UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

OBJECTION TO PROOF OF CLAIM FILED BY CANADIAN PACIFIC RAILWAY COMPANY ON THE BASIS THAT SUCH CLAIM IS UNENFORCEABLE AGAINST THE DEBTOR

Robert J. Keach, the chapter 11 trustee (the "Trustee") of Montreal Maine & Atlantic Railway, Ltd. (the "Debtor"), hereby objects (the "Objection") to Amended Proof of Claim No. 92-2 filed by Canadian Pacific Railway Company ("CP"). As set forth below, the Trustee objects to CP's asserted claim on the basis that such claim must be disallowed and, in any event, is unenforceable. In support of this Objection,[1] the Trustee states as follows:

JURISDICTION AND VENUE

1. The United States District Court for the District of Maine (the "District Court") has original, but not exclusive, jurisdiction over this chapter 11 case pursuant to 28 U.S.C. § 1334(a) and over this Objection pursuant to 28 U.S.C. § 1334(b). Pursuant to 28 U.S.C. § 157(a) and Rule 83.6 of the District Court's local rules, the District Court has authority to refer and has referred this chapter 11 case, and, accordingly, this Objection, to this Court.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has constitutional authority to enter judgment in this action.

[1] The Trustee has already objected to CP's Claim by virtue of the Amended Complaint (each as defined below). *See* Amended Complaint, Count III. For clarity of record, however, the Trustee submits this claim objection on the docket of this Case.

3. Venue over this chapter 11 case is proper in this district pursuant to 28 U.S.C. § 1408, and venue over this proceeding is proper in this district pursuant to 28 U.S.C. § 1409.

4. The relief sought in this Objection is predicated upon, *inter alia*, sections 502(b)(1), 502(e)(1)(B) and 502(e)(1)(C) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 3007-1 of the Local Rules for the United States Bankruptcy Court for the District of Maine (the "Local Rules").

BACKGROUND

A. The Derailment and the Debtor's Bankruptcy Filing

5. On July 6, 2013, an eastbound train (the "Train") operated by the Debtor and/or the Debtor's Canadian subsidiary derailed in Lac-Mégantic, Québec (the "Derailment"). The Derailment set off several massive explosions, destroyed part of downtown Lac-Mégantic, and killed 47 people. At the time of the Derailment, the Train was transporting crude oil (the "Crude Oil") produced from the Bakken Formation in North Dakota (the "Bakken Formation").

6. The entire shipment of the Crude Oil was subject to a through bill of lading (the "Bill of Lading") issued by CP to Western Petroleum Company, Word Fuel Services Corporation and/or Word Fuel Services, Inc. The Train was originally operated by CP, which later "handed it off" to the Debtor, but no new bill of lading was issued and the shipment remained subject to CP's original through bill of lading.

7. As a result of the Derailment, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On or about August 21, 2013, the United States Trustee appointed the Trustee to serve in the Debtor's chapter 11 case (the "Case") pursuant to 11 U.S.C. § 1163.

8. The Derailment also resulted in numerous claims, suits and proceedings being brought against the Debtor and CP, among others, including: (i) suits seeking damages for personal injury, wrongful death, and property damage; (ii) governmental proceedings seeking to recover the clean-up costs of environmental damage; and (iii) claims seeking indemnity and/or contribution with respect to those claims, suits, and proceedings. The damages resulting from the Derailment have been estimated to be in the several hundreds of millions of dollars, and potentially in excess of a billion dollars.

B. The Trustee's Adversary Proceeding

9. On January 30, 2014, the Trustee commenced an adversary proceeding against Petroleum Transport Solutions, LLC, Western Petroleum Company, World Fuel Services Canada, Inc., World Fuel Services Corporation, and World Fuel Services, Inc. (collectively, the "World Fuel Claimants") (Adv. Pro. No. 14-1001) (the "Adversary Proceeding") asserting a cause of action for negligence, as well as a request for the disallowance of claims.

10. On May 29, 2014, the World Fuel Claimants answered the complaint, denying the allegation of negligence and denying liability for the damages arising from the Derailment.

11. As a result of new facts, information and evidence that came to light following the commencement of the Adversary Proceeding, the Trustee, with leave from the Court, filed on January 9, 2015 an amended complaint naming CP and Irving Oil Limited as defendants in the Adversary Proceeding [Adv. D.E. 95] (as may be further amended from time to time, the "Amended Complaint"). As set forth more fully in the Amended Complaint, CP's negligence in connection with the Derailment was the proximate cause of, among other things, the destruction of the Debtor's business, and resulted in the Debtor incurring substantial costs and expenses, and risking substantial liability, in relation to the Derailment. A true and correct copy

of the Amended Complaint is attached hereto as **Exhibit A**, and is fully incorporated herein by reference.

12. On January 15, 2015, CP filed a motion to withdraw the reference on the Adversary Proceeding (the "Motion to Withdraw"), seeking to remove the action from the adversary proceeding to the District Court.

13. On May 18, 2015, the Trustee filed his Second Amended Complaint, adding SMBC Rail Services, LLC ("SMBC") as a defendant to the adversary proceeding.

14. On June 8, 2015, the District Court denied CP's Motion to Withdraw (the "Order on Motion to Withdraw").

15. Also on June 8, 2015, the Trustee and the World Fuel Claimants announced the conclusion of an agreement whereby, subject to Court approval in Canada and in the United States, the World Fuel Claimants will contribute US$110,000,000 to the Trustee's fund for settling Derailment Claims. In addition, on about June 8, 2015, the Trustee also reached a settlement with SMBC. CP is thus the sole remaining non-settling defendant with respect to the Adversary Proceeding.

16. On June 23, 2015, CP filed a motion to dismiss the Adversary Proceeding as to CP (the "Motion to Dismiss"). On July 21, 2015, the Trustee filed an objection to the Motion to Dismiss. A pretrial conference in the Adversary Proceeding is scheduled for August 18, 2015 at 10:30 a.m. (ET).

C. CP's Proof of Claim

17. On June 6, 2014, CP filed a proof of claim pursuant to Bankruptcy Code section 502(a). Thereafter, on June 13, 2014, CP filed the Amended Proof of Claim No. 92-2 (the "CP Claim"). The CP Claim asserts a general unsecured claim against the Debtor in the amount of $924,583.29. Attached to the Amended Proof of Claim is CP's *Supplement to its Amendment to*

Proof of Claim 92-1 (the "Supplement"), in which CP asserts various grounds for its claims against the Debtor.[2]

i. The Alleged Derailment Claims

18. CP asserts claims against the Debtor arising from the Derailment. Specifically, CP alleges "indemnification, contribution, and subrogation rights against the Debtor" in connection with the Wrongful Death Cases and the Quebec Class Action Litigation (together, the "Wrongful Death Litigation"). See Supplement, at ¶¶ 10, 16. As a basis for these claims, CP states that it "disputes that it has any liability" in those cases. Id. at ¶¶ 9, 15.

19. CP argues, without authority, that its claims for indemnification, contribution, and subrogation are "entitled to the same priority as the plaintiffs' claims in the [Wrongful Death Litigation]." Id. at ¶¶ 10, 16. CP further argues, without authority, that "[t]o the extent that CP asserts a claim in connection with the [Wrongful Death Litigation], CP does not assert a claim in their [sic] own right against the Debtor, but asserts a claim a [sic] subrogee of one or more plaintiffs in the [Wrongful Death Litigation]." Id. at ¶¶ 11, 17.[3] Further still, CP asserts that if its "claim for subrogation is denied for any reason, then [it] will and hereby does assert a claim for indemnification, reimbursement, and contribution." Id. at ¶ 11.

20. The Derailment Claims also include claims against the Debtor for any amount that CP may be held to pay for the Clean-up Costs or to the Lading Claimants, Id. at ¶¶ 22, 27, as well as claims "for any amount that CP may be required to pay in relation to any prospective

[2] Unless otherwise indicated, capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Supplement.

