Affiliates' "rights to payment" and "[t]his includes any rights and interests (including all liens) that Debtor may have by law or agreement against any . . . obligor of Debtor." *See* **Exhibit B**, § II.A. Moreover, the Security Agreement expressly contemplated that the assignment would extend to all "substitutions" or "replacements" of such rights to payment an

"all cash or non-cash proceeds of any of the foregoing, including insurance proceeds." *See* **Exhibit B**, § II.

24. As the foregoing makes clear, the Debtor and its Affiliates clearly assigned, by virtue of the Security Agreement, and as collateral security, all of their rights to payment under any contract or agreement, whether then in existence or subsequently acquired. This includes rights to payment from all "obligors" of the Debtor and its Affiliates. There can be no meaningful dispute but that as a contract counter-party of the Debtor and its Affiliates, Travelers is an "obligor" of each of them under any definition. *See, e.g.*, BLACK'S LAW DICTIONARY 1106 (8th ed. 2004) (defining "obligor as "[o]ne who has undertaken an obligation; a promisor or debtor.").[5]

25. In sum, under applicable Maine common law of assignments for security, Wheeling's interest in the Debtor's and its Affiliates' rights to payment under the Policy were effectively assigned under the express terms of the Security Agreement. The Settlement Payment is undeniably payment of the right assigned to Wheeling and must be turned over to Wheeling. *See Restatement*, § 341 comment a ("An effective assignment extinguishes the assignor's right without any notification of the obligor. Any proceeds of the assigned right received by the assignor thereafter are held in constructive trust for the assignee.").

26. This conclusion is consistent with prior decisions of this Court in which the Court applied Maine's common law to conclude that a common law pledge as security of unearned insurance premiums is enforceable in bankruptcy and such interests are superior to the interests

[5] The term "obligor" is also defined by the Maine UCC and "means a person that, with respect to an obligation secured by a security interest in . . . the collateral: (a). Owes payment or other performance of the obligation[.]" 11 M.R.S.A. § 9-1102(59). The term "security interest" under the Maine UCC is sufficiently broad to include an assignment as collateral security. 11 M.R.S.A. § 1-1201(35). While the Maine UCC may not apply with respect to the creation of a security interest in the Settlement Payment, the Security Agreement nevertheless expressly incorporates by reference all definitional terms of the Maine UCC and makes them applicable to the Security Agreement.

of trustees (decided under the Bankruptcy Code) and debtors (decided under the 1898 Bankruptcy Act). *A-I Credit Corp. v. Big Squaw Mountain Corp. (In re Big Squaw Mountain Corp.)*, 122 B.R. 831 (Bankr. D. Me. 1990) (Haines, J.); *In re Maplewood Poultry Co.*, 2 B.R. 550 (Bankr. D. Me. 1980) (Cyr, J.).

27. In reaching this conclusion, Judge Haines, in *A-I Credit Corp.*, and Judge Cyr, in *Maplewood Poultry Co.*, both noted the distinction between an insurance policy itself as collateral, as opposed to rights to payment thereunder: Judge Haines, quoting Judge Cyr, stated in *A-I Credit Corp.:*

> A pledge of insurance policies requires that the pledge maintain physical possession of the policies. Here, the collateral is not the insurance policies themselves, but the unearned premiums, a general intangible. The perfection of a pledge of intangibles under the common law required possession by the pledge of the evidence of the pledge itself. Since [creditor] retained possession of the premium finance agreement under which the security interest in unearned premiums was created, it would appear that sufficient compliance was had with the pledge perfection requirements of the Maine common law.

A-I Credit Corp., 122 B.R. at 837-38 (*quoting In re Maplewood Poultry Co.*, 2 B.R. at 554 n.5). Further, it is noteworthy that Judge Haines also observed that the exclusion from Article 9 of security interests in payments under an insurance policy meant that that parties dealing with an insured were on notice of the need for independent investigation with respect to such interests:

> Although third parties dealing with the insured may not be aware of such an assignment from the face of the insurance policies, the drafters of the U.C.C. considered the area involving claims to and under insurance policies to be sufficiently distinct and well regulated to warrant their exclusion from Article 9's filing requirements. The U.C.C. exclusion serves to alert all parties that rights and claims under insurance policies, including rights in unearned premiums, are matters sufficiently unique to require diligent inquiry before advancing credit with the expectation that they may be made to serve as reliable security.

