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. CAISSE DE DEPOT ET PLACEMENT DU QUEBEC; EUREKA I, LP; ATHENA FAMILY PARTNERS; MP GLOBAL ENTERPRISES & ASSOCIATES, LLC; EARLSTON ASSOCIATES, LP; JERRY R. DAVIS; and FRANK K. TURNER Defendants.	Adversary Proceeding No.

COMPLAINT

Robert J. Keach, solely in his capacity as the chapter 11 trustee of Montreal, Maine & Atlantic Railway, Ltd. (the "Trustee") brings this Complaint seeking the avoidance and recovery of certain unauthorized dividends and fraudulent transfers. In support of his Complaint, the Trustee alleges as follows:

Jurisdiction and Venue

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

2. Venue of the Debtor's chapter 11 case in this District is proper pursuant to 28 U.S.C. § 1409(a). Venue of this adversary proceeding in this District is proper pursuant to 28 U.S.C. § 1409(b).

3. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2)(A), (H), and (O). This Adversary Proceeding is a core matter over which the Bankruptcy Court may, consistent with the United States Constitution, exercise the judicial power of the United States of America.

4. The Trustee consents to the entry of final orders by the Bankruptcy Court in this adversary proceeding.

Parties

5. The Trustee was appointed as the chapter 11 bankruptcy trustee for Maine, Montreal & Atlantic, Ltd. ("MMA" or the "Debtor"), pursuant to 11 U.S.C. § 1163 on August 21, 2013, and has, since that date, served as the trustee of the Debtor's estate.

6. The Debtor is a corporation organized and existing under the laws of the State of Delaware, with a current or former principal place of business in Hermon, Maine. At all times relevant hereto, Montreal, Maine & Atlantic Corporation ("MMA Corp.") owned 100% of the Debtor's stock.

7. Upon information and belief, Caisse de Depot et Placement du Quebec ("Caisse de Depot") is a Crown Corporation organized and existing under the laws of Canada and the Province of Quebec, with its principal place of business located in Quebec City, Province of Quebec, Canada, and a place of business in Montreal, Province of Quebec, Canada.

8. Upon information and belief, Eureka I, LP ("Eureka") is limited partnership organized and existing under the laws of the State of Delaware, with a current or former principal place of business in Pennsylvania.

9. Upon information and belief, Athena Family Partners ("Athena") is a limited partnership organized and existing under the laws of the State of Colorado, with a current or former principal place of business in Osprey, Florida.

10. Upon information and belief, MP Global Enterprises & Associates, LLC ("MP Global") is, or was, a limited liability company organized and existing under the laws of the State of California, with a current or former principal place of business in Irvine, California.

11. Upon information and belief, Earlston Associates, LP ("Earlston") is a limited partnership organized and existing under the laws of the State of Illinois, with a current or former principal place of business in Chicago, Illinois.

12. Upon information and belief, Jerry R. Davis ("Mr. Davis") is an individual now or formerly residing in the United States.

13. Upon information and belief, Frank K. Turner ("Mr. Turner" is an individual now or formerly residing in the United States.

Related Parties and Entities

14. Upon information and belief, MP Structured Finance Fund ("MP Structured") is an entity organized and existing under the laws of the State of California with a current or former principal place of business in Irvine, California.

15. Upon information and belief, CAC, LLC ("CAC") is a limited liability company organized and existing under the laws of the State of Delaware, with a current or former principal place of business in San Diego, California.

16. Upon information and belief, DRD Family Partnership ("DRD Family") is a limited partnership organized and existing under the laws of the State of Delaware, with a current or former principal place of business in San Diego, California.

17. Upon information and belief, Berkshire Investments (Netherlands) BV ("Berkshire") is a *besloten vennootschap* (a "closed company"), organized and existing under the laws of the Netherlands, with a current or former principal place of business in Amsterdam, Netherlands.

18. Upon information and belief, ABC Railway, Inc. ("ABC Railway") is a corporation organized and existing under the laws of the State of Ohio, with a principal place of business in Barberton, Ohio.

19. Upon information and belief, Larry R. Parsons ("Mr. Parsons") is an individual now or formerly residing in the State of Ohio. Mr. Parsons was, at all times material to the allegations in this Complaint, a director of the Debtor.

MMA's Officers and Directors; Railword, Inc.

20. Upon information and belief, Edward Burkhardt ("Mr. Burkhardt") is an individual now or formerly residing in the State of Illinois. Mr. Burkhardt was, at all times material to the allegations in this Complaint, a director of the Debtor.

21. Upon information and belief, Robert C. Grindrod ("Mr. Grindrod") is an individual now or formerly residing in the State of Maine. Mr. Grindrod was, at all times material to the allegations in this Complaint, the President and Chief Executive Officer of the Debtor, as well as a director of the Debtor.

22. Upon information and belief, Rail World, Inc. ("Rail World") is a corporation organized and existing under the laws of the State of Illinois, with a principal place of business in Rosemont, Illinois.

Facts

Purchase From Prior Bankruptcy And Financing / Amendments

23. On July 24, 2002, MMA and MMA Canada (as defined below) acquired the assets of several American and Canadian railroad companies in accordance with an Asset Purchase Agreement (the "2002 APA").[1]

24. Pursuant to the 2002 APA, the following corporate entities became the owners or operators of what was commonly known as the Montreal, Maine & Atlantic Railway, or related businesses:

a. The Debtor;
b. MMA Corp., the holding company;
c. LMS Acquisition Corporation ("LMS");
d. MM&A Rolling Stock Corporation ("MMA Rolling"); and
e. Montreal, Maine & Atlantic Canada, Co. ("MMA Canada")

(collectively, the "MMA Companies" or the "Companies").

25. At the time of the closing of the 2002 APA or shortly thereafter, the following Defendants were holders of MMA Corp.'s equity securities (with approximate percentage of equity ownership of MMA Corp. in parentheses):

a. Athena (0.5%);
b. Caisse de Depot (12.8%);
c. Mr. Davis (0.2%);
d. Earlston (72.8%);
e. MP Global (1.2%); and
f. Mr. Turner (0.13%).

26. The 2002 APA was amended or modified several times, such that it was part of the same transaction as: (A) a December 23, 2002 Rail Funding Agreement between the Maine Department of Transportation ("MaineDOT") and the MMA Companies ("Rail Funding Agreement I"); and (B) a January 8, 2003 Note and Warrant Purchase Agreement between the MMA Companies and certain Investors (as defined below) (the "NWPA").

[1] The sellers in connection with the transactions described in the 2002 APA were: (1) Bangor & Aroostook Railroad Company; (2) Canadian American Railroad Company; (3) Northern Vermont Railroad Company; (4) Newport and Richford Railroad Company; (5) Van Buren Bridge Company; (6) Quebec Southern Railway Company, Ltd.; and (7) Logistics Management Systems, Inc., or these bankruptcy estates of these entities.