[3] Indeed, persuasive authority provides that the contingent claims of a potentially liable party cannot be subrogated to the claims of underlying creditors until, among other things, there exists a final determination as to whether such potentially liable party is *primarily* liable for the underlying claim (in which case, such primarily liable defendant has no right of subrogation at all). See In re Chicago, Mo. & W. Railroad Co. v. Baltimore and Ohio Chicago Terminal Railroad Co., No. 90 C 6939, 1991 WL 83926 (N.D. Ill. May 9, 1991) (dismissing appeal of bankruptcy court decision sustaining trustee's objection to rail track owner's contingent 1171(a) claim asserted through principals of equitable subrogation). The bankruptcy court decision is available upon reasonable request to counsel to the Trustee.

property damages claims, including subrogated property damage claims, as a consequence of the Derailment." Id. at ¶ 29. Presumably CP is also asserting indemnification, contribution, and/or subrogation rights against the Debtor in connection with these claims. See id. at ¶¶ 22, 27, 29.

21. CP acknowledges that the Derailment Claims are contingent, unliquidated claims. See id. ¶¶ 7, 13, 21, 26, 30. CP does not, however, provide an estimate of the value of the Derailment Claims nor does CP provide any documentation to support such claims.

ii. The Alleged Non-Derailment Claims

22. CP asserts a claim against the Debtor for breach of the CP Agreements under 11 U.S.C. § 365 (the "Breach of Contract Claim"). See id. at ¶ 36. CP notes that its "claim for rejection damages is contingent on the continued rejection of the CP Agreements." Id. at ¶ 36. As set forth in Exhibit A to the Supplement, and as reflected on the Amended Proof of Claim, CP values its Breach of Contract Claim at $924,583.29.

iii. The Alleged Administrative Expense Claims

23. CP asserts that the "Debtor continued to receive the benefits of certain of the CP Agreements after the Petition Date," and, therefore, it "has an administrative expense claim for the value of those benefits received by the estate" (the "CP Admin Claim"). Id. at ¶ 38. CP further asserts that it is "entitled to amounts owed as pre-reorganization operating expenses for applicable services and supplies to the Debtor during [the six months prior to the Petition Date] as an administrative expense priority claim" pursuant to 11 U.S.C. §1171(b) (the "§1171(b) Claim"). Id. at ¶39. CP does no assert any amounts to be owing on account of the CP Admin Claim or the §1171(b) Claim, but simply "reserves its right to separately file an administrative expense claim for all such amounts." Id. at ¶¶ 38, 39, 43.

24. On December 1, 2014, CP exercised such right and filed the *Application of Canadian Pacific Railway Company for Allowance and Payment of Administrative Expense Claim* (the "CP Admin Application") [D.E. 1295]. The Trustee reserves all rights to object to the CP Admin Claim (and the §1171(b) Claim more fully) in the context of the Trustee's objection to the CP Admin Application.[4]

iv. The Alleged §553 Set Off Claims

25. CP claims that it holds a secured claim "in an unliquidated amount to the extent of any amounts that are subject to setoff under Section 553 of the Bankruptcy Code." Id. at ¶ 42. CP notes that it "reserves its right to claim setoff and amend this claim to reflect any secured amounts." Id. The Trustee reserves the right to object to any such claim when, if ever, asserted by CP.

RELIEF REQUESTED

26. By this Objection, the Trustee requests entry of an order, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rule 3007 and Local Rule 3007-1, (a) sustaining the Objection, (b) disallowing the CP Claim in its entirety, and (c) granting such other and further relief as this Court deems just and equitable.

BASIS FOR RELIEF

27. Section 502(a) provides that "[a] claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). The Bankruptcy Code defines a "claim" as a "right to payment," 11 U.S.C. § 101(5)(A), "usually referring to a right to payment recognized under state law." In re Hann,

[4] Pursuant to a consented-to motion, the Court entered an order extending the deadline for the Trustee to file an objection to the CP Admin Application to August 25, 2015 [D.E. 1484]. A hearing on the CP Admin Application is currently scheduled for September 22, 2015 at 10:30 a.m. (ET) [D.E. 1484].

476 B.R. 344, 354 (B.A.P. 1st Cir. 2012), aff'd, 711 F.3d 235 (1st Cir. 2013) (quoting Travelers Cas. and Sur. Co. of America v. Pac. Gas and Elec. Co., 549 U.S. 443, 451 (2007)).

28. If an objection to a proof of claim is made, the court must determine the amount of the claim pursuant to section 502(b). See 11 U.S.C. § 502(b). The Court may also "disallow any claim for reimbursement or contribution of an entity that is liable with the debtor" under section 502(e). See 11 U.S.C. §502(e)(1).

A. The Trustee Objects to the Derailment Claims

i. The Derailment Claims are Contingent Claims for Indemnification and/or Contribution Claims and, As Such, Should Be Disallowed Pursuant to Bankruptcy Code Section 502(e)(1)(B) and (C)

29. As contingent claims for indemnification and/or contribution, the Derailment Claims must be disallowed pursuant to section 502(e)(1)(B) of the Bankruptcy Code. Section 502(e)(1)(B) provides as follows:

> Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, *the court shall disallow any claim for reimbursement or contribution* of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that – (B) *such claim for reimbursement or contribution is contingent* as of the time of allowance or disallowance of such claim for reimbursement or contribution.

11 U.S.C. § 502(e)(1)(B) (emphasis added). Accordingly, a claim is disallowed under section 502(e)(1)(B) if "(1) the party asserting the claim [is] liable with the debtor on the claim of a third party; (2) the claim [is] contingent at the time of its allowance; and (3) the claim [is] for reimbursement or contribution." In re Lyondell Chem. Co., 442 B.R. 236, 243 (Bankr. S.D.N.Y. 2011); see also In re Hemingway Transp., Inc., 993 F.2d 915, 922-23 (1st Cir. 1993).

30. "Section 502(e)(1)(B) was enacted for one purpose-'to prevent [ ] *competition between a creditor and his guarantor* for limited proceeds of the estate." Hemingway, 993 F.2d at 923 (citing H. R. Rep. No. 595, 95th Cong., 1st Sess. 354 (1997)) (emphasis in original).

Although "devised *primarily* with contract-based codebtor relationships in mind (e.g., guaranties, suretyships) . . . its language ("liable with") has been found too plain and inclusive to exempt "joint and several" tort-based obligations from disallowance . . . and the Bankruptcy Code elsewhere carves out no exception for this variety of co-obligation." Id. at 924 (emphasis in original).

31. CP's claims for indemnification, reimbursement, and contribution should, therefore, be disallowed. First, CP asserts claims for indemnification and/or reimbursement. See Supplement, ¶¶ 11, 17, 22, 27, 29. Second, as set forth in the Amended Complaint, CP is liable with the Debtor, if not primarily liable, with respect to all the claims underlying CP's Derailment Claims. Such claims, moreover, have also been asserted against the Debtor. As such, CP is liable with the Debtor on a "claim of a creditor." 11 U.S.C. § 502(e)(1); cf. Hemmingway, 993 F.2d at 928 (order disallowing creditor's claim under section 502(e)(1)(B) vacated, in part, because shared creditor had not filed a proof of claim). Finally, CP concedes that the Derailment Claims are contingent and unliquidated. See Supplement, ¶¶ 7, 14, 21, 26, 30. Accordingly, the Derailment Claims fail the test for allowable indemnification or contribution claims under 11 U.S.C. § 502(e)(1)(B), and thus should be disallowed in their entirety.