Id. at 839. In effect, Judge Haines provided the reasoning in support of the rule of the Maine Law Court that no notice is necessary to create an effective common law assignment for security. *DiPietro*, 628 A.2d at 1023.

28. As the foregoing makes clear, Maine's common law and this Court in its prior decisions recognize the validity of Wheeling's security interest in the Settlement Payment as a matter of common law jurisprudence. Moreover, Wheeling's interest therein is senior to the Debtor, its Affiliates, and the Trustee, and this seniority applies regardless of the absence of any kind of public filing or notice. The Settlement Payment must be turned over to Wheeling in partial satisfaction of the outstanding obligations owed to it under the Security Agreement and related credit facility.

II. Wheeling's Rights Under The Maine UCC.

A. Article 9's Scope And Wheeling's Security Interest In The Settlement Payment.

29. In addition to Wheeling's argument that it holds a valid and enforceable first priority interest in and to the Settlement Payment pursuant to Maine's common law, Wheeling also contends that it holds a valid and enforceable first priority security interest in the Settlement Payment under the Maine UCC. Notwithstanding some judicial uncertainty over whether Article 9 applies to security interests in rights to payment under insurance contracts, there are court decisions that recognize that security interests in payments of business interruption insurance claims are nevertheless within the scope of Article 9. These decisions date from before the 2000 revisions to Article 9 and their holdings are confirmed by the 2000 amendments to the UCC, and by cases and scholarly commentary arising thereafter with respect to security interests stemming from other excluded collateral types.

30. Prior to the 2000 revisions to the UCC, cases dealing with security interests in insurance payments focused on an exclusion to the scope of Article 9 that is the same in all material respects to the current exclusion codified in § 9-1109(4)(h) of the Maine UCC, which states as follows:[6]

> [a] transfer of an interest in or an assignment of a claim under a policy of insurance, other than assignment by or to a health-care provider of a health-care-insurance receivable, and any subsequent assignment of the right to payment, but sections 9-1315 and 9-1322 apply with respect to proceeds and priorities in proceeds.

11 M.R.S.A. § 9-1109(4)(h).

31. Notwithstanding this exclusion, there are two noteworthy pre-UCC revision cases that squarely hold that Article 9 covers payments on account of business interruption insurance. For example, in *Meridian Bank v. Bell Fuel Corp.*, 891 F.2d 281 (3d Cir. 1989), the United States Court of Appeals for the Third Circuit affirmed the District Court's determination that a pre-petition security agreement, pursuant to which a creditor obtained a security interest in accounts and all rights to payment of a debtor, included a debtor's pre-petition right to payment from its insurer for business interruption losses. *Meridian Bank v. Bell Fuel Corp. (In re Bell Fuel Corp.)*, 99 B.R. 602 (E.D. Penn. 1989), *aff'd sub nom. Meridian Bank v. Bell Fuel Corp.*, 891 F.2d 281 (3d Cir. 1989). In reversing the Bankruptcy Court, the District Court reasoned that "[t]he business interruption insurance which is at issue here is a distinctly commercial type of insurance and one which the Code drafters undoubtedly intended to include in Article 9." *Id.* at 608 (*citing* UCC § 9-104, Official Comment 7). Moreover, like the case before this Court, the District Court noted in *Bell Fuel* that the insurer had refused to provide payment on account of the business interruption claim and, accordingly, there was a pre-petition claim against the insurer that was subsequently settled post-petition. The District Court considered the post-

[6] The predecessor to § 9-1109(4)(h) (UCC § 9-104) did not have a carve-out for health insurance receivables.

petition payment to be proceeds of a pre-petition chose in action against the insurer, in which the Bank held a valid and perfected Article 9 security interest.

32. Several years later, the United States District Court for the Western District of Missouri reached the same outcome, albeit with different reasoning, in *MNC Commercial Corp. v. Rouse*, No. 91-0615-CV-W-2, 1992 WL 674733 (W.D. Mo. Dec. 15, 1992). In *MNC Commercial Corp.*, the court concluded that a secured party's security interest in accounts and other rights to payment extended to proceeds of a business interruption insurance policy, notwithstanding the exclusionary language of former Article 9 regarding insurance policies. Again, the Court treated the insurance payment as a distinct class of collateral from the insurance policy itself and ruled that the UCC exclusion regarding insurance did not apply.