27. On December 23, 2002, MaineDOT loaned the MMA Companies $5,400,000, as evidenced by Rail Funding Agreement I.

28. The MMA Companies' obligations to MaineDOT arising from Rail Funding Agreement I were secured pursuant to a purchase money security agreement and financing statement, as amended from time to time (the "Rail Funding Security Agreement"), wherein the MMA Companies granted to MaineDOT a security interest in all rail, related cross ties, tie joints, tie plates, switch ties, switches, spikes, joints, anchors, and other related track materials incorporated or installed in, attached to, or located at or on the MMA Companies' real property.

29. MaineDOT perfected the Rail Funding Security Agreement by public filings, including a UCC-1 with the Delaware Department of State and filings in various registries of deeds.

30. On January 8, 2003, the MMA Companies entered into the NWPA with the following parties:

a. Caisse de Depot;
b. Eureka;
c. MP Structured;
d. CAC;
e. DRD Family;
f. Athena;
g. MP Global;
h. Earlston;
i. Berkshire;
j. ABC Railway;
k. Mr. Davis;
l. Mr. Parsons; and
m. Mr. Turner.

(collectively, the "Investors").

31. Under the NWPA, the Investors allegedly invested $15,000,000 into the MMA Companies, in exchange for 12% Senior Subordinated Notes due December 30, 2010

(collectively, the "Notes") and warrants to purchase a total of 251,429 shares of MMA Corp.'s common stock (collectively, the "Warrants").

32. The original principal balance as reflected on the Notes was $15,000,000. The alleged debts represented by the Notes bore interest at twelve percent (12%) at a time when the prime rate was approximately four and one-quarter percent (4.25%).

33. According to the NWPA, the total "issue price" of the Notes was $12,895,649.

34. According to the NWPA, the total purchase price of the Warrants was $2,104,351.

35. The NWPA included schedules identifying the Notes and Warrants issued in connection with the transaction. Upon information and belief, the Debtor issued the Notes and MMA Corp. issued the warrants in accordance with the NWPA (including the schedules attached thereto).

36. According to the schedules attached to the NWPA, the MMA Companies issued Notes to the following investors in the following amounts:

a. Caisse de Depot: $8,000,000;
b. Eureka: $1,025,283;
c. MP Structured: $750,000;
d. CAC: $1,200,000;
e. DRD Family: $300,000;
f. Athena: $1,166,667;
g. MP Global: $250,000;
h. Earlston: $1,606,936;
i. Berkshire: $500,000;
j. ABC Railway: $118,302;
k. Mr. Davis: $29,576;
l. Mr. Parsons: $29,576; and
m. Mr. Turner: $23,660.

37. As of the date of the closing of the NWPA, the Warrants represented eight percent (8%) of the fully diluted common stock of MMA Corp.

38. Upon information and belief, the Notes were convertible to preferred stock in

MMA Corp.

39. By its terms, all of the proceeds of the issuance of Notes and Warrants under the NWPA were to be used to consummate the 2002 APA, and to provide working capital and general corporate capital for the MMA Companies.

40. Upon information and belief, eight out of thirteen of the Investors were also owners of MMA Corp.'s equity securities at the time of the closing of the NWPA, specifically (with approximate percentage of equity ownership of MMA Corp. in parentheses):

a. ABC Railway (5.6%);
b. Athena (0.5%);
c. Caisse de Depot (12.8%);
d. Mr. Davis (0.2%);
e. Earlston (72.8%);
f. MP Global (1.2%);
g. Mr. Parsons (0.3%); and
h. Mr. Turner (0.13%).

41. All of the proceeds of the NWPA were to be used to consummate the 2002 APA, and to provide working capital and general corporate capital for the MMA Companies.

42. The NWPA did not provide what, if any, collateral secured the Notes and, to the extent the Notes were secured by any collateral, the NWPA did not provide where the Investors' security interests were in the priority scheme of the liens on the MMA Companies' assets.

43. Upon information and belief, at the closing of the NWPA, to the extent they constituted obligations of the issuer at all, the Notes were not secured by any collateral, and were thus unsecured debt.

44. The NWPA anticipated or acknowledged numerous other sources of debt and equity financing, including Rail Funding Agreement I and a subsequent $34,000,000 senior secured loan the United States of America, through the Federal Railroad Administration (the "FRA"), made to the Debtor (as set forth in detail below) (the "FRA Loan").

45. Additionally, the NWPA set various requirements for the MMA Companies' operations, finances, and capital structure.

46. These covenants and requirements applied to the MMA Companies as a "Consolidated Group," defined as all of the MMA Companies that were signatories of the NWPA "and their consolidated Subsidiaries."

47. The NWPA provided the following definition of the word "solvent."

> "Solvent," with respect to any Person, means that as of the date of determination both (i)(a) the then fair saleable value of the property of such Person is (1) greater than the total amount of liabilities (including contingent liabilities) of such person and (2) not less than the amount that will be required to pay the probable liabilities on such Person's then existing debts as they become absolute and due considering all financing alternatives and potential asset sales reasonably available to such Person; (b) such Person's capital is not unreasonably small in relation to its business or any contemplated or undertaken transaction; and (c) such Person does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due; and (ii) such Person is 'solvent' within the meaning given that term and similar terms under applicable law relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

48. On September 22, 2003, less than one year after the NWPA was executed in January 2003, the parties to the NWPA amended it for the first time ("First Amendment to NWPA").

49. The First Amendment to NWPA was precipitated by the Debtor's financial distress and inability to service the Notes and comply with the NWPA's covenants.

50. Upon information and belief, at the time of the First Amendment to NWPA, the Debtor had defaulted on the Notes, and was in default of multiple financial covenants in the NWPA.

51. Upon information and belief, the First Amendment to NWPA acknowledged the

Debtor's payment default and relaxed the financial covenants in the NWPA.

52. On July 15, 2004, less than one year from the date of the First Amendment to NWPA, the parties to the NWPA amended it a second time (the "Second Amendment to NWPA").

53. The Second Amendment to NWPA was precipitated by the Debtor's continued and deepening financial distress and continued inability to comply with the NWPA's covenants.

54. In the Second Amendment to NWPA, the MMA Companies acknowledged that they were in default of multiple financial covenants in the NWPA, including Minimum EBITDA, Minimum Interest Coverage, Minimum Fixed Charge Coverage Ratio, Senior Leverage Ratio, and Total Leverage Ratio.

55. The Second Amendment to NWPA lowered the Minimum EBITDA for the quarters ending June 30, 2004, September 30, 2004, and December 31, 2004 from $9,500,000[2] for all three quarters, to $4,400,000, $4,400,000, and $4,000,000, respectively.

56. The Second Amendment to NWPA lowered the Minimum Interest Coverage Ratio from 3.0 to 2.25 for the quarter ending June 30, 2004.