32. In addition, to the extent CP has validly asserted Derailment Claims on the theory of subrogation (which the Trustee disputes, as set forth below), any Derailment Claims also asserted on the theories of reimbursement or contribution must be disallowed pursuant to Bankruptcy Code section 502(e)(1)(C). Section 502(e)(1)(C) provides, in pertinent part, that "the court shall disallow any claim for reimbursement or contribution . . . to the extent that . . . such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title." 11 U.S.C. 502(e)(1)(C). The rationale for preventing a creditor from asserting

subrogation claims *and* claims for reimbursement or contribution is to prevent "double dipping" by creditors, and to force creditors to elect a remedy with respect to the debtor. See In re Watkins Oil Serv., Inc., 100 B.R. 7, 12 (Bankr. D. Ariz. 1989) ("[The] election, between filing a claim and asserting a right to subrogation, is to prevent a party from receiving more than one recovery. Therefore, if a party has asserted a right to subrogation, the Court should disallow the claim filed by the party also seeking a right to contribution or reimbursement.") (citations omitted). CP has characterized the Derailment Claims as claims for subrogation. See Supplement, at ¶¶ 10, 16. To the extent properly characterized as subrogation claims, any Derailment Claims also characterized as reimbursement and/or contribution claims must be disallowed pursuant to section 502(e)(1)(C).

ii. The Derailment Claims Are Improperly Characterized as Subrogation Claims Under Bankruptcy Code Section 509 and Other Applicable Law, and to the Extent Properly Characterized, Should Be Disallowed Pursuant to Section 502(e)(1)(B)

33. As an initial matter, CP has not properly asserted a claim for subrogation against the Debtor under section 509(a) or other applicable law. First, as set forth above, contingent claims of a potentially liable party cannot be subrogated to the claims of underlying creditors until, among other things, there exists a final determination as to whether such potentially liable party is *primarily* liable for the underlying claim (in which case, such primarily liable defendant has no right of subrogation at all). See Chicago, Mo. & W. Railroad Com., 1991 WL 83926 (interpreting Illinois law). As CP's liability for the Derailment has not yet been fully adjudicated (and will not be for some time), it is conclusively precluded from asserting a claim for subrogation to the rights of Derailment victims under Bankruptcy Code section 1171(a) or otherwise.

34. Second, section 509(a) of the Bankruptcy Code provides that "an entity that is liable with the debtor on . . . a claim of a creditor against the debtor, *and that pays such claim*,

is subrogated to the rights of such creditor to the extent of such payment." 11 U.S.C. § 509(a) (emphasis added). A codebtor's right to assert a subrogation claim, therefore, requires that it pay, at least in part, the shared creditor's claim. See Chateaugay, 1995 WL 429018, at *4 ("Section 509(a) establishes that a codebtor's right of subrogation arises only when and to the extent that the codebtor pays the assured creditor.") (citations omitted). As CP has not remitted *any* payments to any of the creditors asserting the claims underlying CP's Derailment Claims, CP cannot properly assert a claim for subrogation under Bankruptcy Code section 509, and any claim so asserted must be disallowed.[5]

35. But even if not disallowed in accordance with applicable law or Bankruptcy Code section 509, the Derailment Claims asserted as claims for subrogation must be disallowed pursuant to Bankruptcy Code section 502(e)(1)(c). At best, the Derailment Claims are claims for *prospective* subrogation, which have been held to fall within the ambit of section 502(e)(1)(B). See, e.g., Aetna Cas. & Sur. Co. v. Georgia Tubing Co. (In re Chateaugay Corp.), No. 93 Civ. 3659, 1995 WL 429018, at *3-4 (S.D.N.Y. July 20, 1995) ("Aetna's denotation of its claim as one of "contingent" or "prospective" subrogation cannot obscure the fact that Aetna is asserting a contingent codebtor claim for reimbursement . . . . In short, the Bankruptcy Court properly disallowed Aetna's claim pursuant to § 502(e)(1)(B); it is precisely claims such as Aetna's that § 502(e)(1)(B) disallows."). As CP's Derailment Claims constitute (at best) prospective subrogation claims, and given that such claims are akin to contingent claims for indemnity and contribution, CP's subrogation claims must be disallowed under section

[5] Even assuming *arguendo* that CP has made payments that would grant it a subrogation claim under section 509(a), such claims would remain subordinated "until [the underlying] creditor's claim is paid in full." 11 U.S.C. § 509(c). Accordingly, to the extent that CP could validly assert a claim for subrogation, CP would not be "entitled to the same priority as the plaintiffs' claims" in the Wrongful Death Cases and the Quebec Class Action Litigation, see Supplement, ¶¶ 10, 16, until the plaintiffs in such cases were paid in full.

502(e)(1)(B) to the same extent as its contingent indemnification and contribution claims. See Aetna, 1995 WL 429018, at *3-4.

iii. In Any Event, the Derailment Claims Should Be Disallowed Pursuant to Bankruptcy Code Section 502(b)(1)

36. Even if the Court finds that the Derailment Claims survive the clear requirements of Bankruptcy Code sections 502(e) and 509, the Derailment Claims must be disallowed pursuant to section 502(b)(1). Section 502(b)(1) provides that if an objection to a claim is filed, the court, after notice and a hearing, "shall allow such claim . . . except to the extent that—(1) such claim is unenforceable against the debtor and property of the debtor . . . ." 11 U.S.C. § 502(b)(1).

37. For the reasons set forth in the Amended Complaint, the amount owed by CP to the Debtor vastly exceeds the amount, if any, that the Debtor owes to CP. A true and correct copy of the Amended Complaint is attached hereto as **Exhibit A**. Accordingly, the Derailment Claims should be disallowed as unenforceable against the Debtor because the Trustee is entitled to a setoff, recoupment, or other claim against CP exceeding CP's claims against the Debtor. See 11 U.S.C. § 502(b)(1).

B. The Trustee Objects to the Breach of Contract Claim

38. As set forth above, section 502(b)(1) provides that if an objection to a claim is filed, the court, after notice and a hearing, "shall allow such claim . . . except to the extent that—(1) such claim is unenforceable against the debtor and property of the debtor . . . ." 11 U.S.C. § 502(b)(1). First, the Trustee denies that CP has suffered any damages from the rejection of the relevant CP Agreements; no rejection or breach damages exist. Second, For the reasons set forth in the Amended Complaint, the amount owed by CP to the Debtor vastly exceeds the amount, if any, that the Debtor owes to CP as a result of the alleged Breach of Contract Claim (even after taking into account any liability on account of the Derailment

Claims). As a result, CP's Breach of Contract Claim should be disallowed as unenforceable against the Debtor because no damages exist and the Trustee is entitled to a setoff, recoupment, or other claim against CP exceeding CP's claims against the Debtor. See id.

C. The Trustee Objects to the §1171(b) Claim

39. Bankruptcy Code section 1171(b) preserves the priority of claims in pre-Code equity receiverships. See 8 COLLIER ON BANKRUPTCY ¶ 1171.02, pp. 107-9, 107 (16th ed. 2010). The specific claims protected by section 1171(b) are referred to as "six-month claims," which are claims incurred where: (i) the claim arose within six months of the filing of the petition; (ii) the obligation was incurred for a current and necessary operating expense in the ordinary course of business; and (iii) the creditor expected to be paid out of the current operating revenues of the railroad, rather than relying on the railroad's general credit. Id.

40. The Trustee objects to the asserted §1171(b) Claim on the basis that (a) such claim is wholly unliquidated—indeed, CP's proof of claim asserts no amounts owing or basis therefor, and absent any basis for assertion, (b) such claim necessarily cannot meet the requirements for a "six month claim." Further, the Trustee objects that there is no basis for any asserted § 1171(b) Claim to be afforded administrative status. Accordingly, the §1171(b) Claim should be disallowed in its entirety (and in the event not disallowed, liquidated and relegated to junior priority status).[6]

RESERVATION OF RIGHTS

41. As set forth above, the Trustee reserves the right to object to the CP Admin Claim (and more fully to the alleged §1171(b) Claim) in the context of the Trustee's objection to the CP Admin Application. The Trustee further reserves the right to object to any right of setoff asserted by CP. In addition, nothing contained herein is or should be construed as: (i) an

[6] As set forth above, the Trustee reserves the right to further object to the §1171(b) Claim in connection with his response to the CP Admin Application.

admission as to the validity of any claim against the Debtor, (ii) a waiver of the Trustee's right to dispute any claim on any grounds, or (iii) a promise to pay any claim.