33. These authorities, decided under the older version of Article 9, made it clear that there is a distinction to be made between a transfer for security of rights to payment under an insurance policy, and a transfer of the actual policy itself. While Article 9 does not apply to the latter, these cases identified important commercial reasons for applying Article 9 to the former, namely recognition of the realities of commercial transactions and the value of uniformity which is promoted by an expansive interpretation of the UCC.

34. Today, the correctness of these decisions can been seen in commentary and cases following the 2000 revisions to Article 9, which itself expanded the definition of the term "account" and added a new term, "payment intangible". Thus the term "account" now includes rights to payment "[f]or a policy of insurance issued or to be issued", whether or not such payment rights have been earned at the time of assignment. And the new term "payment intangible" creates a separate category of collateral that consists of any payment right under any contract, without specification of or regard to the nature or type of contract from which the

payment arises. By the 2000 amendments, now in effect, the UCC has made it clear that payments that arise under a contract are a class of collateral that is governed by the UCC, and there is no distinction or limitation based upon the nature of the asset that generated the payment.

35. In light of these amendments, recent authorities hold that Article 9 applies to rights to payment stemming from transfers of real property, notwithstanding that Article 9 expressly excludes from its coverage the creation of security interests in real property.[7]

36. For example, James J. White and Robert S. Summers in their leading treatise UNIFORM COMMERCIAL CODE: SECURED TRANSACTIONS (5th ed. 2000) (hereinafter, WHITE AND SUMMERS) made the following observation following the 2000 revisions to Article 9:

> Article 9 applies only to security interests in personal property or fixtures. But now more clearly than was formerly true, rights to payments that are themselves secured by real estate mortgages are covered by Article 9; perfecting a security interest in those rights to payment also perfects an interest in the mortgage or other supporting document (against the mortgagee's creditors) without any recording in the real estate files.

WHITE AND SUMMERS, § 21-7. The Bankruptcy Court for the Southern District of New York reached a similar conclusion, in part based on the revised definition of the term "account:"

> The parties agree that Fleet had no lien in the Southeast Property prior to the sale. In any event, UCC Article 9 does not apply to "the creation or transfer of an interest in or lien on real property". UCC § 9–109(d)(11). Fleet claims that upon the sale of the Southeast Property, an "account" was created, and that Fleet's security interest extended to the account. UCC § 9–102(a)(2) defines "Account" to include: "a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of . . . " Although Former Article 9 restricted the definition of account to "any right to payment for goods sold or leased or for services rendered" (*see* Former Article 9–106), Revised Article 9 expanded the

---

[7] Similar to the exclusionary provision for insurance policies, § 9-1109(k) of the Maine UCC excludes:

> The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
>
> (i) Liens on real property in sections 9-1203 and 9-1308;
> (ii) Fixtures in section 9-1334;
> (iii) Fixture filings in sections 9-1501, 9-1502, 9-1512, 9-1516 and 9-1519; and
> (iv) Security agreements covering personal and real property in section 9-1604[.]

> definition to a right to payment of proceeds from the sale of real property where the real property "has been or is to be sold".

In re Nittolo Land Dev. Ass'n, Inc., 333 B.R. 237, 240-41 (Bankr. S.D.N.Y. 2005).

37. WHITE AND SUMMERS and *In re Nittolo* draw a clear distinction between a direct security interest in real property, *i.e.* a mortgage, and a security interest in rights to payment arising therefrom. The former is excluded from coverage under the UCC; while the latter is included within its coverage. There is no meaningful analytical distinction between the analysis in WHITE AND SUMMERS and *In re Nittolo* regarding excluded real estate, and the situation presently before this Court regarding insurance policies. The grant of a security interest in the Policy might well be excluded from coverage under the Maine UCC, but once the insured acquires a right to payment, that payment right is an "account" or a "payment intangible" within the meaning of the Maine UCC, and is not excluded. Wheeling claims a security interest in and to all rights to payment of the Debtor and its Affiliates under all contracts, including the Policy. This security interest includes the Settlement Payment, and it is fully valid and enforceable even if no security interest is claimed (or allowed) with respect to the Policy itself.