57. The Second Amendment to NWPA lowered the Minimum Fixed Charge Coverage Ratio from 1.0 to 0.50, 0.75, and 0.90 for the quarters ending June 30, 2004, September 30, 2004, and December 31, 2004, respectively.

58. The Second Amendment to NWPA raised the Maximum Senior Leverage Ratio from 3.00 to 5.75, 5.50, and 5.50 for the quarters ending June 30, 2004, September 30, 2004, and December 31, 2004, respectively.

59. The Second Amendment to NWPA raised the Maximum Total Leverage Ratio for

[2] All references to original or starting values refer to the values found in the NWPA itself, not any subsequently amended values found in amendments to the NWPA .

all quarters ending March 31, 2005 and thereafter from 4.00 to "not more than 5.5 to 1.00."

60. In general, the Second Amendment to NWPA relaxed various financial covenants in the NWPA.

61. On March 24, 2005, the Debtor entered into the FRA Loan with the United States, through the FRA, within which the FRA loaned the Debtor $34,000,000.

62. The Debtor's obligations to repay the FRA Loan were secured by, *inter alia*, a senior lien on the MMA Companies' rail lines and related tracks and improvements, all of MMA Canada's personal property, and all of the Debtor's shares in MMA Canada.

63. The more than two-year interval between the MMA Companies' beginning operations and receiving the FRA Loan establishes that the MMA Companies were thinly capitalized from the date of the NWPA (January 8, 2003) until the date of the FRA Loan (March 24, 2005).

64. Subsequent amendments to the FRA Loan and the NWPA, as well as additional infusions of capital through subsequent Rail Funding Agreements (as explained below), establish that the FRA Loan did not make the Debtor solvent from a liquidity standpoint and the FRA Loan increased the Debtor's leverage.

65. On March 29, 2005, less than one year from the date of the Second Amendment to NWPA, and less than one week after the closing of the FRA Loan, the NWPA was amended a third time (the "Third Amendment to NWPA").

66. The Third Amendment to NWPA was precipitated by the Debtor's continued and deepening financial distress and inability to comply with the NWPA's covenants, even though the NWPA's covenants had been relaxed by prior amendments of the NWPA.

67. On April 1, 2005, more than two years after the date of the NWPA, and after three

intervening amendments to the NWPA, the MMA Companies and the Investors entered into a Deed of Hypothec in favor Computershare Trust Company of Canada ("Computershare") dated April 1, 2005 (the "Deed of Hypothec").

68. Upon information and belief, prior to the date of the Deed of Hypothec, the Notes were not secured by any collateral.

69. To the extent the Investors attempted to secure the Notes with liens junior to the FRA, such liens did not exist prior to April 1, 2005.

70. The Investors' attempt to secure the Notes with liens junior to the FRA was made as a result of the Debtor's continued default under the Notes.

71. On May 13, 2005, MaineDOT loaned the MMA Companies an additional $3,244,000 through a Rail Funding Agreement ("Rail Funding Agreement II").

72. On March 31, 2006, the NWPA was amended a fourth time (the "Fourth Amendment to NWPA").

73. The Fourth Amendment to NWPA was precipitated by the Debtor's continued and deepening financial distress and continued inability to comply with the NWPA's covenants, even though the NWPA's covenants had been relaxed three times in approximately two years, through the First, Second, and Third Amendment to NWPA.

74. In the Fourth Amendment to NWPA, the MMA Companies acknowledged that they were in default under the NWPA due to the non-payment of interest under the Notes.

75. The Fourth Amendment to NWPA further eased the MMA Companies' covenants regarding Minimum EBITDA, Minimum Interest Coverage, Minimum Fixed Charge Coverage Ratio, Senior Leverage Ratio, and Total Leverage Ratio.

76. The Fourth Amendment to NWPA lowered the Minimum EBITDA as follows:

a. Quarters ending June 30, 2007: from $11,000,000 to $9,000,000;
b. Quarter ending September 30, 2007: from $11,000,000 to $9,500,000;
c. Quarter ending December 41, 2007: $11,000,000 to $9,500,000; and
d. Quarter ending March 31, 2008: $11,000,000 to $9,500,000.

77. The Fourth Amendment to NWPA lowered the Minimum Interest Coverage Ratio as follows:

a. Quarter ending June 30, 2007: from 3.00 to 2.00;
b. Quarter ending September 30, 2007: from 3.00 to 2.00;
c. Quarter ending December 41, 2007: from 3.00 to 2.00;
d. Quarter ending March 31, 2008: from 3.00 to 2.00;
e. Quarter ending June 30, 2008: from 3.00 to 2.25;
f. Quarter ending September 30, 2008: from 3.00 to 2.25;
g. Quarter ending December 31, 2008: from 3.00 to 2.50;
h. Quarter ending March 31, 2009: from 3.00 to 2.50;
i. Quarter ending June 30, 2009: from 3.00 to 2.50; and
j. Quarter ending September 30, 2009: from 3.00 to 2.50.

78. The Fourth Amendment to NWPA lowered the Minimum Fixed Charge Coverage Ratio as follows:

a. Quarter ending June 30, 2007: from 1.20 to 0.80;
b. Quarter ending September 30, 2007: from 1.20 to 0.80;
c. Quarter ending December 41, 2007: from 1.20 to 0.80;
d. Quarter ending March 31, 2008: from 1.20 to 0.80;
e. Quarter ending June 30, 2008: from 1.20 to 0.80;
f. Quarter ending September 30, 2008: from 1.20 to 1.00;
g. Quarter ending December 31, 2008: from 1.20 to 1.00;
h. Quarter ending March 31, 2009: from 1.20 to 1.00; and
i. Quarter ending June 30, 2009: from 1.20 to 1.00.

79. The Fourth Amendment to NWPA raised the Maximum Senior Leverage Ratio as follows:

a. Quarter ending June 30, 2007: from 2.75 to 3.50;
b. Quarter ending September 30, 2007: from 2.75 to 3.50;
c. Quarter ending December 41, 2007: from 2.75 to 3.50;
d. Quarter ending March 31, 2008: from 2.75 to 3.50;
e. Quarter ending June 30, 2008: from 2.75 to 3.50;
f. Quarter ending September 30, 2008: from 2.75 to 3.00;
g. Quarter ending December 31, 2008: from 2.75 to 3.00;
h. Quarter ending March 31, 2009: from 2.75 to 3.00;

i. Quarter ending June 30, 2009: from 2.75 to 3.00; and
j. Quarter ending September 30, 2009: from 2.75 to 3.00.

80. The Fourth Amendment to NWPA raised the Maximum Total Leverage Ratio as follows:

a. Quarter ending June 30, 2007: from 4.00 to 6.00;
b. Quarter ending September 30, 2007: from 4.00 to 6.00;
c. Quarter ending December 41, 2007: from 4.00 to 6.00;
d. Quarter ending March 31, 2008: from 4.00 to 6.00;
e. Quarter ending June 30, 2008: from 4.00 to 6.00;
f. Quarter ending September 30, 2008: from 4.00 to 5.00;
g. Quarter ending December 31, 2008: from 4.00 to 5.00;
h. Quarter ending March 31, 2009: from 4.00 to 5.00;
i. Quarter ending June 30, 2009: from 4.00 to 5.00; and
j. Quarter ending September 30, 2009: from 4.00 to 5.00.