NOTICE

42. Notice of this Objection was served on the following parties on the date and in the manner set forth in the certificate of service: (a) the Office of the United States Trustee; (b) counsel to the Official Committee of Victims; and (c) counsel for CP. The Trustee submits that no other or further notice need be provided.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Trustee requests that the Court enter an order, substantially in the form annexed hereto, pursuant to section 502 of the Bankruptcy Code, Bankruptcy Rule 3007 and Local Rule 3007-1, (i) sustaining this Objection; (ii) disallowing the CP Claim in its entirety; and (iii) granting such other and further relief as may be just.

Dated: August 7, 2015

ROBERT J. KEACH,
CHAPTER 11 TRUSTEE OF MONTREAL MAINE & ATLANTIC RAILWAY, LTD.

By his attorneys:
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EXHIBIT A

Amended Complaint

EXHIBIT
A

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MAINE

In re: MONTREAL, MAINE & ATLANTIC RAILWAY, LTD., Debtor.	Bk. No. 13-10670 Chapter 11
ROBERT J. KEACH, solely in his capacity as the chapter 11 trustee for MONTREAL, MAINE & ATLANTIC RAILWAY, LTD., Plaintiff v. WORLD FUEL SERVICES CORPORATION, WORLD FUEL SERVICES, INC., WESTERN PETROLEUM COMPANY, WORLD FUEL SERVICES, CANADA, INC., PETROLEUM TRANSPORT SOLUTIONS, LLC, CANADIAN PACIFIC RAILWAY COMPANY, and IRVING OIL LIMITED. Defendants.	Adversary Proceeding No. 14-1001

FIRST AMENDED COMPLAINT

Robert J. Keach, solely in his capacity as the chapter 11 trustee of Montreal, Maine & Atlantic Railway, Ltd. (the "Trustee"), by and through his undersigned counsel, brings this Amended Complaint asserting direct claims against Defendants World Fuel Services Corporation ("WFSC"), World Fuel Services, Inc. ("WFSI"), Western Petroleum Company ("Western Petroleum") (WFSC, WFSI, and Western Petroleum, collectively, the "World Fuel Defendants"), Canadian Pacific Railway Company ("CPR"), and Irving Oil Ltd. ("Irving") (the World Fuel Defendants, CPR, and Irving, collectively, "Defendants"). The Trustee also brings this

Amended Complaint seeking disallowance of the Proofs of Claim filed by any and all of the Defendants and by Defendant World Fuel Services Canada, Inc. ("WF Canada") and Defendant Petroleum Transport Solutions, LLC ("PTS") (WF Canada, and PTS, collectively, the "Objection Defendants"). In support of its Complaint, the Trustee avers as follows:

Nature of the Action

1. This action arises out of Defendants' individual and/or collective negligence and/or violation of applicable laws and regulations in connection with the shipment of crude oil upon and the subsequent derailment of a freight train transporting seventy-two tank cars loaded with crude oil (the "Train") in Lac-Mégantic, Quebec (Canada) on July 6, 2013 (the "Derailment").

2. Montreal, Maine & Atlantic Railway, Ltd. ("MMAR") and its wholly-owned Canadian subsidiary, Montreal Maine & Atlantic Canada Co. ("MMA Canada"), operate an integrated, international shortline freight railroad system involving five hundred ten miles of track located in the States of Maine and Vermont, and the Canadian Province of Québec.

3. MMAR and MMA Canada were the operators of the Train at the time of the Derailment. The entire shipment of crude oil was subject to a through bill of lading issued by CPR to Western Petroleum, WFSC and/or WFSI and naming Irving as the consignee. Irving was the importer of the crude oil into Canada; the shipment was bound for an Irving refinery.

4. The Train's cargo of crude oil, which was produced from the Bakken Formation in North Dakota, was owned by WFSI. Defendants arranged for its transport by rail from New Town, North Dakota to Irving's oil refinery in Saint John, New Brunswick (Canada). The tank cars carrying the cargo of crude oil were leased by Western Petroleum. CPR issued to WFSI, WFSC and/or Western Petroleum a through bill of lading (the "Bill of Lading") as to the entire

shipment of crude oil calling for shipment through to Irving's refinery in Saint John, New Brunswick, Canada. The Train was originally operated by CPR, which later "handed it off" to MMAR, but no new bill of lading was issued and the shipment remained subject to CPR's original through bill of lading. Irving was the ultimate purchaser of the crude oil cargo, which it imported from the United States into Canada.

5. Safe and prudent shipping practices, as well as governmental regulations in the United States and Canada, mandate that parties involved in shipment and/or importation of certain types of products that are deemed to be hazardous -- which includes crude oil -- must ensure that the product is properly classified, identified, labelled, and packaged so as to enable safe transport of such cargo.

6. As detailed below, if the goods are not properly classified, or if there are reasonable grounds to suspect that the goods are not properly classified, the parties responsible for the shipment have an affirmative duty not to place the goods for shipment, or to stop any such shipment, until the classification can be clarified or corrected.

7. The shipping documents provided by Defendants identified the Train's entire cargo of crude oil as a Class 3 flammable liquid having a high flash point -- the temperature at which organic material gives off sufficient vapors to ignite -- and, hence, a low danger. The Bill of Lading identified the shipment as "Packing Group III", the safest classification in that category.

8. These representations were false. On the contrary, tests conducted after the Derailment have confirmed that the crude oil had a dangerously low flash point and was highly volatile. Moreover, a number of the safety data sheets supplied to WFSI, WRSC and/or Western Petroleum, covering a significant portion of the crude oil shipped, identified the oil as Packing

Group I, the most dangerous, volatile and explosive classification in that category.

9. The tank cars provided to MMAR for transport of the crude oil cargo were all of the same model and design, so-called DOT-111's. Defendants knew or should have known that, without reinforced shells, head shields, valves, and other exposed fittings, this type of tank car was prone to rupture upon derailment. Further, Defendants knew or should have known that unreinforced tank cars were unsafe and unsuitable for the transport of such cargo. Indeed, the governing leases for a number of the tank cars leased to Western Petroleum, WFSC and/or WFSI expressly prohibited shipment of crude oil classified as Packing Group I or even Packing Group II in the leased tank cars, presumably because the lessors and/or manufacturers of such tank cars were aware that they were not fit for the shipment of such dangerous goods.

10. Had Defendants properly classified, identified, and labelled the Train's crude oil cargo, MMAR could and would have taken steps that would have avoided the Derailment, and/or the crude oil would have been shipped, from the outset, in other, safer tank cars, or not shipped at all.

11. The Derailment caused many of the Train's tank cars to rupture. Given its low flash point, the crude oil that leaked from the ruptured tank cars ignited, resulting in a number of concussive explosions and a massive, uncontrolled fire.

12. The explosions and fire, in turn, resulted in the loss of forty-seven lives, the destruction of a substantial portion of downtown Lac-Mégantic, significant environmental damage, the disruption of local businesses, and the evacuation of many of Lac-Mégantic's residents.

13. The death and destruction arising out of the Derailment spawned numerous claims, suits, and proceedings against MMAR, including: (i) suits seeking damages for personal

injury, wrongful death, and property damage; (ii) governmental proceedings seeking to recover the clean-up costs of environmental damage; and (iii) claims seeking indemnity and/or contribution with respect to those claims, suits, and proceedings. The damages resulting from the Derailment have been estimated to be in the hundreds of millions of dollars, and potentially in excess of a billion dollars.

14. These claims, suits, and proceedings, in turn, impelled MMAR to seek bankruptcy protection under chapter 11 of the Bankruptcy Code and have, effectively, destroyed MMAR's business, causing a serious devaluation of MMAR's assets.