38. Further, Wheeling's rights to payments due under the Policy are enforceable and perfected even though at the time of execution of the Security Agreement or the time of execution of the Policy, the payment from Travelers had not yet become due. By definition, "accounts" include "a right to payment of a monetary obligation, whether or not earned by performance[.]" 11 M.R.S.A. § 9-1102(2). Moreover,

> Although both old and Revised Article 9 speak of a "right to payment," it is clear that the debtor's interest need not be matured or fixed in amount. The account can exist "whether or not it has been earned by performance." The account arises when a contract is entered into, not when the debtor performs the contract. Thus, *Utica National Bank & Trust Co. v. Associated Producers Co.* [1980 OK 172, 622 P.2d 1061 (Okla. 1980). *Accord In re Patio & Porch Systems, Inc.*, 194 B.R. 569, 29 U.C.C. Rep. Serv. 2d 574 (Bankr. D. Md. 1996)] correctly ruled that sales by a

> coal company had produced "accounts" even though the price was not finally determined until after a BTU test of the coal. And *Bank of Stockton v. Diamond Walnut Growers Inc*. [199 Cal. App. 3d 144, 244 Cal. Rptr. 744, 5 U.C.C. Rep. Serv. 2d 1147 (1988)] correctly held that a member of an agricultural marketing association held an account in "member proceeds" to be received from the association for the sale of the 1983 crop even though the sale had not yet occurred. In these cases the debtor held a real contractual interest that could eventually mature into a fixed claim.

1C-19 Secured Transactions Under the UCC § 19.02[2][b] (footnotes from original added in bracketed text above).

39. It is clear that under the Maine UCC, Wheeling has a valid, perfected, and first priority security interest in all payments that became due and payable to the Debtor under the Policy at any time, including the Settlement Payment—regardless of when earned, when the payments became payable or when they were to be received as "proceeds" by the Debtor and MMA Canada.

III. Wheeling's Interest In The Settlement Payment Is Enforceable In This Insolvency Proceeding.

40. There is nothing in the Bankruptcy Code that undermines Wheeling's security interest in the Debtor's and its Affiliates' rights to payment under the Policy and all proceeds thereof. It is axiomatic that a valid and perfected security interest created under applicable state law is enforceable as against a Chapter 11 debtor absent avoidance or modification under any provision of Chapter 5 of the Bankruptcy Code, or the provisions of a confirmed plan of reorganization. There have been no avoidance actions, nor has a plan been proposed or filed that would invalidate Wheeling's security interest, whether granted under Maine common law or the Maine UCC.[8] Moreover, there is no pending proceeding before this Court with respect to, and

[8] There is no plausible argument that the Wheeling Security Agreement is voidable in whole or in part by a lien creditor (§ 546); as a preference (§ 547); as a fraudulent transfer (§ 548); as an unauthorized post-petition transfer (§549) or otherwise under Chapter 5 of the Bankruptcy Code.

the Court need not consider any purported avoidance rights of, MMA Canada or the Monitor under the CCAA.

41. Under either Maine common law or the Maine UCC, Wheeling's interest in the Settlement Payment is valid and enforceable. At common law, Wheeling holds an effective assignment for collateral security that, according to the *Restatement*, is senior in priority to any lien creditor. Under the Maine UCC, Wheeling's security interest in the Settlement Payment is clearly perfected, within the meaning of the Maine UCC, which applies, as to the Debtor and each of its domestic affiliates, MMA Corp. and LMS. Perfection was achieved by the filing of UCC-1 financing statements with the Secretary of State in Delaware.

42. Wheeling concedes that it has made no public filing, either in the U.S. or in Canada, with respect to security interests granted by MMA Canada. Nevertheless, Wheeling's security interest in the Settlement Payment is valid and enforceable against MMA Canada notwithstanding the absence of a public filing. The Security Agreement is governed by Maine law, and MMA Canada is headquartered in Maine. Under Maine law, MMA Canada is located at the place of its Chief Executive Office, which is in Maine. 11 M.R.S.A. § 9-1307(2)(c).[9] As a company located in Maine, MMA Canada entered into an agreement expressly governed by Maine law. There is nothing in Maine law that makes such a grant of a security interest void—or even voidable; all the Maine UCC does is provide priority rules that place unperfected security interests below certain other creditors but does not invalidate them. *See* 11 M.R.S.A. § 9-1322. Under Maine law, Wheeling's security agreement as against MMA Canada is fully valid and enforceable in accordance with its terms notwithstanding the absence of a public filing. The pendency of the Debtor's bankruptcy case and the Canadian Proceedings does not change this

[9] MMA Canada is not organized under the laws of a "state" and, as such, § 9-1307(5) is inapplicable. *See* 11 M.R.S.A. § 9-1102(76) (defining the term "state").

conclusion. Wheeling's security interest in MMA Canada's right to payment from Travelers is not avoidable in this proceeding. In addition, Wheeling's security interest in MMA Canada's right to payment from Travelers also is not avoidable under Canadian law either, although the Court need not address this matter because no avoidance proceeding has been filed in any court under any theory. Wheeling respectfully submits that none would be available under either United States or Canadian law.[10] In short, Wheeling's security interest is valid and enforceable under the Maine UCC against not only the Debtor, but also against MMA Canada, and there are no grounds, nor any proceeding, which would seek to avoid it.