81. Under the Fourth Amendment to NWPA, the MMA Companies agreed "pay to the Investors as an amendment fee an amount equal to 0.5% of outstanding principal," payable within 10 days after the effective date of the Fourth Amendment.

82. On June 9, 2006, MaineDOT loaned the MMA Companies an additional $2,100,073 through a Rail Funding Agreement ("Rail Funding Agreement III").

83. On December 31, 2007, exactly one year from the date of the Fourth Amendment to NWPA, the NWPA was amended a fifth time (the "Fifth Amendment to NWPA").

84. The Fifth Amendment to NWPA was precipitated by the Debtor's continued and deepening financial distress and continued inability to comply with the NWPA's covenants, even though the NWPA's covenants had previously been relaxed four times in approximately four years, through the First, Second, Third, and Fourth Amendment to NWPA.

85. In the Fifth Amendment to NWPA, the MMA Companies acknowledged that they were in default under the NWPA due to the non-payment of interest under the Notes, and breach of certain covenants.

86. The Fifth Amendment to NWPA eliminated the Minimum EBITDA requirement entirely.

87. The Fifth Amendment to NWPA lowered the Minimum Interest Coverage Ratio as follows:

a. Quarter ending March 31, 2008: from 3.00 to 1.00;
b. Quarter ending June 30, 2008: from 3.00 to 1.50;
c. Quarter ending September 30, 2008: from 3.00 to 1.50;
d. Quarter ending December 31, 2008: from 3.00 to 1.75;
e. Quarter ending March 31, 2009: from 3.00 to 1.75;
f. Quarter ending June 30, 2009: from 3.00 to 1.75;
g. Quarter ending September 30, 2009: from 3.00 to 1.75; and
h. Quarter ending December 31, 2009 and thereafter: from 3.00 to 2.00.

88. The Fifth Amendment to NWPA lowered the Minimum Fixed Charge Coverage Ratio as follows:

a. Quarter ending March 31, 2008: from 1.20 to 0.60;
b. Quarter ending June 30, 2008: from 1.20 to 0.60;
c. Quarter ending September 30, 2008: from 1.20 to 0.80;
d. Quarter ending December 31, 2008: from 1.20 to 0.80;
e. Quarter ending March 30, 2009: from 1.20 to 0.80;
f. Quarter ending June 30, 2009: from 1.20 to 0.80;
g. Quarter ending September 30, 2009: from 1.20 to 0.80;
h. Quarter ending December 31, 2009: from 1.20 to 0.80; and
i. Quarter ending March 31, 2010 and thereafter: from 1.20 to 1.00.

89. The Fifth Amendment to NWPA raised the Maximum Senior Leverage Ratio as follows:

a. Quarter ending March 31, 2008: from 2.75 to 4.50;
b. Quarter ending June 30, 2008: from 2.75 to 4.50;
c. Quarter ending September 30, 2008: from 2.75 to 3.50;
d. Quarter ending December 31, 2008: from 2.75 to 3.50;
e. Quarter ending March 30, 2009: from 2.75 to 3.50;
f. Quarter ending June 30, 2009: from 2.75 to 3.50;
g. Quarter ending September 30, 2009: from 2.75 to 3.50; and
h. Quarter ending December 31, 2009 and thereafter: from 2.75 to 3.00.

90. The Fifth Amendment to NWPA raised the Maximum Total Leverage Ratio as

follows:

a. Quarter ending March 31, 2008: from 4.00 to 7.50;
b. Quarter ending June 30, 2008: from 4.00 to 7.50;
c. Quarter ending September 30, 2008: from 4.00 to 6.50;
d. Quarter ending December 31, 2008: from 4.00 to 6.50;
e. Quarter ending March 30, 2009: from 4.00 to 6.50;
f. Quarter ending June 30, 2009: from 4.00 to 6.50;
g. Quarter ending September 30, 2009: from 4.00 to 6.50; and
h. Quarter ending December 31, 2009 and thereafter: from 4.00 to 6.00.

91. Under the Fifth Amendment to NWPA, the MMA Companies made a $75,000 payment to the Investors as an amendment fee.

92. Under the Fifth Amendment to the NWPA, the MMA Companies issued new notes to replace the original Notes, with the new notes bearing interest at 12.25%.[3]

93. On June 8, 2009, MaineDOT loaned the MMA Companies an additional $1,000,000 through a Rail Funding Agreement ("Rail Funding Agreement IV," collectively with Rail Funding Agreements I, II, and III, the "Rail Funding Agreements").

94. On June 12, 2009, the FRA and the Debtor entered into "Amendment No. 1" to the FRA Loan ("First Amendment to FRA Loan").

95. Upon information and belief, the First Amendment to FRA Loan was precipitated by the Debtor's continued and deepening financial distress, and the Debtor's payment default under the FRA Loan.

96. On July 24, 2009, less than two months from the date of the First Amendment to FRA Loan, the NWPA was amended a sixth time (the "Sixth Amendment to NWPA").

97. The Sixth Amendment to NWPA was precipitated by the Debtor's continued and deepening financial distress and continued inability to comply with the NWPA's covenants, even though the NWPA's covenants had previously been relaxed five times in approximately six

[3] This Complaint uses the term "Notes" to refer to both the original promissory notes and the replacement promissory notes.

years, through the First, Second, Third, Fourth, and Fifth Amendment to NWPA.

98. Additionally, the Sixth Amendment to NWPA indicates that the Debtor was in Default under both the NWPA and the FRA Loan at the same time, in spite of amendments to both loans.

99. In the Sixth Amendment to NWPA, the MMA Companies acknowledged that they were in default under the NWPA due to non-payment of the Notes, and breach of certain covenants.

100. The Sixth Amendment to NWPA lowered the Minimum Interest Coverage Ratio as follows:

a. Quarter ending September 30, 2009: from 3.00 to 0.75;
b. Quarter ending December 31, 2009: from 3.00 to 1.40;
c. Quarter ending March 31, 2010: from 3.00 to 2.25;
d. Quarter ending June 30, 2010: from 3.00 to 2.75; and
e. Quarter ending September 30, 2010: from 3.00 to 2.75.

101. The Sixth Amendment to NWPA lowered the Minimum Fixed Charge Coverage Ratio as follows:

a. Quarter ending September 30, 2009: from 1.20 to 0.35;
b. Quarter ending December 31, 2009: from 1.20 to .035;
c. Quarter ending March 31, 2010: from 1.20 to 0.75;
d. Quarter ending June 30, 2010: from 1.20 to 0.75; and
e. Quarter ending September 30, 2010: from 1.20 to 0.75.