15. Defendants owed a duty to the public at large and to MMAR specifically to take reasonable measures to avoid or mitigate the dangers associated with the transport of the Train's crude oil cargo and to exercise reasonable care to ensure that the Train could be operated in a safe manner to eliminate or reduce the risk of a derailment or minimize the damage that would result in the event of a derailment.

16. Such duties included, but were not limited to: (i) properly classifying the cargo; (ii) not placing the crude oil for transport until the shipment was properly tested and properly classified; (iii) stopping the shipment of the crude oil until it was properly classified; (iv) ensuring that MMAR was informed of the highly dangerous nature of the Train's cargo by, among other things, ensuring that the crude oil cargo was properly identified, classified, and labelled as a highly flammable liquid so that MMAR could implement adequate safety procedures and protocols; and (v) providing safe and appropriate packaging for the crude oil cargo, including providing properly designed and reinforced tank cars that would have prevented or reduced the damages resulting from the Derailment.

17. Defendants breached those duties, which breaches proximately caused MMAR to

suffer substantial injuries. MMAR's injuries include, but are not limited to: (i) the costs and expenses associated with being named in the numerous suits, actions, and proceedings in various jurisdictions, which arise out of the Derailment; (ii) actual or potential liability for the claims made against MMAR in such suits, actions, and proceedings; and (iii) the destruction of MMAR's business operations, and the lost value of its assets; asset value lost exceeds $50 million.

18. By this action, MMAR seeks to recover damages from Defendants, jointly and severally and in an amount to be determined at trial, for those injuries.

Jurisdiction and Venue

19. This Court has jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 157 and 1334(b).

20. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

21. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2), including, without limitation, §157(b)(2)(C). The Objection Defendants, PTS, and WF Canada, have each filed a proof of claim in MMAR's chapter 11 case: PTS filed POC No. 28 and WF Canada filed POC No. 30. Additionally, WFSI filed a proof of claim, POC No. 32; WFSC filed a proof of claim, POC No. 31; and Western Petroleum filed a proof of claim, POC No. 29. Those proofs of claim assert claims allegedly arising out of the Derailment. In addition, CPR has filed a proof of claim, claim 92-2 (filed 6/13/14), asserting *inter alia*, claims allegedly arising out of the Derailment. This Adversary Proceeding is a core matter over which the Court may, consistent with the United States Constitution, exercise the judicial power of the United States of America.

Parties

22. The Trustee was appointed MMAR's bankruptcy trustee pursuant to 11 U.S.C. §

1163 on August 21, 2013, and has, since that date, continued to function as the chapter 11 trustee of MMAR. MMAR, the debtor in this chapter 11 case, is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located in Hermon, Maine. MMAR is the parent company of MMA Canada, a company formed and existing as an unlimited liability company under the law of Nova Scotia, and MMAR is or may be liable for the debts and obligations of MMA Canada.

23. Upon information and belief, Defendant WFSC is a corporation organized and existing under the laws of the State of Florida, with its principal place of business located in Miami, Florida.

24. Upon information and belief, Defendant WFSI is a corporation organized and existing under the laws of the State of Florida, with its principal place of business located in Miami, Florida.

25. Upon information and belief, Defendant Western Petroleum is a corporation organized and existing under the laws of the State of Minnesota, with its principal place of business located in Wayzata, Minnesota.

26. Upon information and belief, Defendant WF Canada is a corporation organized and existing under the laws of British Columbia (Canada), with its principal place of business located in Miami, Florida.

27. Upon information and belief, Defendant PTS is a limited liability company organized and existing under the laws of the State of Minnesota, with its principal place of business located in Eden Prairie, Minnesota.

28. Upon information and belief, Defendant CPR is a corporation organized and existing under the laws of Alberta, Canada, with its principal place of business located in

Calgary, Alberta, Canada, and with a place of business in Montreal, Quebec, Canada.

29. Upon information and belief, Defendant Irving is a corporation organized and existing under the laws of New Brunswick, Canada, with its principal place of business located in Saint John, New Brunswick, Canada. Various affiliates of Irving have filed proofs of claim in MMAR's chapter 11 case (See claims 242-1, 243-1, 257-1 and 259-1) and/or have appeared in the chapter 11 case and filed pleadings therein.

Background

A. Crude Oil Extracted From The Bakken Formation Is Known Within The Petroleum Industry To Be Potentially More Volatile Than Other North American Crude Oil

30. Crude oil is the term for "unprocessed" oil, which exists under the earth's surface.

31. Crude oil, also known as petroleum, is a fossil fuel, inasmuch as it is produced naturally from decaying plants and animals living in ancient seas millions of years ago. Crude oil varies in color, from clear to tar-black, and in viscosity, from watery to almost solid.

32. Crude oil has little commercial utility in its natural state. Petroleum refining is the means by which crude oil is processed and refined to produce other valuable products such as gasoline, diesel fuel, and heating oils.

33. The "Bakken Formation" is a sub-surface rock formation covering approximately two hundred thousand square miles in the States of Montana and North Dakota, as well as the Canadian Provinces of Saskatchewan and Manitoba.

34. The Bakken Formation contains one of the largest reserves of crude oil ever discovered in North America.

35. Crude oil has been extracted from the Bakken Formation for more than sixty years; however, production was historically limited due to the difficulty in extracting the oil and the accompanying expense.

36. In recent years, however, advancements in drilling technology and hydraulic fracking -- the process of fracturing subsurface rock formations through high pressure injection of water, sand, and/or chemicals -- has greatly increased the volume of crude oil extracted from the Bakken Formation.

37. Production of crude oil from the Bakken Formation in North Dakota has risen from less than three thousand barrels per day in 2005 to up to approximately one million barrels per day (or more) today.

38. Prior to the boom in oil production from the Bakken Formation, North American crude oil had historically been known to have a high enough flash point that it did not present high risk of spontaneous ignition.

39. However, crude oil extracted from the Bakken Formation has become known to the petroleum industry to be of a different character. Much of the crude oil extracted from wells in the Bakken Formation includes other materials, including volatile vapors, gases, and liquids such as propane, butane, and natural gasoline. These vapors, gasses, and liquids are often explosive and can self-ignite at low ambient temperatures.

B. Unreinforced DOT-111 Tank Cars Are Known Within The Petroleum Industry To Be Prone To Rupture Upon Derailment

40. There are no petroleum refineries located in or around the State of North Dakota, nor is there a pipeline system to transport crude oil extracted from the Bakken Formation in North Dakota to most oil refineries. Such transportation is accomplished almost entirely by rail.

41. Crude oil is transported along railways in what are known as tank cars.

42. For more than two decades, one of the most common types of tank cars used to transport hazardous liquids, including crude oil, throughout North America has been the DOT-111 ("DOT-111"). The Defendants knew, or should have known, about the risks associated

with the use of DOT-111s.

43. For many years preceding the Derailment, government safety regulators and the media have documented and reported that DOT-111 tank cars were prone to tear or rupture upon a collision and/or derailment, which could potentially spill their cargo.

44. During this time, the petroleum industry, its shippers, and the lessons of DOT-111 tank cars have been aware that the risk of DOT-111 tank car ruptures could be eliminated or reduced by implementing certain design changes, such as reinforced shells, head shields, valves, and other exposed fittings. Moreover, since 2011, the rail industry has required that all newly-manufactured DOT-111 tank cars contain design changes of this type so as to eliminate or reduce the risk of rupture in the case of a collision and/or derailment.

45. Cargo volatility is an important consideration in determining rail car selection as well as applicable safety procedures and protocols to be implemented with respect to any shipment of hazardous material.

46. Prudent and safe shipping practices dictate that hazardous flammable liquids that are explosive and capable of self-igniting at low ambient temperatures should not be transported in a train including DOT-111 tank cars that do not have reinforced shells, heads shields, valves, and other exposed fittings, unless the train operator is able to implement enhanced safety procedures and protocols to prevent or minimize the risk of derailment.