IV. The Trustee's Allocation Of The Settlement Payment Is Improper.

43. The Trustee's allocation 65%-to-35% in favor of MMA Canada bears no relationship to the loss that is insured under the Policy, and is nothing more than an arbitrary allocation of funds between parent and subsidiary, without regard to either the contractual definition of the applicable business interruption loss under the Policy, or the contractual rights of Wheeling, as an interested party. If allocation of the Settlement Payment is required, then that allocation should follow the manner in which the insured loss of each of the insured entities would be determined in accordance with the provisions of the Policy. The evidence would show that when that is done, and the rules of the applicable contracts are followed, the allocation would be far different from that proposed by the Trustee. Wheeling reserves all of its rights to

[10] A review of relevant Canadian law reveals that an unperfected security interest in "book debts" of a debtor, such as MMA Canada, that have not been paid as of the commencement of MMA Canada's CCAA proceedings may be void. *See* CCAA, § 36.1; Canadian Bankruptcy and Insolvency Act, § 98.1. Neither the Policy, nor the insurance obligation of Travelers thereunder, constitute a "book debt" under applicable law. The term "book debts" means "[a]ll existing or future debts that in the ordinary course of business that would be entered in books, whether actually entered or not, and includes any part or class thereof." DAPHNE A. DUKELOW, & BETSY NUSE, DICTIONARY OF CANADIAN LAW 124 (2d ed.). A claim against an insurer is not the type of debt that is recorded as an asset in the books of any business in the ordinary course of business, and it is noteworthy that balance sheets of MMA Canada provided by the Monitor never recorded an insurance claim as an asset of the Company. An account receivable, on the other hand, is precisely such a debt. The Settlement Payment is payment of an obligation that clearly is not a "book debt" and therefore there is no basis upon which any party could avoid Wheeling's interest therein.

introduce evidence that is relevant and material to the allocation of the Settlement Payment should allocation become necessary.

CONCLUSION

The inescapable conclusion that one must reach is that the entirely of the Settlement Payment is Wheeling's Collateral, whether at common law or under the Maine UCC. Wheeling has a valid, perfected and enforceable security interest in all payments due to the Debtor and its Affiliates under its pre-petition contracts—such as the Settlement Payment paid under the Policy. This security interest is governed by Maine law, and its validity, priority and enforceability is established whether one applies Maine common law or the Maine UCC. Under these circumstances, it is unnecessary for the Court to take evidence on the proper allocation of the Settlement Payment; however, should the Court receive any such evidence on this matter, the allocation outcome would be far different from that proposed by the Trustee. When the BI Losses are allocated in accordance with relevant provisions of the Policy, the vast majority of the same will be shown to be allocable to the Debtor.

For these and for all of the foregoing reasons, Wheeling respectfully requests that this Court enter its order requiring the Debtor to turn over to Wheeling all of the Settlement Payment received under the Policy.

Dated: March 5, 2014

/s/ George J. Marcus

George J. Marcus
Daniel L. Rosenthal
David C. Johnson
Andrew C. Helman

Counsel for Wheeling & Lake Erie Railway Company

MARCUS, CLEGG & MISTRETTA, P.A.
One Canal Plaza, Suite 600
Portland, ME 04101
207.828.8000

CERTIFICATE OF SERVICE

I, Holly C. Pelkey, hereby certify that I am over eighteen years old and that I caused a true and correct copy of the above document to be served upon the parties and at the addresses set forth on the Service List attached hereto either electronically or via first class mail, postage prepaid, on 5th day of March, 2014.