102. The Sixth Amendment to NWPA raised the Maximum Senior Leverage Ratio as follows:

a. Quarter ending September 30, 2009: from 2.75 to 12.00;
b. Quarter ending December 31, 2009: from 2.75 to 10.75;
c. Quarter ending March 31, 2010: from 2.75 to 6.75;
d. Quarter ending June 30, 2010: from 2.75 to 5.50; and
e. Quarter ending September 30, 2010: from 2.75 to 5.50.

103. The Sixth Amendment to NWPA raised the Maximum Total Leverage Ratio as

follows:

a. Quarter ending September 30, 2009: from 4.00 to 20.00;
b. Quarter ending December 31, 2009: from 4.00 to 18.00;
c. Quarter ending March 31, 2010: from 4.00 to 11.25;
d. Quarter ending June 30, 2010: from 4.00 to 9.00; and
e. Quarter ending September 30, 2010: from 9.00.

104. Under the Sixth Amendment to NWPA, the MMA Companies made a $10,495.19 payment to the Investors as an amendment fee.

The Sale of Rail Lines and Payoff of Notes

105. In late 2010 and early 2011, the MMA Companies entered into a series of transactions, wherein the MMA Companies sold certain rail assets to the State of Maine and used the proceeds of that sale, in part, to pay the remaining balance of the Notes. The Warrants were left in place.

106. On December 16, 2010, the Debtor's Board of Directors authorized the Debtor to enter into the interrelated transactions that comprised the sale and related payoff of the Notes, through certain "Resolutions of the Board of Directors of Montreal, Maine & Atlantic Railway, Ltd." (the "Board Resolution").

107. On December 29, 2010, the FRA and the Debtor entered into a "Loan Workout Agreement and Amendment No. 2 to Financing Agreement, Mortgage, and Security Agreement" ("Second Amendment to FRA Loan").

108. According to the Second Amendment to FRA Loan, the FRA Loan had an overdue principal balance of $906,579.38, as well as accrued and unpaid interest of $1,466,355.58, as of December 29, 2010.

109. The Second Amendment to FRA Loan anticipated the MMA Companies' forthcoming sale of rail assets to the State of Maine, stating that "a condition precedent to a sale

of the Lines [to] the State is the release of [FRA's] interest in the Lines pursuant to the Mortgage and Security Agreement… so that [the Debtor] is able to convey the Lines to the State free and clear of such liens and encumbrances."

110. The FRA waived numerous payment and covenant defaults in the Second Amendment to FRA Loan.

111. On January 4, 2011, the Debtor entered into a P&S with the State of Maine (the "P&S"), under which the Debtor agreed to sell, to the State of Maine, the following rail lines (with limited exceptions):

a. The Madawaska Subdivision;
b. The Presque Isle Subdivision;
c. The Fort Fairfield Subdivision;
d. The Limestone Subdivision; and
e. The Houlton Subdivision

(collectively, the "Lines").

112. At the time of the P&S, the MMA Companies were in default on their obligations under the NWPA, the FRA Loan, and the Rail Funding Agreements.

113. At the time of the P&S, the MMA Companies were not able to service their debts or pay their expenses as they became due and were, based on the fair value of their assets, insolvent on a balance sheet basis.

114. The purchase price of the Lines in the P&S was $21,100,000.

115. The parties to the P&S applied $1,000,000 of the purchase price as a credit to the State of Maine's claim against the Debtor under the Rail Funding Agreements.

116. The State of Maine and the MaineDOT agreed to the P&S and the sale of the Lines in an effort to save MMA Corp.'s failing railroad.

117. Upon information and belief, Maine and the MaineDOT intended for the P&S to

provide the Debtor with working capital, and the sale of the Lines was designed to accomplish that intention.

118. The remaining $20,100,000 of the purchase price in the P&S was due and payable at closing.

119. The P&S provided for the continued operation of rail service along the Lines by way of cooperation and agreements between the Debtor and the State of Maine.

120. These agreements between the Debtor and the State of Maine were memorialized in an "Interim Service Agreement" dated January 4, 2011, in which the Debtor agreed to continue to provide freight rail service along the Lines.

121. In exchange for releasing its security interest in the Lines, the FRA received $2,372,934.96 from the sale of the rail lines to the State of Maine. That amount represented the sum of the overdue principal and accrued interest on the FRA Loan.

122. The FRA also received additional security for the FRA Loan, consisting of:

a. Security interests in the Debtor's and MMA Canada's assets;
b. A guarantee by the Debtor of MMA Canada's debts to the FRA;
c. A stock pledge of MMA Canada stock;
d. A guarantee by the Debtor of MMA Corp.'s debts to the FRA; and
e. A guarantee by the Debtor of LMS's debts to the FRA

(collectively, the "Additional Security").

123. Upon information and belief, the FRA released its security interest in the Lines without receiving the full outstanding balance of the FRA Loan, because of the Debtor's need for working capital from the sale of the Lines, and because of the Investors' insistence on full payment as a condition to allowing the sale to occur.

124. The Second Amendment to FRA Loan provided for the following priority of payments from the proceeds of the sale of assets to Maine:

a. First, $2,372,934.96 to the FRA;
b. Second, $13,862,165.29 (plus a per diem of $4,581.36) to the Investors;
c. Third, $1,082,685.79 to the Debtor; and
d. Fourth, $2,708,912.20, the balance of the proceeds, to the Wheeling and Lake Erie Railway Company ("Wheeling").

125. On January 4, 2011, the MMA Companies, with the exception of MMA Rolling, entered into a Termination and Release (the "2011 Termination") with the Investors and Rail World.

126. Under the 2011 Termination, the Investors agreed that their rights under the Notes would terminate upon payment in full by the MMA Companies.

127. The Investors agreed to terminate any security interests they held in connection with the Notes upon payment in full.

128. The Investors' release of their security interests was necessary before the Additional Security could be granted to the FRA.

129. The Investors were aware that the release of their security interests was necessary to complete the sale of the Lines to the State of Maine, and they used this fact to force the MMA Companies to pay the Notes in full, and to force the other parties to release liens in order to consummate the transaction.

130. Additionally, the 2011 Termination terminated the Deed of Hypothec, the Management Agreement (in favor of Rail World), an Agency Agreement (in which Caisse de Depot was appointed collateral agent on behalf of the Investors), the Earlston Guarantee (as defined below at ¶161), and a Pledge Agreement (which Earlston executed in favor of Caisse de Depot).

131. By its terms, the 2011 Termination did not affect the Investors' rights with respect to the Warrants.

132. Schedule A to the 2011 Termination provides the following "payoff amounts":

a. Caisse de Depot: $9,994,865.24;
b. Eureka: $1,589,090.80;
c. Athena: $1,808,222.40;
d. MP Global: $387,476.13;
e. Mr. Davis: $45,839.98; and
f. Mr. Turner: $36,670.74.

The total amount of these payments was $13,862,165.29.