47. Prudent and safe shipping practices further dictate that, unless a train's operator is made aware that the train's cargo contains hazardous, flammable liquids that are explosive and capable of self-igniting at low ambient temperatures and is, therefore, able to implement enhanced safety procedures and protocols to prevent or minimize the risk of derailment, such cargo should not be transported in a train including DOT-111 tank cars that do not have

reinforced shells, head shields, valves, and other exposed fittings.

C. Proper Classification And Identification Of Crude Oil Is Essential For Safe Transportation By Rail

48. A party offering a hazardous material for shipment within the United States and/or importation into Canada has the duty, among others, to ensure that: (i) all hazardous materials are properly identified and classified; (ii) the hazard class or classes that characterize the hazard(s) associated with the material are properly identified; (iii) the proper packing group, if applicable, is assigned to each material; and (iv) the hazardous material is transported in appropriate packaging.

49. For example, under the regulations applicable to the Canadian Transportation of Dangerous Goods Act in effect as of July 6, 2013 (Transportation of Dangerous Goods Regulations, SOR/DORS/2001-286 ("TDGR")), "[b]efore allowing a carrier to take possession of dangerous goods for transport, the consignor must determine the classification of the dangerous goods " in accordance with the regulations." TDGR §2.2(1). "When importing goods into Canada, the consignor must ensure that [the goods] have the correct classification before they are transported into Canada." TDGR §2.2(2). "Consignor" means a person who "is named in the shipping document as the consignor" or "imports …dangerous goods into Canada" or (if the other two definitions do not apply) "has possession of dangerous goods immediately before they are in transport." TDGR §1.4. Moreover, "if an error in classification is noticed or if there are reasonable grounds to suspect an error in classification the consignor must not allow a carrier to take possession of the dangerous goods for transport until the classification has been verified or corrected." TDGR §2.2(5). In addition, [a] carrier who notices an error in classification or has reasonable grounds to suspect an error in classification while the dangerous goods are in transport must advise the consignor and must stop transporting the dangerous goods until the

consignor verifies or corrects the classification." TDGR §2.2(6). "Classification" means, for dangerous goods, as applicable, the shipping name, the primary class, the compatibility group, the subsidiary class, the UN number, the packing group, and the infection substance category." TDGR §1.4 (emphasis supplied).

50. There are nine recognized classes of hazardous substances in the United States and Canada. These classes define the type of risk a hazardous material may pose.

51. Crude Oil falls within "Hazard Class 3 – Flammable Liquids."

52. The packing groups applicable to a particular hazard class indicate the degree of risk a hazardous material may pose in transport in relation to other materials within that hazard class.

53. There are three packing groups applicable to Class 3 Hazardous Materials: Packing Group I, indicating high danger, Packing Group II, indicating moderate danger, and Packing Group III, indicating low danger.

54. Classification within these packing groups is determined by the material's flash point and initial boiling point, as follows:

Packing Group	Flash Point	Initial Boiling Point
I		≤ 35°C (95°F)
II	≤ 23°C (73°F)	> 35°C (95°F)
III	≥ 23°C (73°F) but ≤ 60.5°C (141°F)	> 35°C (95°F)

55. Prudent and safe shipping practices dictate that, in order to properly classify and identify a particular shipment of crude oil, its properties must be determined. These properties include, but are not limited to, its flash point, corrosivity, specific gravity at loading and

reference temperatures, as well as the presence and concentration of other compounds.

56. This information concerning a particular shipment of crude oil is also necessary to: (i) select the proper tank car packaging; (ii) ensure that the proper tank car outage -- the "head space" or amount of unfilled space in the tank car -- is maintained; and (iii) devise and implement appropriate transportation safety procedures and protocols.

57. The flash point and initial boiling point of crude oil can vary greatly. Depending upon these and other properties, a particular shipment of crude oil can fall into Packing Group I, II, or III.

58. Defendants knew or had reasonable grounds to suspect that the testing of Bakken crude oil prior to shipment by rail cars was inadequate and was likely to lead to misclassification.

59. For example, an Irving refinery employee gave a presentation at a Crude Oil Quality Association conference in Seattle, Washington less than one month before the Derailment, in which he showed a series of PowerPoint slides entitled Crude By Rail Quality Issues (the "Irving PowerPoint").

60. The Irving PowerPoint reveals Irving's awareness of a number of quality control and safety issues concerning the transport of crude oil by rail. Among other things, the Irving PowerPoint notes that under current practices:

a. Sampling of crude oil is performed at the delivery point; that source sampling program is almost non-existent;

b. Purchasers rely primarily on established and sometimes outdated assays to make purchase decisions;

c. Rail car crude cargo consists of co-mingled product;

d. Irving's refinery had encountered rail cars littered with trash, others with residual

substances, and one car contained three different crude types;

e. "Samples are not from a homogenous mixture"; and

f. "Rail cars after 5-7 days delivery time have begun layering; water and sediment on bottom; light products on top."

61. The PowerPoint notes that the current practice of delivery point sampling is "too late in the process to address any safety issues." It goes on to recommend more testing at the loading terminals to help "identify issues related to safety of personnel or specification while the rail car is in transit," and states that "This will give time to plan action from the data."

Facts

A. Defendants Obtained Crude Oil From The North Dakota Bakken Formation, Arranged For Its Shipment To Saint John, New Brunswick (Canada), And Falsely Assigned It A Packing Group III Designation, Indicating A Low Danger

62. On or about June 29, 2013, the World Fuel Defendants and Irving obtained and offered for shipment a supply of crude oil from New Town, North Dakota to Saint John, New Brunswick (Canada).

63. The crude oil product was obtained from eleven different suppliers from a number of wells located within the North Dakota Bakken Formation.

64. This crude oil product had been transported by trucks over highways from several supplier facilities, where it was "transloaded" -- the process of transferring a shipment from one mode of transportation to another -- into rail tank cars. Each rail tank car was filled from approximately three truck loads.

65. This process of transloading resulted in the tank cars holding a blend of crude oil from a variety of sources.

66. The information contained in material safety data sheets ("MSDS") provided by the suppliers of this crude oil varied widely and was, at times, contradictory.

67. While all of these MSDSs identified the product as a Class 3 – Flammable Liquid, some MSDSs designated their shipment as Packing Group I, some MSDSs designated their shipment as Packing Group II, and one MSDS designated the shipment as Packing Group III. Two MSDSs indicated that it was necessary to "determine flash point to accurately classify packing group." A MSDS for more than a quarter of the total volume of crude oil designated the cargo unequivocally as Packing Group I.

68. The shipping documents from the trucks that delivered this crude oil to the rail loading facility assigned the product a Packing Group II – Moderate Danger designation.

69. Under applicable regulations, the mix of possible classifications and the predominance of the Packing Group I classification in the MSDS forms mandated that the entire shipment be classified as Packing Group I, or highly dangerous. *See, e.g.,* TDGR §2.5. Moreover, the Defendants should not have placed the oil for transport, and should have prevented its shipment, until the classification was clarified or corrected.

70. Notwithstanding the varied and sometimes conflicting product classification and identification designations provided by the suppliers and delivery trucks, and contrary to applicable regulations in the U.S. and Canada, Defendants classified and identified the entire seventy-two tank car shipment of crude oil on the bill of lading as Petroleum Crude Oil, UN1267, Class 3, Packing Group III, indicating a high flash point and initial boiling point and, hence, a low danger.

71. Defendants conducted either no investigation and analysis, or a faulty investigation and analysis, to determine the properties of their shipment of crude oil. Moreover, the predominant classification provided by the MSDS forms was ignored.