/s/ Karen A. Stone
Karen A. Stone
Legal Assistant

Mailing Information for Case 13-10670

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

- D. Sam Anderson sanderson@bernsteinshur.com, acummings@bernsteinshur.com;sspizuoco@bernsteinshur.com;astewart@bernsteinshur.com
- Aaron P. Burns aburns@pearcedow.com, rpearce@pearcedow.com,lsmith@pearcedow.com
- Richard Paul Campbell rpcampbell@campbell-trial-lawyers.com, mmichitson@campbell-trial-lawyers.com
- Roger A. Clement, Jr. rclement@verrilldana.com, nhull@verrilldana.com;bankr@verrilldana.com
- Daniel C. Cohn dcohn@murthalaw.com, njoyce@murthalaw.com
- Maire Bridin Corcoran Ragozzine mcorcoran@bernsteinshur.com, sspizuoco@bernsteinshur.com;astewart@bernsteinshur.com;acummings@bernsteinshur.com;kfox@bernsteinshur.com;kquirk@bernsteinshur.com
- Keith J. Cunningham kcunningham@pierceatwood.com, mpottle@pierceatwood.com;rkelley@pierceatwood.com
- Debra A. Dandeneau , arvin.maskin@weil.com
- Joshua R. Dow jdow@pearcedow.com, rpearce@pearcedow.com;lsmith@pearcedow.com
- Michael A. Fagone mfagone@bernsteinshur.com, acummings@bernsteinshur.com;astewart@bernsteinshur.com;sspizuoco@bernsteinshur.com;kquirk@bernsteinshur.com;kfox@bernsteinshur.com
- Daniel R. Felkel dfelkel@troubhheisler.com
- Jeremy R. Fischer jfischer@dwmlaw.com, aprince@dwmlaw.com
- Isaiah A. Fishman ifishman@krasnowsaunders.com, ryant@krasnowsaunders.com;cvalente@krasnowsaunders.com
- Peter J. Flowers pjf@meyers-flowers.com

- Christopher Fong christopherfong@paulhastings.com
- Taruna Garg tgarg@murthalaw.com, cball@murthalaw.com;kpatten@murthalaw.com
- Jay S. Geller jgeller@jaysgellerlaw.com
- Craig Goldblatt craig.goldblatt@wilmerhale.com
- Frank J. Guadagnino fguadagnino@clarkhillthorpreed.com
- Michael F. Hahn mhahn@eatonpeabody.com, clavertu@eatonpeabody.com;dcroizier@eatonpeabody.com;jmiller@eatonpeabody.com; dgerry@eatonpeabody.com
- Andrew Helman ahelman@mcm-law.com, bankruptcy@mcm-law.com
- Paul Joseph Hemming phemming@briggs.com, pkringen@briggs.com
- Seth S. Holbrook holbrook_murphy@msn.com
- Nathaniel R. Hull nhull@verrilldana.com, bankr@verrilldana.com
- David C. Johnson bankruptcy@mcm-law.com, djohnson@mcm-law.com
- Jordan M. Kaplan jkaplan@zwerdling.com, mwolly@zwerdling.com
- Robert J. Keach rkeach@bernsteinshur.com, acummings@bernsteinshur.com;astewart@bernsteinshur.com;kquirk@bernsteinshur.com
- Curtis E. Kimball ckimball@rudman-winchell.com, jphair@rudman-winchell.com;cderrah@rudmanwinchell.com
- Thomas Addison Knowlton Thomas.a.knowlton@maine.gov
- Andrew J. Kull akull@mittelasen.com, ktrogner@mittelasen.com
- George W. Kurr gwkurr@grossminsky.com, tmseymour@grossminsky.com
- Alan R. Lepene Alan.Lepene@ThompsonHine.com, Cathy.Heldt@ThompsonHine.com
- Edward MacColl emaccoll@thomport.com, bbowman@thomport.com;jhuot@thomport.com;eakers@thomport.com
- Benjamin E. Marcus bmarcus@dwmlaw.com, hwhite@dwmlaw.com;dsoucy@dwmlaw.com
- George J. Marcus bankruptcy@mcm-law.com
- Patrick C. Maxcy patrick.maxcy@dentons.com
- John R McDonald jmcdonald@briggs.com, mjacobson@briggs.com
- Kelly McDonald kmcdonald@mpmlaw.com, kwillette@mpmlaw.com
- James F. Molleur jim@molleurlaw.com, all@molleurlaw.com;tanya@molleurlaw.com;jen@molleurlaw.com;barry@molleurlaw.com;kati@molleurlaw.com;martine@molleurlaw.com;Jessica@molleurlaw.com
- Ronald Stephen Louis Molteni moltenir@stb.dot.gov
- Victoria Morales Victoria.Morales@maine.gov, rhotaling@clarkhillthorpreed.com,Toni.Kemmerle@maine.gov,ehocky@clarkhill.com,Nathan.Moulton@maine.gov,Robert.Elder@maine.gov
- Dennis L. Morgan dmorgan@coopercargillchant.com, hplourde@coopercargillchant.com
- Stephen G. Morrell stephen.g.morrell@usdoj.gov
- Kameron W. Murphy kmurphy@tuethkeeney.com, gcasey@tuethkeeney.com
- Office of U.S. Trustee ustpregion01.po.ecf@usdoj.gov
- Richard P. Olson rolson@perkinsolson.com, jmoran@perkinsolson.com;lkubiak@perkinsolson.com