133. The payoff amounts in the 2011 Termination are, in all instances, higher than the original face amount of the Notes listed in the NWPA.

134. Schedule A to the 2011 Termination does not include the following Investors:

a. MP Structured;
b. CAC;
c. DRD Family;
d. Earlston;
e. Berkshire;
f. ABC Railway; and
g. Mr. Parsons.

135. Upon information and belief, the Investors not listed on Schedule A to the 2011 Termination either converted their Notes into preferred stock in MMA Corp. or sold their Notes prior to the closing of the 2011 Termination.

136. Upon information and belief, Mr. Burkhardt and/or an entity controlled by him purchased the Notes of several of the Investors prior to the closing of the 2011 Termination.

137. Upon information and belief, Earlston, ABC Railway, and Mr. Parsons were holders of equity securities in MMA Corp. as of the date of the closing of the 2011 Termination.

138. Upon information and belief, with the exception of Eureka, all of the parties listed in paragraph 132 were holders of equity securities in MMA Corp. as of the date of the closing of the 2011 Termination.

139. The payoff amounts in Schedule A to the 2011 Termination equal the amount

payable to the Investors in the FRA Workout (approximately $13.86 million).

140. The MMA Companies paid $13,862,165.29 to the Investors on or about the closing date of the 2011 Termination.

141. On August 7, 2013 (the "Petition Date"), the Debtor filed its bankruptcy petition.

142. On August 8, 2013, MMA Canada commenced ancillary proceedings in the Superior Court of Canada.

The Debtor's Corporate Structure and Control

143. Mr. Burkhardt and related entities controlled the Debtor at all times material to the allegations in this Complaint.

144. Mr. Burkhardt was the chairman of the Debtor's board of directors at all times material to the allegations in this Complaint.

145. Mr. Burkhardt owns Earlston.

146. Earlston was the lead investor of the NWPA.

147. Further, Earlston was the lead investor of the MMA Companies generally.

148. Upon information and belief, Earlston was the largest equity security holder of MMA Corp. Earlston held over 50% of the equity securities of MMA Corp. at all times relevant hereto.

149. Rail World is Earlston's general partner.

150. Mr. Burkhardt owns or controls Rail World, and was its sole director at all times relevant hereto.

151. Rail World was the recipient of a management fee of $500,000 per year from the MMA Companies, arising from a Management Agreement dated the same date as the NWPA (the "Management Agreement").

152. While the Management Agreement purported to establish Rail World as the contract management to the MMA Companies as an independent contractor, in fact, the actual effect of the Management Agreement was to make Rail World and Mr. Burkhardt the *de facto* CEO of all of the MMA Companies.

153. Mr. Burkhardt directed the actions of the MMA Companies and ran the Companies' corporate transactions.

154. As referenced in the NWPA, the MMA Companies issued Earlston a $7,000,000 "Term B Note" under the "Senior Credit Agreement" (the "Term B Note").

155. As a participant in the NWPA, Caisse de Depot allegedly contributed $8,000,000 of the total financing in the transaction. Earlston guaranteed the MMA Companies' obligations to Caisse de Depot under the Note issued to Caisse de Depot in the transaction (the "Earlston Guarantee").

156. Earlston guaranteed the MMA Companies' obligations to Caisse de Depot even if Earlston sold its own Notes or converted them to equity in the MMA Companies.

157. In addition, Earlston obtained a Note in the original principal amount of $1,606,936 under the NWPA.

158. Earlston's overall exposure in the NWPA was $9,606,936, or approximately 64% of the total consideration paid under the NWPA.

159. Wheeling was one of the Debtor's largest creditors.

160. Mr. Parsons owns or controls Wheeling.

161. Mr. Parsons is, or was, a director of MMA Corp. and the Debtor, and is or was a stockholder of MMA Corp., both directly and through Wheeling subsidiaries.

162. ABC Railway, one of the Investors, is a wholly-owned subsidiary of Wheeling.

163. Additionally, Mr. Burkhardt is a member of the board of directors of Wheeling.

COUNT I
(Recharacterization of Debt as Equity and Avoidance and Recovery of Unauthorized Dividend Pursuant to 8 Del. C. § 173 and 11 U.S.C. §§ 544(b) Against Certain Investors)

164. The Trustee repeats and realleges, as if set forth at length herein, each and every allegation of paragraphs 1 through 163 of this Complaint.

165. Bankruptcy courts, like other federal courts, are empowered to recharacterize debt as equity, when appropriate under the facts and circumstances of the case.

166. As evidenced by the numerous amendments to the NWPA, the Debtor was thinly capitalized and overburdened with debt from the issuance of the Notes.

167. The Debtor had inadequate capital contributions.

168. The Debtor was insolvent at all times relevant hereto on a balance sheet basis.

169. The Debtor was insolvent at all times relevant hereto on the basis that the Debtor was unable to pay its debts as they came due.

170. The Investors made up well over 50%, and as high as 90% or more, of MMA Corp.'s equity securities.

171. Mr. Burkhardt, Earlston, Rail Word, and the Investors controlled the Debtor's corporate operations.

172. The Debtor would not have been able to obtain a loan on similar terms to the Notes from outside lenders.

173. The Debtor's total leverage ratio was exceedingly high.

174. The Notes were never performing.

175. The Notes were in default at all times leading up to the 2011 Termination.

176. Through the NWPA, the Debtor paid off of the Notes, although the Notes had

already reached their maturity date (December 30, 2010) before the NWPA.

177. Through the NWPA, the Investors contributed capital to the Debtor allegedly in the form of loans, but the loans had the substance and character of equity contributions, and were, in fact, equity contributions.

178. Accordingly, the Notes should be recharacterized as equity interests in the Debtor.

179. Title 8 of the Delaware Code ("Delaware Corporate Law") § 173 provides that corporations may pay dividends to shareholders only in accordance with Delaware Corporate Law.

180. Under Delaware Corporate Law, unauthorized dividends include dividends paid by insolvent corporations.

181. The MMA Companies were insolvent at the time of the 2011 Termination.

182. The $13,862,165.29 in payments made to certain Investors (those listed in paragraph 132, above) in the 2011 Termination constituted, in fact, the payment of dividends on equity interests and each such payment should be avoided as an improper dividend payment paid by an insolvent corporation.

COUNT II
(Avoidance and Recovery of Constructively Fraudulent Transfer Pursuant to Uniform Fraudulent Transfer Act and 11 U.S.C. §§ 544(b) Against Certain Investors)

183. The Trustee repeats and realleges, as if set forth at length herein, each and every allegation of paragraphs 1 through 182 of this Complaint.

184. All of the participants involved in the Second Amendment to FRA Loan, the P&S, and the 2011 Termination (collectively, the "2011 Transactions") intended and planned that all transactions involved would occur simultaneously and were interdependent, related transactions.

185. The 2011 Transactions should be collapsed into a single, integrated transaction for purposes of determining whether those transactions were fraudulent.

