

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

In re:

MONTREAL MAINE & ATLANTIC
RAILWAY, LTD.

Debtor.

Bk. No. 13-10670
Chapter 11

**OMNIBUS REPLY AND RESERVATION OF RIGHTS OF
GENERAL ELECTRIC RAILCAR SERVICES CORPORATION
REGARDING TRUSTEE'S MOTION FOR ENTRY OF AN ORDER
AUTHORIZING FILING OF SETTLEMENT AGREEMENTS UNDER SEAL**

General Electric Railcar Services Corporation ("GERSCO") files this omnibus reply and reservation of rights (a) in support of the *Motion for Entry of an Order Authorizing Filing of Settlement Agreements under Seal* [Docket No. 1397] (the "Sealing Motion") filed on April 21, 2015 by Robert J. Keach, the chapter 11 trustee (the "Trustee") for Montreal Maine & Atlantic Railway, Ltd. ("MMA"), and the omnibus reply [Docket No. 1491] to the objections below filed by the Trustee on July 7, 2015 (the "Trustee's Reply"), and (b) in response to (i) the *United States Trustee's Objection to Motion for Entry of an Order Authorizing Filing of Settlement Agreements under Seal* [Docket No. 1459], (ii) *Canadian Pacific Railway Company's Objection to the Trustee's Motion to File Settlement Agreements under Seal* [Docket No. 1461], and (iii) *Wheeling & Lake Erie Railway Company's Supplemental Objection to Motion for Entry of an Order Authorizing Filing of Settlement Agreements under Seal* [Docket No. 1465]. In support hereof, GERSCO respectfully states as follows.

BACKGROUND

1. As previously reported by the Trustee in Exhibit 2 to the *Trustee's First Amended Plan of Liquidation Dated July 7, 2015* [Docket No. 1495], GERSCO has entered into a

settlement agreement (the “GERSCO Settlement Agreement”) with the Trustee and MMA’s wholly owned subsidiary, Montreal Maine & Atlantic Canada Co. (“MMAC”). As the Trustee has also previously reported, subject to the terms of the GERSCO Settlement Agreement, GERSCO has agreed to contribute to a settlement fund in exchange for, among other things, a full and final release of and global injunction barring all claims against GERSCO and certain related parties arising out of the July 6, 2013 train derailment in Lac-Mégantic, Québec (the “Derailment”). According to the Trustee and MMAC, approximately 24 other entities or groups of affiliated entities have entered into similar settlement agreements.

2. The GERSCO Settlement Agreement contains a standard confidentiality provision, subject to the right of the Trustee and MMAC to file under seal copies of the agreement with this Court and the Québec Superior Court (the “Canadian Court”) administering MMAC’s proceeding under Canada’s *Companies’ Creditors Arrangement Act* (the “Canadian Case”).

3. On May 6, 2015, Canadian Pacific Railway Company (“CP”) filed a motion with the Canadian Court seeking to obtain copies of the settlement agreements on substantially similar terms to those set forth in CP’s objection here. At a June 15, 2015 hearing in MMAC’s case, the Canadian Court, consistent with the terms of a redaction protocol proposed by MMAC and certain of the settling parties, resolved CP’s motion by directing MMAC to promptly provide CP’s counsel with copies of the settlement agreements (including the GERSCO Settlement Agreement), subject to the following conditions: (a) the financial terms of the settlement agreements shall be redacted; (b) the agreements shall be provided solely to CP’s counsel; (c) the agreements shall be used by CP’s counsel only to contest the proposed plans for MMA and MMAC before this Court and the Canadian Court; (d) the agreements shall be filed with the

Canadian Court under seal and subject to a publication ban; and (e) neither MMAC's communication of the agreements to CP's counsel, nor the consent of any of the settling parties thereto, shall be interpreted as a waiver of any privilege or confidentiality.

4. According to the Trustee, on June 16, 2015, the MMAC monitor provided CP's counsel with a redacted copy of the GERSCO Settlement Agreement in accordance with the protocol approved by the Canadian Court. (Trustee's Reply at ¶ 7.)

5. In the Trustee's July 7, 2015 Reply, the Trustee represents that he is willing—subject to the consent of the settling parties (including GERSCO)—to alter the relief sought by the Sealing Motion so as to be consistent with the ruling of the Canadian Court on the settlement agreement confidentiality issue.

OMNIBUS REPLY AND RESERVATION OF RIGHTS

6. GERSCO has already complied with the Canadian Court's recent ruling by submitting a redacted copy of the GERSCO Settlement Agreement to the Trustee and counsel for MMAC, which, in turn, has been forwarded to counsel for CP. (*See* Trustee's Reply at ¶ 7.) As a result, CP's objection, and its request that it "be given access to the settlement agreements," has been rendered moot. (*See* CP Objection at 11.)

7. Nevertheless, consistent with the Trustee's Reply, GERSCO is willing to consent to the Trustee's submission to the U.S. Trustee (the "UST"), counsel to CP, and counsel to the Official Committee of Victims (the "OVC", if and to the extent such committee is still in operation) of the same redacted copy of the GERSCO Settlement Agreement previously provided by the MMAC monitor to CP's counsel in the Canadian Case, subject, however, to each of the conditions set forth in the Trustee's Reply, including the following:

- (a) the Trustee shall redact the financial terms of the GERSCO Settlement Agreement, the form of which shall be identical to the form provided to CP in connection with the Canadian Case;
- (b) the Trustee shall provide a redacted copy of the GERSCO Settlement Agreement only to the UST, counsel to CP, and counsel to the OVC (if and to the extent such committee is still in operation);
- (c) the redacted copy of the GERSCO Settlement Agreement shall be inadmissible in Court except insofar as it may be used in preparation for hearings with respect to MMA's plan of liquidation;
- (d) the GERSCO Settlement Agreement shall be filed with the Court under seal and shall be subject to a publication ban; similarly, steps shall be taken during all applicable hearings to preserve the confidentiality of the GERSCO Settlement Agreement and the terms thereof; and
- (e) communication of the redacted copy of the GERSCO Settlement Agreement shall not be interpreted as a renunciation or waiver of the confidential and privileged nature of such agreement.

8. As to the objection filed by Wheeling, while GERSCO does not object to the position taken by the Trustee in his Reply, GERSCO reserves the right to be heard further on this matter at the hearing on the Sealing Motion if and as warranted.

9. Pending the completion of the MMA plan confirmation process, GERSCO reserves all of its rights and remedies under the GERSCO Settlement Agreement.

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Dated: July 13, 2015

Respectfully submitted,

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**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.)

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 Ominbus Reply and Reservation of Rights of General Electric Railcar Services Corporation Regarding Trustee's Motion for Entry of an Order Authorizing Filing of Settlement Statement Agreements Under Seal, to be served upon the parties indicated on the service list attached hereto in the manner described on said service list.

Dated: Portland, Maine
July 13, 2015

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Chapter 11 Case No. 13-10670

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