72. The World Fuel Defendants' and Irving's shipment of crude oil was loaded into a

number of DOT-111 tank cars that had been manufactured prior to 2011, the year in which government regulations mandated that all newly-manufactured DOT-111 tank cars contain enhanced resistance against rupture. Upon information and belief, these cars had not been retrofitted with reinforced shells, head shields, valves, or other exposed fittings and were, therefore, subject to a high risk of rupture in the event of a collision or derailment. The leases applicable to a number of these cars prohibited shipment of Packing Group I or Packing Group II product.

73. The World Fuel Defendants and Irving arranged for the shipment of the tank cars from the New Town, North Dakota intermodal transloading facility to Cote Saint-Luc, outside Montreal, Quebec (Canada), *via* CPR, and from there to Irving's refinery in Saint John, New Brunswick (Canada) *via* MMAR.

74. The bill of lading for this shipment was issued by CRP and identified Western Petroleum as the shipper, WFSC as the party to be billed, and Irving as the consignee. WSFI claims to have held title to the crude oil and to have been the party actually billed for the shipment by CPR.

B. MMAR's Receipt Of Defendants' Crude Oil Shipment And The Derailment

75. The Train departed from the New Town, North Dakota intermodal facility on or about June 29, 2013.

76. The Train was comprised of the seventy-two DOT-111 tank cars and one box car, which were provided by Defendants, and several CPR locomotives.

77. CPR transported the Train to CPR's rail yard in Cote Saint-Luc, Quebec (Canada).

78. On or about July 5, 2013, CPR transferred the seventy-two DOT-111 tank cars

and box car to MMAR.

79. Applicable Canadian law and/or regulations, as well as the joint rate agreement between MMAR and CPR, required that MMAR accept Defendants' rail cars and cargo and transport it through to its intended destination.

80. MMAR connected one of its locomotives at the head end of the Train, followed by a VB remote control car, followed by four additional locomotives, followed by the seventy-two DOT-111 tank cars.

81. MMAR then commenced the second leg of the Train's transport toward its ultimate destination -- the Irving Oil refinery in Saint John, New Brunswick (Canada).

82. MMAR had no knowledge concerning the actual properties of the crude oil contained in the Train's DOT-111 tank cars beyond what was contained on the Waybill provided by CPR: Petroleum Crude Oil, UN1267, Class 3, Packing Group III, indicating a high flash point and initial boiling point and, hence, a low danger.

83. Had Defendants made MMAR aware that their crude oil cargo was, in fact, Packing Group I, a hazardous substance, MMAR would have implemented safety procedures and protocols that would have prevented the Derailment. Among other things, these procedures and protocols would have required that the Train never be left unattended, always be parked on a blocked, side track, and never be parked on a main track.

84. Shortly before midnight on July 5, 2013, MMAR parked and secured the Train on its main track near the town of Nantes, Quebec (Canada) and left it unattended. The main track at this location had a slight descending grade of approximately 1.2%.

85. At or around 1:00 a.m. on July 6, 2013, the unattended Train started to move downgrade.

86. The Train gathered speed as it rolled uncontrolled down the descending grade toward the town of Lac-Mégantic.

87. Sixty-two of the DOT-111 tank cars and the single box car ultimately derailed near the town center of Lac-Mégantic.

88. Many, if not all, of the DOT-111 tank cars ruptured upon derailment, releasing their contents of crude oil.

89. The released crude oil ignited upon release, resulting in a number of massive explosions and an accompanying large pool of fire that burned for several days.

90. As many as forty-seven people were killed and additional people may have suffered injuries as a result of the explosions and fire.

91. The town center of Lac-Mégantic sustained extensive damage from the explosions and fire.

92. The air, soil, and water in and around the site of the Derailment also sustained significant contamination from the spilled crude oil and the resulting fires.

C. The Derailment Forced MMAR To Seek Bankruptcy Protection And Resulted In MMAR Being Joined In And Facing Potential Liability In A Number Of Civil And Administrative Actions And Proceedings, Which Has Destroyed MMAR's Business

93. At the time of the Derailment, MMAR was a going-concern business, which had recently experienced substantial growth in both revenues and profits.

94. Prior to the Derailment, MMAR reasonably projected that it would continue to experience growth in both revenues and profitability into the future.

95. Instead, the Derailment precipitated the MMAR's chapter 11 filing and ultimate liquidation.

96. As a result of the Derailment, MMAR's business was effectively destroyed. The

Trustee received Court approval to sell substantially all of MMAR's assets, and the Trustee has closed on that sale for a purchase price of approximately $15 million. MMAR no longer has any operating business, let alone a profitable operating businesses.

97. Following the Derailment, MMAR was named as a defendant in a number of civil actions brought by the representatives and administrators of the estates of deceased victims of the Derailment in the Circuit Court of Cook County, Illinois (the "Illinois Cases"); the Illinois Cases have since been transferred to the United States District Court for the District of Maine.

98. MMAR has incurred and will continue to incur substantial costs and expenses in defending against the claims made in the Illinois Cases, and additional cases to be filed.

99. MMAR faces the risk of significant liabilities with respect to the claims made in the Illinois Cases, and additional cases to be filed.

100. MMAR and MMA Canada have been named as respondents in a class action petition brought by representatives and administrators of the estates of deceased victims of the Derailment in the Superior Court of the Province of Quebec (Canada), District of Mégantic (the "Canadian Class Action").

101. MMAR has incurred and will continue to incur substantial costs and expenses in defending against the claims made in the Canadian Class Action.

102. MMAR faces the risk of significant liabilities with respect to the claims made in the Canadian Class Action.

103. MMAR and MMA Canada have been named as respondents by the government of Quebec (Canada) in Orders 628 and 628-A, issued under §114.1 of the provincial Environment Quality Act, c.Q-2, which seek to hold MMAR and MMA Canada responsible for the costs of cleanup and remediation of the environmental damage caused by the Derailment (the "Clean-Up

Proceeding").

104. MMAR has incurred and will continue to incur substantial costs and expenses in defending against the claims made in the Clean-Up Proceeding.

105. MMAR faces the risk of significant liabilities with respect to the Clean-Up Proceeding.

106. The World Fuel Defendants, as consignors of the crude oil shipment, had an affirmative duty to withhold the crude oil from shipment or transport until the shipment was properly classified.

107. Irving, as the importer of the goods into Canada and as a party with reasonable grounds to suspect an error in classification, had an affirmative duty to not place the goods for shipment, or to stop the shipment, until the classification was corrected.

108. Upon information and belief, CPR, given its extensive dealings with the World Fuel Defendants and its access to all MSDS forms and other relevant documentation, had reasonable grounds to suspect that the classification of the crude oil shipment was incorrect; CPR had an affirmative duty to not carry the shipment or to stop the shipment until the classification was correct.

COUNT I
(Negligence)

109. The Trustee repeats and realleges, as if set forth at length herein, each and every allegation of paragraphs 1 through 108 of this Amended Complaint.

110. Defendants owed a duty to MMAR and to the public at large to operate their businesses in a safe manner, to take reasonable measures to avoid or mitigate the dangers associated with the transportation of their crude oil cargo, and to exercise reasonable care to ensure that MMAR could operate the Train in a safe manner and thereby prevent a derailment or

minimize the damage that would result in the event of a derailment.

111. Such duties included, but were not limited: (i) to not place the crude oil for shipment until the classification was correct; (ii) to not ship, or to stop the shipment of the crude oil until the classification was correct; (iii) to ensure that MMAR was informed of the highly dangerous nature of the Train's cargo by, among, other things, ensuring that the crude oil shipment was properly identified, classified, and labelled as a highly flammable liquid with high danger; and (iv) to provide safe and appropriate packaging for the crude oil cargo, including providing properly designed and reinforced tank cars and/or other buffer rail cars that would have prevented the Derailment or reduced the damages resulting therefrom.