186. The majority of the $21,100,000 paid for the Lines by the State of Maine was distributed to certain of the Investors (those listed in paragraph 132, above) on account of the Notes. Because the Notes were at all times non-performing and must be recharacterized as equity interests in the Debtor, the $13,862,165.29 paid to certain of the investors the Investors should be treated as a distribution or dividend to equity holders in an insolvent company.

187. The Debtor received less than reasonably equivalent value from the Investors in exchange for the $13,862,165.29 the Debtor paid certain of the Investors in the 2011 Termination.

188. At the time of the Debtor's payment of $13,862,165.29 to certain of the Investors, the Debtor: (A) was engaged or was about to engage in a business for which its remaining assets and capital were unreasonably small in relation to the business; (B) intended to incur, or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due; and (C) was insolvent or would be rendered insolvent by the transactions undertaken in connection with the 2011 Termination.

189. Upon information and belief, Mr. Burkhardt, Earlston, Rail World, and the Investors possessed extensive knowledge of the Debtor's financial conditions, business operations, and corporate operations.

190. Given their extensive knowledge of the Debtor's financial conditions, business operations, and corporate operations, Mr. Burkhardt, Earlston, Rail World, and the Investors had reasonable cause to believe that the Debtor was insolvent before, during, and after the 2011 Transactions.

191. Before, during, and after the 2011 Transactions, the Debtor had actual creditors holding unsecured claims allowable within the meaning of §§ 502 and 544(b) of the Bankruptcy Code, and one or more of such creditors continues to hold such claims against the Debtor as of the date hereof.

192. The Debtor's payment of $13,862,165.29 to certain Investors (those listed in paragraph 132, above) should be avoided as a fraudulent transfer pursuant to the applicable provisions of the Uniform Fraudulent Transfer Act ("UFTA") and §§ 544(b) and 550 of the Bankruptcy Code.

COUNT III
(Avoidance and Recovery of Actually Fraudulent Transfer Pursuant to Uniform Fraudulent Transfer Act and 11 U.S.C. §§ 544(b) Against Certain Investors)

193. The Trustee repeats and realleges, as if set forth at length herein, each and every allegation of paragraphs 1 through 192 of this Complaint.

194. Upon information and belief, the Investors possessed extensive knowledge of the Debtor's financial conditions, business operations, and corporate operations.

195. Given their extensive knowledge of the Debtor's financial conditions, business operations, and corporate operations, the Investors had reasonable cause to believe that the Debtor was insolvent before, during, and after the 2011 Termination.

196. Before, during, and after the 2011 Termination, the Debtor had actual creditors holding unsecured claims allowable within the meaning of §§ 502 and 544(b) of the Bankruptcy Code, and one or more of such creditors continues to hold such claims against the Debtor as of the date hereof.

197. The Debtor's payment of $13,862,165.29 to certain Investors (those listed in paragraph 132, above) was orchestrated by the Investors with actual intent to hinder, delay, or

defraud the Debtor's creditors. From the perspective of the Investors, the primary purpose of the 2011 Termination was to extract the complete payment of their non-performing Notes, despite the Debtor's then-existing financial distress and desperate need for working capital, while leaving the Debtor with insufficient capital to operate its business and pay its debts as they came due.

198. The Maine version of the UFTA lists eleven, non-exclusive factors that may be considered, although none need to be present, in determining whether to infer fraudulent intent from the circumstances of a transfer. At least four of the "badges of fraud" apply to the payment made to the investors in the 2011 Transactions: (A) the payment was made to insiders of the Debtor and its affiliated companies; (B) the payment was of substantially all of the Debtor's working capital that would have been otherwise available through the P&S; (C) the Debtor received no value at all in exchange for the payment; and (D) the Debtor was insolvent before the payment, and the payment and 2011 Transactions deepened the Debtor's insolvency. See Me. Rev. Stat. tit. 14, § 3575(2).

199. The Debtor's payment of $13,862,165.29 to certain Investors (those listed in paragraph 132, above) should be avoided as a fraudulent transfer pursuant to the applicable provisions of Maine's version of the Uniform Fraudulent Transfer Act (Me. Rev. Stat. tit. 14, § 3575) and §§ 544(b) and 550 of the Bankruptcy Code.

COUNT IV
(Avoidance and Recovery of Insider Preferences Pursuant to Uniform Fraudulent Transfer Act and 11 U.S.C. §§ 544(b) Against Certain Investors)

200. The Trustee repeats and realleges, as if set forth at length herein, each and every allegation of paragraphs 1 through 199 of this Complaint.

201. The UFTA provides that, "A transfer made by a debtor is fraudulent as to a

creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time and the insider had reasonable cause to believe that the debtor was insolvent."

202. The Debtor's payment of $13,862,165.29 to certain Investors was a transfer made by the Debtor on account of the Notes.

203. To the extent the Notes are not recharacterized as equity, the obligations evidenced by the Notes were antecedent debts for purposes of the UFTA.

204. The Debtor was insolvent at the time of the 2011 Transactions.

205. The Investors had reasonable cause to believe that the Debtor was insolvent.

206. The Debtor's payment of $13,862,165.29 to the Investors was fraudulent as to creditors whose claims arose before the 2011 Termination.

207. The Debtor's payment of $13,862,165.29 to certain Investors (those listed in paragraph 132, above) should be avoided pursuant to the applicable provisions of the Uniform Fraudulent Transfer Act (Me. Rev. Stat. tit. 14, § 3576) and § 544(b), and the Investors are liable for the amount of the avoided transfers pursuant to § 550 of the Bankruptcy Code.

COUNT V
(Avoidance and Recovery of Insider Preferences Pursuant to Uniform Fraudulent Transfer Act and 11 U.S.C. §§ 544(b) Against Earlston)

208. The Trustee repeats and realleges, as if set forth at length herein, each and every allegation of paragraphs 1 through 207 of this Complaint.

209. Any payments made by the Debtor to Earlston on account of the Term B Note were transfers made by the Debtor.

210. The Term B Note was an antecedent debt for purposes of UFTA.

211. The Debtor was insolvent at the time of any payments to Earlston on account of

the Term B Note.

212. Earlston and its agents had reasonable cause to believe that the Debtor was insolvent.

213. Any payments by the Debtor to Earlston on account of the Term B Note were fraudulent as to creditors whose claims arose before any such payments.

214. The Debtor's payments to Earlston on account of the Term B Note should be avoided pursuant to the applicable provisions of the Uniform Fraudulent Transfer Act (Me. Rev. Stat. tit. 14, § 3576) and § 544(b), and Earlston is liable for the amount of the avoided transfers pursuant to § 550 of the Bankruptcy Code.