- Jeffrey T. Piampiano jpiampiano@dwmlaw.com, aprince@dwmlaw.com;hwhite@dwmlaw.com
- Jennifer H. Pincus Jennifer.H.Pincus@usdoj.gov
- William C. Price wprice@clarkhill.com, rhotaling@clarkhillthorpreed.com
- Elizabeth L. Slaby bslaby@clarkhillthorpreed.com
- F. Bruce Sleeper bankruptcy@jbgh.com
- Renee D. Smith renee.smith@kirkland.com, brian.rittenhouse@kirkland.com
- John Thomas Stemplewicz john.stemplewicz@usdoj.gov
- Deborah L. Thorne deborah.thorne@btlaw.com
- Timothy R. Thornton pvolk@briggs.com
- Mitchell A. Toups matoups@wgttlaw.com, jgordon@wgttlaw.com
- Jason C. Webster jwebster@thewebsterlawfirm.com, dgarcia@thewebsterlawfirm.com;hvicknair@thewebsterlawfirm.com
- William H. Welte wwelte@weltelaw.com
- Elizabeth J. Wyman liz.wyman@maine.gov, eve.fitzgerald@maine.gov

Manual Notice List

The following is the list of **parties** who are **not** on the list to receive email notice/service for this case (who therefore require manual noticing/service). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Wystan M. Ackerman
Michael R. Enright
Stephen Edward Goldman
Robinson & Cole LLP
280 Trumbull STreet
Hartford, CT 06103

Daniel Aube
308 St-Lambert Street
Sherbrooke, QU J1C0N9

Steven J. Boyajian
Robinson & Cole LLP
One Financial Plaza, Suite 1430
Providence, RI 02903

Allison M. Brown
Diane P. Sullivan
Weil, Gotshal & Manges LLP
301 Carnegie Center, Suite 303
Princeton, NJ 08540

Craig D. Brown
Meyers & Flowers, LLC
3 North Second Street, Suite 300
St. Charles, IL 60174

Luc A. Despins
Paul Hastings, LLP
75 East 55th Street
New York, NY 10022

Alan S. Gilbert
233 South Wacker Drive, Suite 7800
Chicago, IL 60606

Marcia L. Goldstein
Arvin Maskin
Victoria Vron
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153

Eric M. Hocky
Clark Hill Thorp Reed
2005 Market Street
Suite 1000
Philadelphia, PA 19103

Terence M. Hynes
Sidley Austin LLP
1501 K. Street N.W.
Washington, DC 20005

Robert Jackstadt
Tueth, Keeney, Cooper, Mohan & Jackstadt
101 West Vandalia, Suite 210
Edwardsville, IL 62025

Thomas A. Labuda
Matthew E. Linder
Jeffrey C. Steen
Sidley Austin, LLP
One South Dearborn
Chicago, IL 60603

Stefanie Wowchuck McDonald
233 South Wacker Drive, Suite 7800
Chicago, IL 60606

William K. McKinley
Troubh Heisler
511 Congress Street
P.O. Box 9711
Portland, ME 04104-5011

Dennis M. Ryan
Faegre Baker Daniels LLP
90 South 7th St Ste 2200
Minneapolis, MN 55402-3901

Virginia Strasser
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

Robert D. Thomas
49 Park Street
Dexter, ME 04930

Frederick J. Williams
74 Bellevue Street
Compton, QU J0B 1L0

Michael S. Wolly
Zwerdling, Paul, Kahn & Wolly, PC
1025 Connecticut Ave., N.W
Washington, DC 20036