112. Defendants breached those duties by their wrongful acts and/or omissions.

113. Defendants breaches of those duties include, but are not limited to, the following:

a. Despite their knowledge that crude oil produced from the Bakken Formation is often explosive and can self-ignite at low ambient temperatures, Defendants failed to conduct any investigation and analysis, conducted a flawed investigation and analysis, or failed to ensure that some other responsible party had conducted a proper investigation and analysis of the crude oil cargo to enable it to be properly classified, identified, labelled, and packaged for shipment.

b. Despite their knowledge that the tank cars carrying their shipment of crude oil contained a mixture of crude oil from eleven different suppliers, Defendants failed to conduct any investigation and analysis, conducted a flawed investigation and analysis, or failed to ensure that some other responsible party had conducted a proper investigation and analysis of the

crude oil cargo to enable it to be properly classified, identified, labelled, and packaged for shipment.

c. Despite their knowledge that the crude oil suppliers and delivery trucks from whom Defendants had obtained the crude oil had provided conflicting product classification and identification designations for the crude oil -- including a number of MSDSs that had assigned Packing Group I, indicating high danger and Packing Group II, indicating moderate danger designations and two that had indicated it was necessary to determine the crude oil's flash point to accurately classify the packing group – the World Fuel Defendants, in violation of applicable regulations, assigned the entire crude oil shipment a Packing Group III designation, indicating a high flash point and initial boiling point and, hence, a low danger, and the remaining Defendants failed to challenge such classification despite reasonable grounds to suspect such classification was wrong.

d. Defendants allowed the entire shipment of crude oil to be shipped in DOT-111 tank cars under a Packing Group III designation, when, in fact, it should have been assigned a Packing Group I designation and shipped in safer cars.

e. Defendants failed to withhold the shipment initially and failed to halt the shipment of the goods until the classification was correct.

f. Despite their awareness of the well-known rupture risk of the DOT-111 tank cars, Defendants provided to MMAR used DOT-111 tank cars, which

had not been retrofitted to properly and safely transport such flammable petroleum products, and failed to provide to MMAR the proper classification and identification of the crude oil cargo that would have enabled MMAR to implement appropriate safety procedures and protocols.

114. But for Defendants' negligent and careless acts and omissions, MMAR would have taken steps that would have prevented the Derailment and its resulting injury to MMAR and others, and/or the shipment would not have occurred at all, or would only have occurred in suitable tank cars.

115. As a direct and proximate result of one or more of the above negligent acts and/or omissions of Defendants, MMAR suffered injuries arising out of the Derailment.

116. MMAR's injuries that were proximately caused by Defendants include: (i) incurring substantial costs and expenses in defending against the claims made in the Illinois Cases, the Canadian Class Action, and the Clean-Up Proceeding; (ii) the risk of significant liabilities with respect to the Illinois Cases, the Canadian Class Action, and the Clean-Up Proceeding; and (iii) the destruction of its business and the devaluation of its assets.

COUNT II
(Disallowance of Claims)

117. The Trustee repeats and realleges, as if set forth at length herein, each and every allegation of paragraphs 1 through 116 of this Complaint.

118. CPR filed proof of ("POC") 92-2 in MMAR's Chapter 11 case (the "CPR POC"); the claims evidenced by the CPR POC allegedly arise, in part, from the Derailment.

119. Upon information and belief, WF Canada and PTS are affiliates of, or are affiliated with, the World Fuel Defendants.

120. The Objection Defendants, PTS, and WF Canada, have each filed a proof of claim in MMAR's chapter 11 case: PTS filed POC No. 28 and WF Canada POC No. 30.

121. Additionally, WFSI filed a proof of claim, POC No. 32; WFSC filed a proof of claim, POC No. 31; and Western Petroleum filed a proof of claim, POC No. 29.

122. These POCs, Nos. 28, 29, 30, 31, and 32, are referred to in this Amended Complaint as the "World Fuel POCs." The World Fuel POC's evidence claims that allegedly arise out of the Derailment.

123. MMAR is not liable to the Defendants or the Objection Defendants for any amount, whether based on contract, tort, subrogation, indemnification, contribution, reimbursement, or otherwise. Liability for the claims set forth in the CPR POC and the World Fuel POCs is denied based on the Defendants' actions or inactions, as described in the preceding paragraphs of this Amended Complaint. Alternatively, the amount owed by the relevant Defendants to MMAR vastly exceeds the amount, if any, that MMAR owes to the relevant Defendants.

124. The claims described in the CPR POC and the World Fuel POCs are unenforceable and should be disallowed pursuant to 11 U.S.C. § 502(a)(1).

WHEREFORE, Robert J. Keach, in his capacity as the trustee of Montreal, Maine & Atlantic Railway, Ltd., respectfully requests that this Court: (i) enter judgment in favor of the bankruptcy estate and against Defendants Canadian Pacific Railway Company, Irving Oil Ltd., World Fuel Services Corporation, World Fuel Services, Inc., and Western Petroleum Company, jointly and/or severally, in an amount to be determined at trial; and (ii) disallow and expunge the CPR POC and the World Fuel POCs in their entirety, pursuant to 11 U.S.C. § 502(a)(1).

Dated: January 9, 2015

ROBERT J. KEACH, solely in his capacity as the chapter 11 trustee of Montreal, Maine & Atlantic Railway, Ltd.

/s/ *Michael A. Fagone*

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

ORDER SUSTAINING OBJECTION TO PROOF OF CLAIM FILED BY CANADIAN PACIFIC RAILWAY COMPANY ON THE BASIS THAT SUCH CLAIM IS UNENFORCEABLE AGAINST THE DEBTOR

This matter having come before the Court on the *Objection to Proof of Claim Filed by Canadian Pacific Railway Company on the Basis That Such Claim is Unenforceable Against the Debtor* (the "Objection") filed by Robert J. Keach, the chapter 11 trustee (the "Trustee") of Montreal Maine & Atlantic Railway, Ltd., in relation to Amended Proof of Claim No. 92-2 (the "Claim") filed by Canadian Pacific Railway Company ("CP"), and after such notice and opportunity for hearing as was required by the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and this Court's local rules, and after due deliberation and sufficient cause appearing therefore; it is hereby **ORDERED**, **ADJUDGED**, and **DECREED** that:

1. The Objection is sustained.

2. Amended Claim No. 92-2 shall be disallowed in its entirety.

Dated: _____, 2015

_____
Honorable Peter J. Cary
Chief Judge, United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MAINE

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

NOTICE OF HEARING

On August 7, 2015, Robert J. Keach, the chapter 11 trustee in the above-captioned case (the "Trustee"), filed the *Objection to Proof of Claim Filed by Canadian Pacific Railway Company on the Basis that Such Claim is Unenforceable Against the Debtor* (the "Objection"). A hearing to consider the Objection has been scheduled for **October 6, 2015 at 9:00 a.m. ET.**

If you wish to respond to the Objection, then **on or before September 29, 2015 at 5:00 p.m. (ET)**, you or your attorney must file with the Court a response to the Objection explaining your position. If you are not able to access the CM/ECF Filing System, then your response should be served upon the Court at:

Alec Leddy, Clerk
United States Bankruptcy Court for the District of Maine
202 Harlow Street
Bangor, Maine 04401

If you do have to mail your response to the Court for filing, then you must mail it early enough so that the Court will receive it **on or before September 29, 2015 at 5:00 p.m. (ET).**

You may attend the hearing with respect to the Objection, which is scheduled to be held on **October 6, 2015 at 9:00 a.m.** at the Bankruptcy Court, 537 Congress Street, 2nd Floor, Portland, Maine. If no objections are timely filed and served, then the Court may enter a final order approving the Motion without any further hearing.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought, and may enter an order granting the requested relief without further notice or hearing.

Dated: August 7, 2015

ROBERT J. KEACH
CHAPTER 11 TRUSTEE OF MONTREAL MAINE & ATLANTIC RAILWAY, LTD.

By his attorneys:

/s/ *Lindsay K. Zahradka*

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Lindsay K. Zahradka, Esq. (admitted *pro hac vice*)
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