Prayer for Relief

WHEREFORE, Robert J. Keach, in his capacity as the trustee of Montreal, Maine & Atlantic Railway, Ltd., respectfully requests that this Court: (i) recharacterize the Notes as equity interests in the Debtor, avoid the $13,862,165.29 payment made to certain investors under the 2011 Transactions as an improper dividend pursuant to Delaware Corporate Law, and recover the payment for the Debtor's estate; (ii) avoid the payment made to certain investors under the 2011 Transactions as a constructively fraudulent transfer pursuant to the Uniform Fraudulent Transfer Act and recover the payment for the Debtor's estate; (iii) avoid the payment made to certain investors under the 2011 Transactions as an actually fraudulent transfer pursuant to the Uniform Fraudulent Transfer Act and recover the payment for the Debtor's estate; (iv) alternatively, avoid the payment made to certain investors under the 2011 Transactions as an insider preference pursuant to the Uniform Fraudulent Transfer Act and recover the payment for the Debtor's estate; and/or (v) alternatively, avoid the payments made to Earlston under the Term

B Note as insider preferences pursuant to the Uniform Fraudulent Transfer Act and recover the payments for the Debtor's estate.

Dated: July 27, 2015

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

/s/ Robert J. Keach

Robert J. Keach
D. Sam Anderson
Roma Desai
BERNSTEIN SHUR
100 Middle Street
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(207) 774-1200 (telephone)
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B104 (FORM 104) (08/07)

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only)

PLAINTIFFS	DEFENDANTS
Robert J. Keach, solely in his capacity as the chapter 11 trustee for Montreal, Maine & Atlantic Railway, Ltd.	Caisse De Depot Et Placement Du Quebec, et al. (See attached sheet)
ATTORNEYS (Firm Name, Address, and Telephone No.) Robert J. Keach, Esq. D. Sam Anderson, Esq. Roma Desai, Esq. Bernstein, Shur, Sawyer & Nelson, P.A. 100 Middle Street, Portland, ME 04104 (207) 774-1200	**ATTORNEYS** (If Known) See attached sheet
PARTY (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☐ Other ☒ Trustee	**PARTY** (Check One Box Only) ☐ Debtor ☐ U.S. Trustee/Bankruptcy Admin ☐ Creditor ☒ Other ☐ Trustee

CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED)

Avoidance and recovery of certain unauthorized dividends, insider preferences, and fraudulent transfers

NATURE OF SUIT

(Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)

FRBP 7001(1) – Recovery of Money/Property
- ☐ 11-Recovery of money/property - §542 turnover of property
- ☐ 12-Recovery of money/property - §547 preference
- ☐ 13-Recovery of money/property - §548 fraudulent transfer
- ☒ 14-Recovery of money/property - other

FRBP 7001(2) – Validity, Priority or Extent of Lien
- ☐ 21-Validity, priority or extent of lien or other interest in property

FRBP 7001(3) – Approval of Sale of Property
- ☐ 31-Approval of sale of property of estate and of a co-owner - §363(h)

FRBP 7001(4) – Objection/Revocation of Discharge
- ☐ 41-Objection / revocation of discharge - §727(c),(d),(e)

FRBP 7001(5) – Revocation of Confirmation
- ☐ 51-Revocation of confirmation

FRBP 7001(6) – Dischargeability
- ☐ 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims
- ☐ 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud
- ☐ 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny

(continued next column)

FRBP 7001(6) – Dischargeability (continued)
- ☐ 61-Dischargeability - §523(a)(5), domestic support
- ☐ 68-Dischargeability - §523(a)(6), willful and malicious injury
- ☐ 63-Dischargeability - §523(a)(8), student loan
- ☐ 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support)
- ☐ 65-Dischargeability - other

FRBP 7001(7) – Injunctive Relief
- ☐ 71-Injunctive relief – imposition of stay
- ☐ 72-Injunctive relief – other

FRBP 7001(8) Subordination of Claim or Interest
- ☐ 81-Subordination of claim or interest

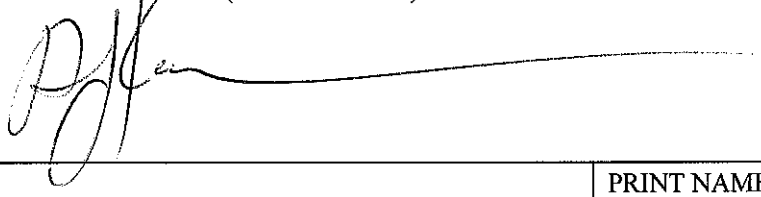
FRBP 7001(9) Declaratory Judgment
- ☐ 91-Declaratory judgment

FRBP 7001(10) Determination of Removed Action
- ☐ 01-Determination of removed claim or cause

Other
- ☐ SS-SIPA Case – 15 U.S.C. §§78aaa *et.seq.*
- ☒ 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)

☐ Check if this case involves a substantive issue of state law	☐ Check if this is asserted to be a class action under FRCP 23
☐ Check if a jury trial is demanded in complaint	Demand $

Other Relief Sought

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Montreal, Maine & Atlantic Railway, Ltd.	BANKRUPTCY CASE NO. 13-10670	
DISTRICT IN WHICH CASE IS PENDING Maine	DIVISION OFFICE Portland	NAME OF JUDGE Judge Peter G. Cary
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) 		
DATE July 24, 2015	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Robert J. Keach, Esq.	

INSTRUCTIONS

The filing of a bankruptcy case creates an "estate" under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor's discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also must complete and file Form 104, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court's Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 104 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff's attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and **Defendants.** Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.

Defendants	Address
CAISSE DE DEPOT ET PLACEMENT DU QUEBEC	Caisse De Depot et Placement Du Quebec 1000 Place Jean-Paul Riopelle Montreal, A8 H2Z2B3, Canada
EUREKA I, LP	Eureka I, LP 770 Township Line Road Suite 150 Yardley, PA 19067 Registered Agent: Corporation Service Company, 2711 Centerville Rd, Suite 400 Wilmington, DE 19808
ATHENA FAMILY PARTNERS	Athena Family Partners P.O. Box 1077 Osprey, FL 34229 Registered Agent: Barry S. Engel 730 17th St, Ste 500 Denver, Co 80202-3580
MP GLOBAL ENTERPRISES & ASSOCIATES, LLC	MP Global Enterprises & Associates, LLC 650 Town Center Drive Costa Mesa, CA 92626
EARLSTON ASSOCIATES, LP	Earlston Associates, LP 8600 W Bryn Mawr Ave 500N Chicago, Illinois 60631 Patrick C. Maxcy, Esq Alan S. Gilbert, Esq. Dentons US LLP 233 S. Wacker Drive, Suite 7800 Chicago, IL 60606-6459
JERRY R. DAVIS	Jerry R. Davis 2450 E. Alameda Avenue, Unit 12 Denver, CO 80209 Jerry R. Davis 8490 N. Lee Trevino drive Tucson, AZ 85742

Defendants	Address
FRANK K. TURNER	Frank K. Turner 32 W. 412 Derby Road P.O. Box 357 Wayne, IL 60194-0357